



CITY OF
HAYWARD
HEART OF THE BAY

CITY COUNCIL AGENDA

FEBRUARY 18, 2014

**MAYOR MICHAEL SWEENEY
MAYOR PRO TEMPORE MARK SALINAS
COUNCIL MEMBER BARBARA HALLIDAY
COUNCIL MEMBER FRANCISCO ZERMEÑO
COUNCIL MEMBER MARVIN PEIXOTO
COUNCIL MEMBER GREG JONES
COUNCIL MEMBER AL MENDALL**

Table of Contents

Agenda	3
Approval of Minutes of the City Council Meeting on January 28, 2014	
Draft Minutes	7
Approval of Minutes of the Special Joint City Council/Hayward Housing Authority/Redevelopment Successor Agency/Hayward Public Financing Authority Meeting on February 4, 2014	
Draft Minutes	12
Green Hayward PAYS® (Pay-As-You-Save) On-Bill Conservation and Efficiency Financing – Review of Final Program Design and Authorization for City Manager to Execute Contracts	
Staff Report	18
Attachment I	26
Attachment II	28
Approval of Network Infrastructure Maintenance Agreement Renewal	
Staff Report	78
Attachment I	80
Attachment II	82
Authorization to Negotiate and Execute Contract Amendments with Technology Management Services for additional Enterprise Resource Planning (ERP) Project Management Services and the Government Finance Officers Association for additional ERP Project Consulting Services	
Staff Report	83
Attachment I	86
Adoption of Resolution Approving an Amendment to the City of Hayward Salary Plan for Fiscal Year 2014	
Staff Report	87
Attachment I	89
Attachment II	91
Authorization to Amend a Professional Services Agreement with CliffordMoss for Outreach Efforts Related to Potential 2014 Revenue Measure	
Staff Report	99
Attachment I Resolution.	101
Presentation of Fact Finder's Report and City's Rebuttal on City's Impasse with Service Employees International Union (SEIU) Local 1021 – Maintenance and Operations Unit and SEIU Local 1021 – Clerical and Related Unit; and Consideration of Action on Impasse and Imposition of City's Last, Best, and Final Offer to these Units (Report from City Manager David)	
Staff Report	102
Attachment I	108
Attachment II	204
Attachment III	206

Adoption of Interim Urgency Ordinance Extending a Temporary Moratorium on the Development, Establishment and Operation of new Small-Format and Large-Scale Tobacco Retailers and all new E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars within the City of Hayward. The adoption of the Ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065 and State CEQA Guidelines Sections 15061(b)(3), 15306 and 15378 (Report from Director of Development Services Rizk)

Staff Report	208
Attachment I.	214
Attachment II	219



CITY COUNCIL MEETING FOR FEBRUARY 18, 2014
777 B STREET, HAYWARD, CA 94541
WWW.HAYWARD-CA.GOV

CLOSED SESSION
Closed Session Room 2B – 5:00 PM

1. PUBLIC COMMENTS

2. Public Employment

Pursuant to Government Code 54957

➤ Performance Evaluation

City Attorney

3. Conference with Labor Negotiators

Pursuant to Government Code 54957.6

➤ Lead Negotiators: City Manager David; City Attorney Lawson; Assistant City Manager McAdoo; Human Resources Director Robustelli; Finance Director Vesely; Deputy City Attorney Vashi; Director of Maintenance Services McGrath; Senior Human Resources Analyst Collins; Senior Human Resources Analyst Monnastes; Jack Hughes, Liebert, Cassidy and Whitmore

Under Negotiation: All Groups

4. Adjourn to Special Joint City Council/Redevelopment Successor Agency Meeting

SPECIAL JOINT CITY COUNCIL/REDEVELOPMENT SUCCESSOR AGENCY MEETING
Council Chambers – 7:00 PM

CALL TO ORDER Pledge of Allegiance Council Member Zermeño

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 Work Session, or Informational Staff Presentation 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. Approval of Minutes of the City Council Meeting on January 28, 2014
[Draft Minutes](#)
2. Approval of Minutes of the Special Joint City Council/Hayward Housing Authority/Redevelopment Successor Agency/Hayward Public Financing Authority Meeting on February 4, 2014
[Draft Minutes](#)
3. Green Hayward PAYS® (Pay-As-You-Save) On-Bill Conservation and Efficiency Financing – Review of Final Program Design and Authorization for City Manager to Execute Contracts
[Staff Report](#)
[Attachment I](#)
[Attachment II](#)
4. Approval of Network Infrastructure Maintenance Agreement Renewal
[Staff Report](#)
[Attachment I](#)
[Attachment II](#)
5. Authorization to Negotiate and Execute Contract Amendments with Technology Management Services for additional Enterprise Resource Planning (ERP) Project Management Services and the Government Finance Officers Association for additional ERP Project Consulting Services
[Staff Report](#)
[Attachment I](#)
6. Adoption of Resolution Approving an Amendment to the City of Hayward Salary Plan for Fiscal Year 2014
[Staff Report](#)
[Attachment I](#)
[Attachment II](#)
7. Authorization to Amend a Professional Services Agreement with CliffordMoss for Outreach Efforts Related to Potential 2014 Revenue Measure
[Staff Report](#)
[Attachment I Resolution](#)

February 18, 2014



8. Approval of the Recognized Obligation Payment Schedule (ROPS 14-15A) and Administrative Budget for the Period July 1, 2014 Through December 31, 2014

Redevelopment Successor Agency Resolution

(Report will be available on February 17, 2014, on the City's website.)

The following order of business applies to items considered as part of Public Hearings and Legislative Business:

- *Disclosures*
 - *Staff Presentation*
 - *City Council Questions*
 - *Public Input*
 - *Council Discussion and Action*
-

PUBLIC HEARING

9. Presentation of Fact Finder's Report and City's Rebuttal on City's Impasse with Service Employees International Union (SEIU) Local 1021 – Maintenance and Operations Unit and SEIU Local 1021 – Clerical and Related Unit; and Consideration of Action on Impasse and Imposition of City's Last, Best, and Final Offer to these Units (Report from City Manager David)

[Staff Report](#)

[Attachment I](#)

[Attachment II](#)

[Attachment III](#)

(Exhibits to the Resolutions will be available on February 15, 2014, on the City's website)

LEGISLATIVE BUSINESS

10. Adoption of Interim Urgency Ordinance Extending a Temporary Moratorium on the Development, Establishment and Operation of new Small-Format and Large-Scale Tobacco Retailers and all new E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars within the City of Hayward. The adoption of the Ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065 and State CEQA Guidelines Sections 15061(b)(3), 15306 and 15378 (Report from Director of Development Services Rizk)

[Staff Report](#)

[Attachment I](#)

[Attachment II](#)

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Oral reports from Council Members on their activities, referrals to staff, and suggestions for future agenda items.

ADJOURNMENT

NEXT REGULAR MEETING – 7:00 PM, TUESDAY, FEBRUARY 25, 2014

February 18, 2014



PUBLIC COMMENT RULES: *The Mayor may, at the beginning of the hearing, limit testimony to three (3) minutes per individual and five (5) minutes per an individual representing a group of citizens or organization. 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 has 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.

Please visit us on:





**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, January 28, 2014, 7:00 p.m.**

The Council meeting was called to order by Mayor Sweeney at 7:00 p.m., followed by the Pledge of Allegiance led by Council Member Salinas.

ROLL CALL

Present: COUNCIL MEMBERS Zermeño, Jones, Halliday, Peixoto, Salinas,
Mendall
MAYOR Sweeney
Absent: None

CLOSED SESSION ANNOUNCEMENT

Mayor Sweeney noted the Closed Session was canceled and therefore there was no reportable action.

PRESENTATION

Mayor Sweeney noted that PG&E recognized the City of Hayward for reducing electricity use in City facilities by ten percent. On behalf of PG&E, Ms. Andrea Schumer, Senior Customer Relationship Manager, presented the City with the Gold-level Beacon Spotlight Award for its accomplishments in the Beacon Award program in 2013. It was noted that the award was sponsored by the Institute for Local Government and the Statewide Energy Efficiency Collaborative which recognizes California cities and counties that achieve measurable reduction in greenhouse gas emissions and energy use while implementing best sustainability practices. Ms. Schumer alluded to the various projects and PG&E incentive programs that contributed to promoting energy savings.

PUBLIC COMMENTS

Mr. Jim Drake, Hayward resident, raised concerns about the City's exclusive negotiation with Waste Management, the Loop, and the Russell City Energy Center, and he claimed that City candidates had supported the projects.

Mr. Moses Sullivan, Hayward resident and Keep Hayward Clean and Green Task Force member, praised Mayor Sweeney for his participation as the Master of Ceremony at the Dr. Martin Luther King Jr. Celebration on January 20, 2014.

Mr. David Tucker, Waste Management representative, thanked the City for continuing to work with Waste Management to achieve a favorable contract for Hayward residents.

Council Member Salinas noted for the record that he was not on the Council or the Planning Commission when the Loop was approved or when the Russell City Energy Center was built.

CONSENT

Consent Item No. 5 was removed for separate vote.

1. Approval of Minutes of the Special City Council Meeting on January 14, 2014

It was moved by Council Members Zermeno and Peixoto, seconded by Council Member Halliday, and carried unanimously, to approve the minutes of the Special City Council Meeting on January 14, 2014.

2. Resolution Calling for and Ordering a General Municipal Election and Requesting the Board of Supervisors of Alameda County to Provide for the Consolidation of a General Municipal Election to be Held on June 3, 2014, for the Purpose of Electing a Mayor and Two Members of the City Council for Terms of Four Years

Staff report submitted by City Clerk Lens, dated January 28, 2014, was filed.

It was moved by Council Members Zermeno and Peixoto, seconded by Council Member Halliday, and carried unanimously, to adopt the following:

Resolution 14-008, "Resolution of the City Council of the City of Hayward Calling for and Ordering a General Municipal Election and Requesting the Board of Supervisors of Alameda County to Provide for the Consolidation of a General Municipal Election of the City of Hayward with the Statewide Direct Primary Election to be Held on June 3, 2014, for the Purpose of Electing a Mayor and Two Members of the City Council for Terms of Four Years"

3. Adoption of an Ordinance Reinstating the Energy Efficiency Provisions of the City of Hayward's Green Building Requirements for Private Developments (Formerly Chapter 10, Article 22 of the Hayward Municipal Code)

Staff report submitted by City Clerk Lens, dated January 28, 2014, was filed.

It was moved by Council Members Zermeno and Peixoto, seconded by Council Member Halliday, and carried unanimously, to adopt the following:

Ordinance 14-03, "An Ordinance Reinstating the Energy Efficiency Provisions of the City of Hayward's Green Building Requirements for Private Developments (Formerly Chapter 10, Article 22 of the Hayward Municipal Code)"

4. Utility Service Agreement 13-01 - Gary Parham (Owner/Applicant) - Request for Water Service for Assessor's Parcel Number 085A-6100-005-03, located in the Castle Homes Area of Unincorporated Alameda County



**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, January 28, 2014, 7:00 p.m.**

Staff report submitted by Acting Development Review Engineer O'Connor, dated January 28, 2014, was filed.

It was moved by Council Members Zermeno and Peixoto, seconded by Council Member Halliday, and carried unanimously, to adopt the following:

Resolution 14-009, "Resolution Authorizing the City Manager to Apply to the Alameda County Local Agency Formation Commission for Approval to Allow the City to Provide Water Service to the Property Located at 4901 Matilda Lane, Bearing Assessor's Parcel Number 085A-6100-005-03, and Further Authorizing the City Manager to Execute Utility Service (USA 13-01) and Public Street Improvements Agreements"

5. Resolution Supporting *The Conversation Campaign* To Encourage End-of-Life Planning Discussions Between Families, Health Care Providers and Others

Staff report submitted by City Manager David, dated January 28, 2014, was filed.

Council Member Halliday noted that the Institute for Healthcare Improvement and the Alameda County Health Care Services Agency had requested the City to pass a resolution supporting *The Conversation Campaign*. Ms. Halliday noted that National Healthcare Decisions Day was on April 16, 2014, and in passing the resolution, the Council would join efforts with other local agencies to promote that day. Ms. Halliday encouraged all to have an open conversation about end-of-life planning.

It was moved by Council Member Halliday, seconded by Council Member Mendall, and carried unanimously, to adopt the following:

Resolution 14-010, "A Resolution of the City Council of the City of Hayward Supporting the Conversation Campaign, a Campaign Which Encourages Discussions Between Families and Health Care Providers for End-Of-Life Planning"

PUBLIC HEARING

6. Adoption of Negative Declaration and Request for Text Amendment (PL-2013-0437 TA) to: (1) Add a definition for Transitional and Supportive Housing to Section 10-1.3500 of the Zoning Ordinance; (2) Amend Table 9 of Section 10-24.300 of the South Hayward BART/Mission Boulevard Form-Based Code by removing reference to both Transitional and Supportive Housing as Allowed Functions; and (3) Replace Section 10-1.145 of the Zoning Ordinance with new Section 10-1.145 related to Reasonable Accommodation for Persons with Physical Disabilities. Applicant: City of Hayward

Staff report submitted by Senior Planner Buizer, dated January 28, 2014, was filed.

Development Services Director Rizk announced the item and introduced Senior Planner Buizer who provided a synopsis of the report.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 7:31 p.m.

It was moved by Council Member Zermeño, seconded by Council Member Halliday, and carried unanimously, to adopt the following:

Resolution 14-011, “Resolution Adopting the Negative Declaration and Adopting Findings Supporting the Text Amendments Related to Transitional and Supportive Housing and Reasonable Accommodations”

Introduction of Ordinance 14-_, “Ordinance Amending Hayward Municipal Code Section 10-1.3500, Zoning Ordinance Definitions, Relating to Transitional and Supportive Housing”

Introduction of Ordinance 14-_, “Ordinance Amending Table 9 of Section 10-24.300 of the South Hayward BART/Mission Boulevard Form Based Code, Relating to Transitional and Supportive Housing”

Introduction of Ordinance 14-_, “Ordinance Amending Section 10-1.145 of the Hayward Municipal Code Regarding Reasonable Accommodation”

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Zermeño noted that downtown had safe streets and he was glad that the See’s Candies store would return to Southland Mall. Mr. Zermeño requested that the Council introduce a Close the Loophole Resolution at an upcoming Council agenda, per an email that he had received from Mr. Ian Fregosi. He noted that closing the commercial property loophole would generate \$6 billion in revenue for schools, cities and counties. There was no consensus to add the item.



**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, January 28, 2014, 7:00 p.m.**

Council Member Halliday, the City's representative to StopWaste, spoke about a mailer that was sent out to Alameda County residents by StopWaste regarding a report of a new Benchmark Service which measures what is in garbage containers and is paid for by an annual fee charged to all garbage accounts in Alameda County.

ADJOURNMENT

Mayor Sweeney adjourned the meeting at 7:38 p.m., in memory of Mr. Norman George Snart who passed away on January 18, 2014. It was noted that Mr. Snart was born in Lincoln, Kansas, had a degree in Fine Arts and a minor in Civil Engineering, and moved to Hayward in 1962. Mr. Snart was a happy person, had good humor, was an avid collector, and along with his wife, Valerie, had interest in the arts and donated time and money locally. Mayor Sweeney asked staff to work with Mr. Snart's family and find an appropriate location to plant a tree in his memory.

APPROVED:

Michael Sweeney
Mayor, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward



**MINUTES OF SPECIAL JOINT CITY COUNCIL/HAYWARD HOUSING
AUTHORITY/REDEVELOPMENT SUCCESSOR AGENCY/HAYWARD
PUBLIC FINANCING AUTHORITY MEETING
OF THE CITY OF HAYWARD**
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, February 4, 2014, 7:00 p.m.

The Special Joint City Council/Hayward Housing Authority/Redevelopment Successor Agency/Hayward Public Financing Authority meeting was called to order by Mayor/Chair Sweeney at 7:00 p.m., followed by the Pledge of Allegiance led by Council/HA/RSA/HPFA Member Mendall.

ROLL CALL

Present: COUNCIL/HA/RSA/HPFA MEMBERS Zermeno, Jones, Halliday,
Peixoto, Salinas, Mendall
MAYOR/CHAIR Sweeney
Absent: None

CLOSED SESSION ANNOUNCEMENT

City Attorney Lawson noted the Council met with labor negotiators pursuant to Government Code 54957.6 regarding all groups; met with legal counsel pursuant to Government Code 54956.9 regarding Bay Area Rapid Transit District v. PPF Industrial Road/Bowman Place, LP, et al., Alameda County Superior Court, Case No. RG13708269; and met with property negotiators pursuant to Government Code 54956.8 regarding South Hayward Transit-Oriented Development Project, 28901 and 28937 Mission Boulevard. There was no reportable action.

PUBLIC COMMENTS

Ms. Rene Rettig, United Merchants Downtown Hayward representative, expressed gratitude for reinstating the bicycle patrol program and noted that since Officer Craig Fovel began patrolling the downtown, there have been improvements in the area.

Mr. Elie Goldstein, Kraski's Nutrition owner, echoed the gratitude for the return of bicycle patrols and noted that IBiz internet café was no longer operating which was a positive change to the area.

Mr. Antonio Puente, member of the San Francisco Bay Area Curling Club, spoke about the sport of curling and he noted that the Curling Club was considering Hayward as a viable location to dedicate an ice facility and he invited all to "Intro to Curling" at the Oakland Ice Center.

WORK SESSION

1. Review of 2nd Quarter Progress for Police Department Priorities FY 2014

Staff report submitted by Police Program Analyst Sugayan, dated February 4, 2014, was filed.

Police Chief Urban provided a synopsis of the report.

Council members thanked staff for their efforts with the second quarter progress report and offered the following comments: continue to provide statistics for collisions on city roadways and on private property; continue to research grants to fund the bicycle patrol program and expand to areas beyond the downtown; as efforts to enforce the speed limit through the loop are considered, take into account the impact to surrounding neighborhoods; and monitor students jaywalking from Chabot College to the cafés/restaurants across the street.

CONSENT

Consent Items 3 and 4 were removed for separate votes.

2. Approval of Minutes of the City Council Meeting on January 21, 2014

It was moved by Council Member Peixoto, seconded by Council Member Zermeño, and carried unanimously, to approve the minutes of the City Council Meeting on January 21, 2014.

3. Adoption of an Ordinance Adding a New Article 25 Entitled "Mission Boulevard Corridor Form-Based Code" to Chapter 10 of the Hayward Municipal Code, Relating to the Adoption of the Mission Boulevard Corridor Specific Plan

Staff report submitted by City Clerk Lens, dated February 4, 2014,
was filed.

It was moved by Council Member Salinas, seconded by Council Member Peixoto, and carried unanimously, to adopt the Ordinance for the Southern Segment of the Mission Boulevard Corridor Form-Based Code Area (South of Jackson Street):

It was moved by Council Member Halliday, seconded by Council Member Mendall, and carried, to adopt the Ordinance for the Northern Segment of the Mission Boulevard Corridor Form-Based Code Area (North of A Street) with the following vote:

AYES: Council Members Zermeño, Halliday, Peixoto, Mendall
MAYOR Sweeney

NOES: None

ABSENT: Council Members Jones, Salinas

ABSTAINED: None

Ordinance 14-04, "An Ordinance Adding a New Article 25 Entitled
"Mission Boulevard Corridor Form-Based Code" to Chapter 10 of
the Hayward Municipal Code, Relating to the Adoption of the
Mission Boulevard Corridor Specific Plan"

4. Adoption of an Ordinance Reclassifying the Zoning Designation for Properties in the Mission Boulevard Corridor Form-Based Code Area



**MINUTES OF SPECIAL JOINT CITY COUNCIL/HAYWARD HOUSING
AUTHORITY/REDEVELOPMENT SUCCESSOR AGENCY/HAYWARD
PUBLIC FINANCING AUTHORITY MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, February 4, 2014, 7:00 p.m.**

Staff report submitted by City Clerk Lens, dated February 4, 2014,
was filed.

It was moved by Council Member Peixoto, seconded by Council Member Mendall, and carried unanimously, to adopt the Ordinance for the Southern Segment of the Mission Boulevard Corridor Form-Based Code Area (South of Jackson Street):

It was moved by Council Member Halliday, seconded by Council Member Peixoto, and carried, to adopt the Ordinance for the Northern Segment of the Mission Boulevard Corridor Form-Based Code Area (North of A Street) with the following vote:

AYES: Council Members Zermeño, Halliday, Peixoto, Mendall
MAYOR Sweeney
NOES: None
ABSENT: Council Members Jones, Salinas
ABSTAINED: None

Ordinance 14-05, "An Ordinance Reclassifying the Zoning
Designation for Properties in the Mission Boulevard Corridor Form-
Based Code Area"

5. Adoption of an Ordinance Amending Hayward Municipal Code Section 10-1.3500, Zoning Ordinance Definitions, Relating to Transitional and Supportive Housing

Staff report submitted by City Clerk Lens, dated February 4, 2014,
was filed.

It was moved by Council Member Peixoto, seconded by Council Member Zermeño, and carried unanimously, to adopt the following:

Ordinance 14-06, "Ordinance Amending Hayward Municipal Code
Section 10-1.3500, Zoning Ordinance Definitions, Relating to
Transitional and Supportive Housing"

6. Adoption of an Ordinance Amending Table 9 of Section 10-24.300 of the South Hayward BART/Mission Boulevard Form-Based Code, Relating to Transitional and Supportive Housing

Staff report submitted by City Clerk Lens, dated February 4, 2014,
was filed.

It was moved by Council Member Peixoto, seconded by Council Member Zermeño, and carried unanimously, to adopt the following:

Ordinance 14-07, “Ordinance Amending Table 9 of Section 10-24.300 of the South Hayward BART/Mission Boulevard Form-Based Code, Relating to Transitional and Supportive Housing”

7. Adoption of an Ordinance Amending Section 10-1.145 of the Hayward Municipal Code Regarding Reasonable Accommodation

Staff report submitted by City Clerk Lens, dated February 4, 2014, was filed.

It was moved by Council Member Peixoto, seconded by Council Member Zermeño, and carried unanimously, to adopt the following:

Ordinance 14-08, “Ordinance Amending Section 10-1.145 of the Hayward Municipal Code Regarding Reasonable Accommodation”

8. Adoption of FY 2014 Statement of Investment Policy and Delegation of Investment Authority

Staff report submitted by Director of Finance Vesely, dated February 4, 2014, was filed.

It was moved by Council/HA/RSA/HPFA Member Peixoto, seconded by Council/HA/RSA/HPFA Member Zermeño, and carried unanimously, to adopt the following:

Resolution 14-012, “Resolution Reaffirming the Statement of Investment Policy and Renewing the Delegation of Authority to Make Investments to the Director of Finance”

Housing Authority Resolution 14-01, “Resolution Reaffirming the Statement of Investment Policy and Renewing the Delegation of Authority to Make Investments to the Director of Finance”

Redevelopment Successor Agency Resolution 14-01, “Resolution of the City Council of the City of Hayward, Acting as the Governing Board For the Successor Agency of the Redevelopment 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”



**MINUTES OF SPECIAL JOINT CITY COUNCIL/HAYWARD HOUSING
AUTHORITY/REDEVELOPMENT SUCCESSOR AGENCY/HAYWARD
PUBLIC FINANCING AUTHORITY MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, February 4, 2014, 7:00 p.m.**

Public Financing Authority Resolution 14-01, "Resolution Affirming the Statement of Investment Policy and Renewing the Delegation of Authority to Make Investments to the Director of Finance"

9. Approval of an Amendment to a Professional Services Agreement for Development Engineering Review Services in the Planning Division

Staff report submitted by Planning Manager Siefers, dated February 4, 2014, was filed.

It was moved by Council Member Peixoto, seconded by Council Member Zermeño, and carried unanimously, to adopt the following:

Resolution 14-013, "Resolution Authorizing the City Manager to Execute a Contract Amendment for Up to \$40,000 with WC3 Consultants for Development Review Engineering Services"

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Zermeño announced there was a new Filipino restaurant on Foothill Boulevard called Tapsilog Express and a new coffee shop on B Street called Eko Coffee Bar and Tea House.

Council Member Halliday noted that the American City & County Magazine recognized Hayward as a 2013 Crown Community for the completion of the Route 238 Improvement Project, and she commented on the positive aspects of the project.

ADJOURNMENT

Mayor/Chair Sweeney adjourned the meeting at 7:53 p.m.

APPROVED:

Michael Sweeney
Mayor, City of Hayward
Chair, Housing Authority
Chair, Redevelopment Successor Agency
Chair, Public Financing Authority

ATTEST:

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



DATE: February 18, 2014

TO: Mayor and City Council

FROM: Director of Public Works – Utilities & Environmental Services

SUBJECT: *Green Hayward PAYS®* (Pay-As-You-Save) On-Bill Conservation and Efficiency Financing – Review of Final Program Design and Authorization for City Manager to Execute Contracts

RECOMMENDATION

That the City Council adopts the attached resolution approving the Green Hayward PAYS® Program Design and authorizing the City Manager to execute agreements with suppliers and a contractor to provide products and installation services, and to execute loan documents to fund the program.

SUMMARY

This report presents and summarizes the Program Design document, which will serve as the implementation manual for the Green Hayward “Pay As You Save®” (PAYS®) pilot program. City staff is working with consultants funded through the Bay Area Regional Energy Network (BayREN) to design a PAYS® on-bill financing system to allow multi-family property owners to install water conservation and energy efficiency measures with no up-front costs. The costs of efficiency improvements will be repaid over time through a surcharge on the customer’s water bill. In addition to the Program Design, staff selected a preferred contractor and three suppliers to perform the installations and supply water conservation products on behalf of the City. Staff also found a bank that is interested in partnering with the City on this innovative approach to facilitating energy and water efficiency improvements. A goal of this pilot program is to serve 2,000 dwelling units in the first year.

BACKGROUND

In May 2013, the Regional Climate Protection Authority (RCPA), which received BayREN funding, selected Hayward to receive technical assistance to design a PAYS® program. The RCPA is a nonprofit agency coordinating climate change issues and efforts to reduce greenhouse gas (GHG) emissions for the ten local governments within Sonoma County. The BayREN implements energy saving programs for the nine-county Bay Area and is funded by California utility ratepayers through the California Public Utilities Commission . PAYS® allows eligible property owners to

install water and energy-saving measures with no up-front cost. Participants repay program costs over time through a surcharge on their water bills, with their estimated water, sewer, and energy savings exceeding the surcharge. If implemented, Hayward would be the second city in California to provide this innovative financing program to its water customers.

Hayward's Climate Action Plan, adopted in 2009, includes Action 3.8, which calls for the development of "a residential energy efficiency retrofit financing program for multiple unit homes." In addition, the draft General Plan includes Program NR-13: *"Financing Program for Residential Energy Efficiency Retrofits. The City shall work with regional agencies and organizations to develop a residential energy efficiency retrofit financing program for single-family and multi-family homes."*

A preliminary PAYS[®] overview was presented to the City Council Sustainability Committee on July 1, 2013¹ and a Concept Paper and draft memorandum of understanding (MOU) with the RCPA were presented to the Committee on October 2, 2013². On October 15, 2013³, Council reviewed the Concept Paper and authorized and directed the City Manager to execute the MOU. The Program Design was presented to the Committee on January 29, 2014⁴. The Committee recommended that Council approve the Program Design and made the following comments:

- The Committee asked for clarification about eligible measures.
 - Staff responded that improvements to hot water distribution systems may include new circulation pumps that only operate when needed. In addition, other energy measures may qualify if they are determined to be cost-effective, if they can be paid off within ten years, and if the improvements will result in savings to the property owner.
- The Committee asked for more information about how the program will be marketed.
 - Staff explained that marketing will be targeted first to larger multi-family properties and those that have higher-than-average water use. Staff will contact owners with phone calls and letters and contractors will also conduct their own marketing, which will be coordinated with City staff.
- The Committee supported the fact that the program will allow owners to select their own contractor ("customer choice contractors").
- The Committee indicated a preference to have one contractor provide both Basic Measure and Energy Measure installations to minimize the number of people with whom a property owner will need to be in contact.
- The Committee agreed with staff's preference to perform the Certification Agent role in-house as this should allow for a more efficient process and build internal capacity for possible future expansion of the program.

¹ See Item # 4 at <http://www.ci.hayward.ca.us/CITY-GOVERNMENT/COUNCIL-STANDING-COMMITTEES/COUNCIL-SUSTAINABILITY-COMMITTEE/2013/CSC-CCSC071013full.pdf>

² See Item # 4 at <http://www.hayward-ca.gov/CITY-GOVERNMENT/COUNCIL-STANDING-COMMITTEES/COUNCIL-SUSTAINABILITY-COMMITTEE/2013/CSC-CCSC100213full.pdf>

³ See Item # 4 at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2013/CCA13PDF/cca101513full.pdf>

⁴ See Item # 3 at <http://www.hayward-ca.gov/CITY-GOVERNMENT/COUNCIL-STANDING-COMMITTEES/COUNCIL-SUSTAINABILITY-COMMITTEE/2014/CSC-CCSC012914full.pdf>

DISCUSSION

Since Council's review of the Concept Paper, staff has been working closely with the PAYS[®] Design Team to prepare a detailed Program Design (see Attachment II). The Program Design will serve as the implementation manual for the Green Hayward PAYS[®] program and includes the following sections:

1. Introduction – This section of the Program Design states the goal of the program is to retrofit at least 2,000 dwelling units within multi-family complexes having twenty or more units in the first year and introduces the concept of the 80 percent rule, which is that the surcharge on the customer's bill will not exceed 80 percent of the customer's estimated bill savings. This rule is to minimize the potential for the surcharge to be more than the savings. The program is designed such that participating customers should see a *decrease* on their water bill – even with the surcharge.
2. Program Roles – This section of the Program Design defines the roles of the Utility (the City), the Capital Provider, Certification Agent, Certified Contractors, Certified Suppliers, Property Owners, Tenants, and the Design Team.
3. Target Market – The Target Market has not changed since the Concept Paper was presented. The program will target multi-family properties that have twenty or more units, master-metered water service and central water heating, and toilets that use at least 3.5 gallons of water per flush. These requirements are to ensure that the 80 percent rule can be met and that the cost savings will benefit the water bill payer. Interested owners who have buildings that do not meet all the target criteria will still be considered and can qualify if their property can support a project that meets the 80 percent rule.
4. Pilot Measures – This section explains the three types of measures that will be eligible in the program.
 - a. Basic Measures will include showerheads, aerators, toilets, and LED light bulbs.
 - b. Energy Measures will include water distribution retrofits, common area lighting retrofits, and other measures deemed appropriate for the building. Water distribution retrofits may include hot water pipe insulation and hot water circulation pumps that only operate when needed. Additional Energy Measures will be considered if shown to meet the 80 percent rule.
 - c. Landscaping Measures will primarily involve installation of weather-based irrigation controllers (WBIC) on sites with at least 4,000 square feet of irrigated lawn. A WBIC automatically adjusts the irrigation schedule based on daily weather changes.

In response to requests from members of the Rental Housing Owners Association (see Public Contact section), the Design Team researched options for reducing water use related to landscaping. Turf conversion was considered, but such projects are typically expensive and do not meet the 80 percent rule.

5. Leveraging the Bay Area Multifamily Building Enhancements Pilot (BAMBE) – The BAMBE is a rebate program offered through the BayREN, which provides rebates of \$750 per unit for any upgrade that reduces energy use by ten percent or more. The rebates, which are currently available, will help more expensive Energy Measures meet the cost-effectiveness criteria (the 80 percent rule). Staff is working with administrators of the BAMBE program to ensure that there is coordination between the two programs in terms of marketing and scoping projects and post-installation inspections.
6. Marketing, Education & Outreach – This section of the Program Design explains the approach that will be followed to reach the target market. Initial outreach will focus on large properties averaging 100 units with higher than average per unit water use. Staff will start with letters and phone calls. Customers who are not interested will have the ability to opt out of additional marketing efforts. Customers who have opted out will not be contacted by program partners (contractors). Marketing and outreach efforts may be adjusted depending on early success of the program.
7. Pilot Process – This section describes the interactions among the parties involved in implementing the program and is designed to ensure careful coordination of an efficient process for program implementers, as well as for the customer.
8. Certification Agent – In the October 15, 2013 Council report, staff indicated that the intention was to follow a competitive process to find an outside party to serve as the Certification Agent. After further consideration, staff prefers to keep the Certification Agent role in-house to maximize implementation efficiencies and minimize administrative costs if necessary staffing to fulfill the role can be arranged. In addition, if the program is expanded to single-family and commercial properties in the future, staff will be better positioned to make the necessary changes and continue to administer the program. To implement the PAYS program, the Environmental Services Division will need to reassign staff and add temporary or part time staff up to the equivalent of one full time position. Staff will evaluate the most efficient and effective approach and recommend an appropriate staffing option at Mid-Year. In the near term, contract staff may be necessary to assist with providing Certification Agent services. An administrative fee will be charged to each participating customer and is intended to cover the staff costs associated with managing the program.
9. Certified Contractors – Two types of contractors – Program Contractors and Customer Choice-Contractors will install eligible measures. Program Contractors selected through an RFP process will install Basic and Energy Measures (could be one or multiple firms). As further discussed below, Customer-Choice Contractors will be contractors selected by participants. This section also summarizes the responsibilities of the contractors and includes details ranging from marketing to collecting payment.
10. Capital – The Design Team has been actively seeking a financial institution interested in working with the City and the PAYS[®] program. Staff has an Expression of Interest letter from New Resource Bank and a summary of the proposed loan terms is presented below in the Fiscal Impact section of this report.

11. **Bad Debt** – Bad debt may result from missed payments or the failure of a measure that cannot be repaired. Bad debt will be minimized by requiring participants to be customers who are in Good Standing, which means that they have not been late on a payment in the last 24 months (last 12 bills). Missed payments may be collected, as can all Hayward water accounts, using the City’s new assessment process. Bad debt could also result from measures that fail before installation costs are recovered. The contractor’s and/or product warranty will most often cover the cost of repair or replacement. In some cases, if the product cannot be repaired or replaced, the bi-monthly surcharge for the product will cease and full installation costs will not be recovered by the City.
12. **Pilot Fees** –The Program Design calls for a Program Activity fee equal to eight percent of all costs, including labor and permits. If the City is able to secure outside capital with an interest rate less than eight percent, the savings will be passed along to the participant. In addition, participants will be charged a Certification Agent fee of \$1,000 per project to cover program administration costs. Finally, all participants will be charged a \$200 fee to cover the cost of an assessment by an Energy Measure Contractor to determine if there is potential to complete Energy Measures. The costs and fees for a hypothetical 100-unit project are provided below:

Sample Basic Upgrade - Measure Costs and Utility Bill Savings for a 100-Unit Property*

Measure	# installed	Gross cost	Rebates	Net cost	Avg. bi-monthly owner utility bill savings	Bimonthly surcharge**
Basic Package Measures						
0.84 gpf toilet (reduced from 3.5 gpf)	100	\$30,708.00	-\$10,000.00	\$20,708.00	\$1,034.00	-
1.5 gpm showerhead (reduced from 2 gpm)	100	\$4,500.00	-	\$4,500.00	\$220.92	-
Bathroom faucet aerator	100	\$250.00	-	\$250.00	\$47.72	-
Kitchen faucet aerator	100	\$500.00	-	\$500.00	\$106.22	-
LED (replacing 60+ watt bulb)	500	\$10,000.00	-	\$10,000.00	\$0.00	-
Subtotal		\$45,958.00				
Basic Package Fees						
Energy assessment fee		\$200.00				
Certification Agent fee		\$1,000.00				
Basic Measure Totals		\$47,158.00	-\$10,000.00	\$37,158.00	\$1,408.86	\$903.62

* Costs and savings are based on preliminary estimates.

** Assumes 60 bi-monthly payments over a ten-year period.

13. **Billing & Information** – Water billing will soon be managed using the City’s new *Munis* system. Staff will continue to work with Tyler Technologies to integrate the billing requirements listed in this section into the *Munis* software and make necessary modifications to accommodate the Program needs.

14. Training – As described in this section, the Design Team will assist with training all program implementers, including City staff and contractors, prior to launch of the program.
15. Evaluation – Water and energy usage data will be collected for participating properties to evaluate the impact of the PAYS[®] program. After one year of implementation, the program will be evaluated using several criteria related to marketing, billing, customer acceptance, and administrative processes. Customers and contractors also will be surveyed to determine whether any changes should be made to the Program Design.

Supplier and Contractor Selection – Staff received fourteen proposals in response to a RFP issued in December 2013. Many proposals were to supply particular products, some offered to only provide contracting services, and one firm offered to provide all services. Staff interviewed four of the six firms that proposed to provide contracting services. Three of the firms are based in Southern California and one is based in Richmond, California. No proposals were received from Hayward contractors. The top-scoring firm, Bottom Line Utility Solutions (BLUS), is headquartered in Laguna Hills, California and proposed to install basic, energy, and landscaping measures and to supply the products for basic and landscaping measures.

BLUS intends to hire local staff to support program demand. BLUS is the contractor currently providing installation services for the Town of Windsor's PAYS program and bid the lowest installation prices for basic measures. BLUS has significant experience working in large-scale multi-family efficiency programs and has relationships with several Hayward multi-family property owners. BLUS believes they will be able to reach the program goal of 2,000 units well within the one-year pilot period. Finally, as noted during the January 29, 2014, Sustainability Committee meeting, it is staff's and the Committee's preference to have one contractor provide both basic and energy measure installations to improve efficiency and make the customer's experience as smooth as possible.

While BLUS proposed to provide all products needed for the program, staff recommends that only the aerators and LED bulbs be supplied by BLUS. Staff recommends that Council authorize agreements with the following firms as they are able to provide the lowest prices on the products that meet our quality and efficiency specifications:

- Niagara Conservation for toilets and showerheads;
- HD Supply for anti-scald shower valves; and
- Accurate WeatherSet for the weather-based irrigation controllers.

ECONOMIC IMPACT

A PAYS[®] program would benefit residents and property owners who are able to take advantage of the opportunity to improve energy and water efficiency in their homes with no up-front costs and no increases in their overall utility bills. Local contractors may also benefit from the increased workload from efficiency measure installations.

FISCAL IMPACT

The BayREN grant will cover most of the costs associated with design of the PAYS[®] system for implementation. Green Hayward PAYS[®] will not be supported by the General Fund. Staff time will be paid for by administration fees charged to program participants. Staff recommends Council approve a loan with New Resource Bank to fund efficiency measure installations. Upfront measure costs will be paid back over time with a surcharge on the customer's water bill. Revenue from the surcharge will be used to make loan payments to the bank.

Staff recommends an initial total loan amount of \$1,000,000 to be issued by the bank as a line of credit. Advances on the line of credit would be issued as often as twice per month in the form of individual advance notes, each with ten year maturities. The amounts and frequency of the individual notes would be dependent upon customer participation and project installation activity. If the program experiences high participation levels and/or project costs are higher than anticipated, staff will return to Council to seek authorization for additional loans from the bank.

The interest rate would be 6.95% and the proposed terms allow interest-only payments for the first nine months for each note. This would ensure the City has sufficient time to begin collecting the surcharge from each customer before repaying the principal to New Resource Bank. The consultant team, led by RCPA, reviewed the loan terms and interest rate and determined that the costs of the capital are consistent with preliminary assumptions made regarding the ability to make an attractive offer to customers.

Finance Department staff reviewed the Expression of Interest letter with all proposed loan terms and found it acceptable. Finance staff noted that the interest rate is high; however, the Design Team has determined that even with an interest rate of 8.00%, the program can still allow utility bill savings to exceed costs. The interest rate for this loan should not be compared to those available for 30-year residential mortgages. The proposed loan is for 10 years and would be unsecured. Staff is hopeful that after the one-year pilot is successful, banks will then be willing to offer a lower rate for continuation and/or expansion of the program.

As an alternative to a bank loan, the program could be funded by a loan from the City's Water Fund. The Water Fund does have monies allocated for water conservation and efficiency and they can be used to support the program during the one-year pilot period; however, it is staff's preference to maintain Water Fund reserves for other water conservation expenses.

PUBLIC CONTACT

As noted in the October 2013 report to the Committee, staff made an initial presentation to the Rental Housing Association on August 13, 2013 to gauge interest and collect initial input. Members of the Association expressed interest, especially in the possibility of conserving water in their landscaping. Members also noted that they experienced performance problems with water-efficient toilets in the past. In addition, contractors currently marketing the BAMBE rebate program have talked with several Hayward property owners and found there is interest in participating in the Green Hayward PAYS program. Once the program is launched, staff will engage qualified property owners and managers using a comprehensive marketing and outreach strategy.

NEXT STEPS

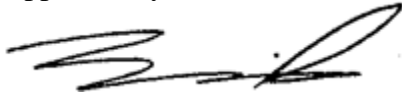
Following the Council meeting, staff will make revisions to the Program Design to address comments if necessary. If the Council approves the Program Design and authorizes staff to enter into contracts with the selected suppliers and contractors, then staff will execute the necessary contracts. In addition, if approved by the Council, staff will complete loan documents with a bank and begin marketing the program.

Staff anticipates launching the program in late March or early April. Staff will provide regular updates to the City Council Sustainability Committee on implementation of the program. At the end of the first twelve-months or 2,000 units, whichever comes first, staff will present Council with a report on the pilot program and a recommendation regarding possible continuation of the program.

Prepared by: Erik Pearson, AICP, Environmental Services Manager

Recommended by: Alex Ameri, Director of Public Works – Utilities & Environmental Services

Approved by:



Fran David, City Manager

Attachments:

Attachment I	Resolution
Attachment II	Draft Program Design

HAYWARD CITY COUNCIL

RESOLUTION NO. 14-

Introduced by Council Member _____

RESOLUTION APPROVING THE GREEN HAYWARD PAYS PROGRAM DESIGN AND AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACTS BETWEEN THE CITY OF HAYWARD AND BOTTOM LINE UTILITY SOLUTIONS, NIAGARA CONSERVATION, HD SUPPLY, AND ACCURATE WEATHERSET AND AUTHORIZING THE CITY MANAGER TO EXECUTE LOAN DOCUMENTS AND AGREEMENTS WITH NEW RESOURCE BANK

WHEREAS, the City of Hayward Climate Action Plan includes Action 3.8, which calls for the development of “a residential energy efficiency retrofit financing program for multiple unit homes; and

WHEREAS, the City of Hayward City Council reviewed the Program Design for the Green Hayward PAYS (Pay As You Save) pilot program and finds it to be a program that supports implementation of the Climate Action Plan and will benefit Hayward property owners.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward hereby approves the Green Hayward PAYS pilot program; and

BE IT FURTHER RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to execute, on behalf of the City of Hayward, a contracts with Bottom Line Utility Solutions as the Certified Contractor and with Niagara Conservation, HD Supply, and Accurate Weatherset as the Certified Suppliers to implement the Green Hayward PAYS program, in a form approved by the City Attorney; and

BE IT FURTHER RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to execute, on behalf of the City of Hayward, loan documents and agreements with New Resource Bank.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2014

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

Green Hayward PAYS[®] Program Design

submitted to

**City of Hayward
Department of Public Works
Utilities and Environmental Services**

December 19, 2013

submitted by

**BAY
AREA** Regional
Energy
Network

prepared by

The Energy Efficiency Institute, Inc.

Colchester, Vermont

BKi

Oakland, California

Purpose of this Green Hayward PAYS® Pilot¹ Program Design

This Program Design is the implementation manual for the recommended City of Hayward tariffed on-bill resource efficiency pilot program based on the Pay As You Save® (PAYS®) system. The Program Design describes the:

- target market and scale of the pilot program,
- types of program measures and customer eligibility for their installation,
- recommended program outreach and marketing,
- roles and responsibilities of key program partners,
- protocols to be followed by all parties involved with program operation, and
- potential sources of financing and the recommended process for obtaining capital.

The purpose of this Program Design is to provide, prior to pilot launch, the City of Hayward's and the Design Team's description of every aspect of program implementation. The Program Design attachments include all forms, contracts, and tools required to implement the program. Determining all program design details prior to implementation mitigates the risk that pilot staff and contractors will make important program decisions in the field that are not in line with the City of Hayward's goals for a pilot based on the PAYS system.

The Program Design is not intended as a position paper, a history of PAYS efforts, or a narrative of the pilot's development. Parties who need this information should review the Concept Paper prepared by the Design Team for the City of Hayward.

The Program Design will be revised based on feedback from the City of Hayward staff, the City's Sustainability Committee, the City Council, and input provided by program partners. The last section of the Program Design contains the Design Team's recommendations for how changes to this document can be made once the pilot is underway.

¹ The brand name "Green Hayward PAYS®" is presented in this document as a program that adheres to the customer assurances and key elements of the Pay As You Save® system to ensure that an offer that works is made to all participants. When referenced as "the Pilot", it is with this same understanding. To avoid confusion about what might appear to be a similar tariffed on-bill program that may not adhere to requirements of the Pay As You Save® system, it is noted that Hayward understands the conditions for use of the trademarked PAYS® as detailed in the EEI Intellectual Property Agreement.

Table of Contents

1.	Introduction	1
2.	Program Roles	2
3.	Target Market	3
4.	Pilot Measures.....	5
5.	Leveraging Bay Area Multifamily Building Enhancements Pilot	11
6.	Marketing, Education & Outreach (MEO)	13
7.	Pilot Process	18
8.	Certification Agent	25
9.	Certified Contractors.....	28
10.	Capital	32
11.	Bad Debt.....	34
12.	Pilot Fees	35
13.	Billing & Information System Requirements.....	36
14.	Training.....	38
15.	Evaluation.....	40
16.	Next Steps	43
17.	Glossary of Terms.....	44
18.	Changes to this Program Design	46

Attachments

Attachments are reserved at this time. All Attachments will be provided with the Final Program Design.

Attachment A	Data Sheet and Measure Screens
Attachment B	Data Sheet and Measure Screen User Guide
Attachment C	PG&E Customer Release Form
Attachment D1	Certification Agent Agreement*
Attachment D2	Certification Agent Responsibilities
Attachment E1	Contractor Installation Agreement*
Attachment E2	Distributor (Supplier) Agreement*
Attachment E3	Contractor Responsibilities
Attachment F	Purchase Agreement*
Attachment G	Owner Agreement*
Attachment H1	New Customer Notice of PAYS Charges*
Attachment H2	Recorded Notice of PAYS Charges*
Attachment I	Certification Agent Inspection Checklist
Attachment J	Customer Work Acceptance Form*
Attachment K	Measure Failure Report Form
Attachment L	New Customer Form*
Attachment M	Frequency Asked Questions

Attachment N Guidance on Program Claims

Attachment O Marketing Education and Outreach for an Expanded Program

Attachment P Survey Questions for Program Staff

Attachment Q Billing System Functions

Attachment R Training Agendas*

Attachment S Measure Eligibility Summary

* Items with asterisk require a signed intellectual property agreement for review

1. Introduction

The City of Hayward (Hayward) is working with the Bay Area Regional Energy Network (BayREN) to design and implement a tariffed on-bill resource efficiency pilot program. The Green Hayward PAYS® Pilot (the Pilot) has three components:

The **multifamily component** goal is to retrofit 2,000 multifamily housing units in Hayward with an array of resource efficiency measures that will help multifamily property owners reduce their water and energy use.

The **landscaping component** goal is to retrofit up to 100 multifamily, commercial, or institutional customers' landscapes with a non-subscription weather-based irrigation controller (WBIC) that will significantly increase the efficiency of the irrigation system and reduce water waste.

The **community solar component** goal is to test whether a tariffed on-bill program can enable municipal and institutional customers to install solar hot water or photovoltaic systems on their premises.

The Sonoma County Regional Climate Protection Authority (RCPA) leads the Pilot's Design Team on behalf of Hayward and BayREN, with funding provided by the California Public Utilities Commission (CPUC). The purpose of the funding is to investigate the potential for energy savings, both direct and indirect, from tariffed on-bill programs operated by water utilities.

The Pilot will be based on the Energy Efficiency Institute, Inc.'s (EEI's) Pay As You Save® (PAYS®) system. PAYS is a market-based system in which customers, vendors, and capital providers acting in their own interests produce unprecedented resource efficiency investment that is also in society's interest. The key to the success of the PAYS system is "an offer that works" – an offer that allows customers to purchase cost-effective measures with:

- no up-front payment, no new debt obligation, no credit checks², no liens;
- a guarantee that their monthly tariffed charge is lower than their ***estimated*** savings;
- the assurance they will pay only while they remain customers at the location;
- none of the typical risks associated with contracting for or installing measures; and
- a promise that failed measures will be repaired or the payment obligation will end.

This Pilot concept has already stimulated interest from potential capital providers, contractors, measure distributors, and certification agents. (These roles are described in *Section 2: Program Roles*.) Measures will be selected and payments structured so that for every \$0.80 in Pilot on-bill charges, there is estimated customer-bill savings of at least \$1.00.

Residential solar installations are not discussed in this Program Design because, at current energy rates and measure costs, solar installations typically have a payback term longer than ten years. However, at the request of Hayward staff, the Design Team will examine the potential for the Pilot to help municipal and institutional entities implement solar hot water or photovoltaic systems.

The current schedule calls for the Pilot to begin operation in March 2014.

² Hayward will verify that customers are in "good standing" with their water bills. This is defined further in *Section 11: Bad Debt*.

2. Program Roles

The Pilot involves the interaction and cooperation of a number of key players in order for the program to deliver widespread resource efficiency in Hayward.

Utility

Hayward's water utility will provide three basic program functions: 1) program oversight; 2) program outreach including initial customer and community contacts; and 3) financial management including securing program capital, making program payments, and billing and collection of the PAYS tariffed charge³ from customers.

Capital Provider

If third-party capital (rather than self-financing) is available to fund the Pilot, Hayward will seek a Non-Revolving Guidance Line of Credit of up to \$4,000,000 using either a Capital Provider pre-approved by the Design Team. Hayward will repay the Capital Provider(s) with interest paid only on the capital drawn.

Certification Agent

A Certification Agent is responsible for day-to-day Pilot operations including marketing, project approvals and contracts, and program data collection and reporting. Hayward will fulfill this role. If Hayward decides to delegate these responsibilities, it will use an RFP process to select an appropriate entity to fulfill this role. Any reference to Certification Agent within this Program Design is made with this understanding. Furthermore, this Program Design maintains a distinction between Hayward activities that will always belong to Hayward and those a third party Certification Agent may eventually assume.

Certified Contractors

Only Certified Contractors may install measures during the Pilot. Program Contractors will be selected to install the Pilot's Basic and Energy Measures through an RFP process. This RFP process will include an interview and references check. Participants who want to use their own contractors to have Pilot Basic and Energy Measures installed may do so if their contractors sign the Contractor Agreement and agree to abide by all program rules, becoming Customer-Choice Contractors.

Certified Suppliers

Manufacturers and distributors of the Pilot's pre-qualified Basic Measures and Landscaping Measures will be selected using an RFP process based upon measure quality and performance.

Property Owners

Owners of multifamily buildings (and, if appropriate, their building managers) with master-metered water service and central hot water who agree to the Pilot's terms.

Tenants

Property owners (or their representatives) will coordinate with tenants to allow Certified Contractors to enter their units and install measures. Tenants will receive up to five LED light bulbs per dwelling unit for allowing access to their units.

³ The utility authorized charge at the meter location where certified Pilot measures have been installed.

Design Team

The Sonoma County Regional Climate Protection Authority on behalf of the Bay Area Regional Energy Network with funding from the California Public Utilities Commission leads a consultant team that is developing pilot programs that conserve water and energy.

BKi is the project manager. BKi oversees the work of the Design Team and assists BayREN in meeting its responsibilities to the CPUC.

Energy Efficiency Institute, Inc., the developer of the PAYS® system, is designing Pilot protocols to create widespread adoption of water and energy efficiency in Hayward while meeting the needs of Hayward's multifamily property owners and their tenants.

Resource Performance Partners (RPP) is providing EEI and Hayward with economic as well as water and energy savings analyses to ensure Hayward's program benefits participants.

Implementer Summary

Role	Procurement Method	Contracted To	Paid By ⁴
Capital Provider	Design Team Pre-Approval	City of Hayward	Repaid by City of Hayward
Certification Agent	City of Hayward will fulfill this role	City of Hayward	City of Hayward will reimburse itself for services
Certified Contractor	RFP for Program Contractors; Customer-Choice Contractors must be certified by City of Hayward	City of Hayward	City of Hayward
Certified Suppliers	RFP	City of Hayward	City of Hayward

3. Target Market

The Pilot's components will have different target markets as identified below.

Multifamily Target Market

The Pilot will target multifamily buildings that have:

- 20 or more units as primary target, 5-19 units as secondary target⁵;

⁴ The City of Hayward will make upfront payments to pay for all pilot services, and will repay the Capital Provider regardless of collections. These costs will be re-paid to Hayward over time by participants and successor customers who benefit from installed measures by paying the Green Hayward PAYS® charges on their water utility bills.

⁵ Preliminary analysis indicates that for buildings with 20 or more units there will be sufficient savings to cover all program costs associated with installing Basic Measures without copays. It is possible that there may be sufficient savings to qualify installation of Basic Measures in buildings with fewer than 20 units without copays. Prior to dedicating significant Pilot resources to these smaller buildings, it is recommended the Certification Agent review [PAYS® Program Design | City of Hayward | December 19, 2013](#)

- master-metered water service and central water heating systems;
- primarily toilets that use 3.5 or more gallons per flush (gpf);
- higher than national average per-unit water usage, and;
- property owners who express interest in installing energy- and water-saving measures without incurring undue risk or increasing their debt load.

Participating building owners must agree to program terms, including:

- paying for measures over time from their savings;
- disclosing the payment obligation to successor owners or building managers, and;
- maintaining and not damaging the measures.

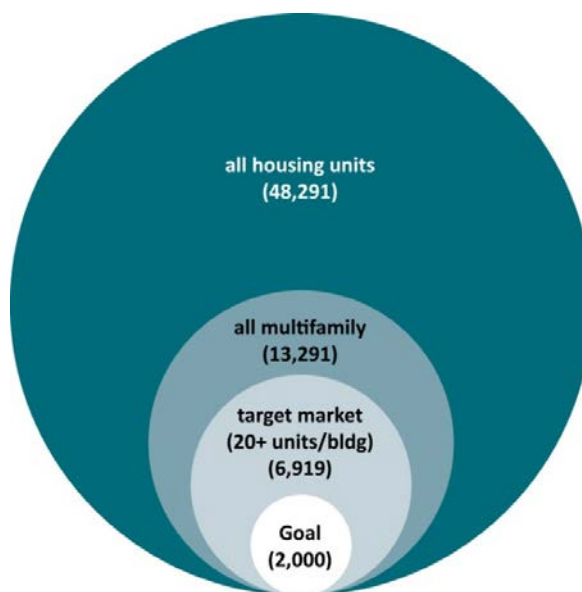
Building owners (or their representatives) must coordinate with tenants to allow Certified Contractors to enter the living units and install measures. Tenants will receive up to five LED light bulbs per dwelling unit for allowing access to their units. At this time, the Design Team does not envision requiring tenants to sign agreements since they are already legally obligated not to destroy or remove fixtures in units.

EEl recommends that Hayward evaluate its multifamily Pilot after serving approximately 2,000 units or completes one year of operation, whichever comes first. There are about 7,000 housing units in buildings with 20 or more units in Hayward, so 2,000 units represent more than 25% of Hayward's target building stock.⁶

the building's water use and unit count and evaluate the likelihood that Pilot measures would provide sufficient savings to these customers.

⁶ U.S. Census Bureau American Community Survey 2011 5-Year Estimates, Table DP04

Number of target housing units in the PAYS program



Source: U.S. Census Bureau

Assuming an average building size of 30 units, meeting this goal would require providing Pilot services to 67 target buildings in Hayward. Assuming a 20-unit minimum, the greatest number of buildings required to meet this goal would be 100 buildings (i.e., $2,000 \text{ units} \div 20 \text{ units per building} = 100 \text{ buildings}$). Preliminary analysis of Hayward's building stock and initial outreach with multifamily building owners indicate that these participation goals may be reasonable given the conditions listed above.

Other Target Markets

The Pilot's Landscaping component will target up to 100 multifamily, commercial, and institutional customers:

- who are looking for ways to reduce their irrigation costs (e.g., who respond to Landscaping marketing efforts);
- who have 4,000 square feet or more of well-irrigated turf with controlled irrigation and with irrigation consumption estimated to exceed 175% the Maximum Allowable Water Allowance (MAWA) for their landscaping (i.e., their irrigation system is poorly controlled); and
- whose landscaping maintenance contractors are willing to become Pilot Certified Contractors and install the program-selected weather based irrigation controller (WBIC).

Finally, the Pilot's community solar component will target municipal and institutional customers interested in installing solar water heating or energy systems on their premises.

4. Pilot Measures

The Pilot will offer three types of measures: Basic Measures, Energy Measures, and Landscaping, which will be a test of a non-subscription, weather-based irrigation controller (WBIC). Some measures will require upfront participant copays. Existing Hayward rebates will be used to make retrofitting toilets a more cost-effective measure.

Green Hayward PAYS® Program Measures Chart

Measure	Copay (upfront cost)	Rebates	Procurement
Basic Measures*			
Showerheads	None	PG&E	RFP
Aerators	None		RFP
Toilets (and seats)	None	Hayward	RFP
LED Light Bulbs (Dimmable)	None		RFP
Energy Measures			
Water Distribution retrofit	TBD**	PG&E	Installing Contractor
Lighting Retrofits (savings to building owner)	TBD**	PG&E	Installing Contractor
Other Energy Measures	TBD**		Installing Contractor
Community Solar	TBD**	PG&E	Installing Contractor
Landscaping			
Weather Based Irrigation Controller Installation	TBD**		RFP

* Required, if eligible, for customer to qualify for additional measures

** To be determined based upon measure screens; copays may be required based on building conditions

Measure Selection Process

Pilot measure cost and final customer eligibility criteria will be determined by Hayward and the Design Team based on bid prices for Basic and Landscaping measures in response to Hayward's RFP. Certified Contractor's actual bids for individual Energy Measures including Community Solar will be used to determine these measures' eligibility for the Pilot tariff.

Estimated pricing used in the development of this Program Design are based upon preliminary analyses by EEI and its subcontractor, RPP, for recommended products and services that have been successfully used by other utilities. EEI anticipates manufacturer and contractor responses to RFPs will result in prices at or below RPP's estimates. Products to be offered as the Pilot's Basic and Landscaping Measures will be selected by Hayward based on Hayward's assessment of product quality.⁷ The Design Team will update final pricing included in this Program Design and its supporting tool upon final product and service selection by Hayward.

Measure Cost Effectiveness

Measures eligible for the Green Hayward PAYS tariff must screen as cost effective under the "80% Rule": annual payments cannot exceed 80 percent of the estimated annual utility bill savings, and the maximum term of the monthly payment amount cannot exceed 80 percent of the useful life of the measure. With the 80% Rule, the 20 percent of estimated savings reserved for participants offers a sufficient incentive for high-use customers to participate and provides a sufficient safety margin to ensure that virtually all participants will have immediate net savings. Since the 80% Rule provides the minimum savings threshold for measures to be eligible for the tariff, many participants will receive greater savings for a longer period of time than the 80% Rule suggests.

⁷ While the Design Team has no contractual relationship with any Basic or Landscaping Measure supplier, it will recommend the use of specific products it has reviewed and tested and whose desirability and functionality have been proven in other programs. If Hayward staff select other products for its pilot, the Design Team cannot assure that they will be as well received by property owners and their tenants, perform as well, or last as long.

Measure cost effectiveness is based on savings estimates and costs for a measure. This involves a simple annual percentage rate (APR) calculation, the same methodology used to calculate mortgage or financing payments, with three primary variables: cost (including costs associated with program oversight, permits, and measure assessment less any rebates), interest rate, and term. The term will be set using the 80% Rule, but will be limited to ten years or 60 bi-monthly billing cycles. The interest rate will be set at Hayward's cost of capital. As long as the annual payments are less than 80% of the estimated annual utility bill savings, the project can qualify for the tariff with no upfront copay.

The Design Team will supply Hayward and its partners with an Excel workbook referred to as the Pilot's Data Sheet. The Data Sheet contains three Measure Screens with which to evaluate whether a measure or package of measures should qualify for the Pilot (including estimates for savings, tariffed charges, and project costs)⁸:

- The **Multifamily Measure Screen** determines whether Basic Measure packages qualify based on variables such as the number of units, typical vacancy rate, average number of tenants per unit, number of 3.5 gpf toilets per unit, etc.
- The **Energy Measure Screen** determines whether measures that save energy qualify based on variables such as measure and labor costs, rebates, program fees, utility rates, cost for capital, etc.
- The **Landscaping Screen** determines whether the selected WBIC can be installed by a Certified Contractor without a copay and produce immediate net savings for the participant based on the amount of water currently used for irrigation, the condition of the system (i.e., spray heads and leaks), and the condition of the turf.

Because the water usage used in measure cost-effectiveness calculations varies depending on the occupants' behavior, the Pilot's Measure Screens will use conservative assumptions about customers' existing annual water usage to assure savings. For example, the Multifamily Measure Screen will use a default value of 75% of national estimates for average tenant water fixture usage. Based upon participant discussions with the Certification Agent, these default values in the Multifamily Measure Screen can be adjusted to rescreen Basic Measure cost effectiveness based on the participant's own knowledge about occupancy and tenant water usage. The Certification Agent and Certified Contractors will explain how monthly PG&E and bi-monthly Hayward water bills will vary, but that, over time, a participant will receive savings on these bills that are significantly greater than the PAYS charge.

Eligible Measures

Eligible measures will save water, natural gas, electricity, or a combination of these resources. All measures will be permanent measures that must remain in the building and be maintained. In the case of measure failure due to product malfunction or improper installation (and not property owner, building manager or tenant damage, misuse, or lack of maintenance), measures will be repaired or the associated payment obligation will end.⁹

⁸ The Data Sheet will also be used by Certified Contractors to record measures as they are installed. Actual project costs, tariffed charges, and estimated savings will be determined and calculated based on the number of measures that are installed (e.g., some units may not be accessible and Contractors may determine it is not safe to install measures in some units due to existing conditions).

⁹ This scenario has not occurred to date in programs based upon the PAYS system because repair costs for PAYS measures can be recovered by extending the payment term for the measure, provided the new payment term does not exceed the measure's useful life. However, it is possible, for example, that a toilet with a ten-year

Basic Measures

Basic Measures, if eligible, must be installed in each tenant's unit in order for the participating building owner to be eligible for Energy or Landscaping Measures, unless there are medical reasons or pre-existing conditions¹⁰ preventing installation of one or more Basic Measures. Basic Measures can be installed with no upfront copay¹¹ and consist of the following:

- **High efficiency showerheads:** Contractors will install a chrome, 1.5 gallon per minute (gpm) showerhead to replace any existing showerhead that uses more than 2.0 gpm. Customers may choose between either a wall-mounted or hand-held showerhead. All showerhead installations will include an ASSE 1062 compliant Temperature Actuated Flow Reduction (TAFR) valve installed immediately upstream of the showerhead to inhibit any potential for scalding. Customers who have an existing designer showerhead (e.g., waterfall, multi-jet) will not be required to install a Pilot showerhead but may choose to do so if they are willing to pay for any associated additional plumbing costs as a copay.
- **High efficiency aerators:** Contractors will install, unless tenants refuse them or installation is not possible, 1.0 gpm pressure compensating bathroom aerators and 1.5 gpm pressure compensating kitchen aerators.
- **High efficiency toilets:** Contractors will install a 1.06 gallon per flush (gpf) toilet (or one with a lower maximum gpf) that is certified by IAPMO (or equivalent) and that is MaP rated for 600 grams or more of solid waste to replace all existing toilets in the building that use 3.5 gpf or more. 1.6 gpf toilets will also be replaced to the extent it is cost effective based on the Multifamily Measure Screen analysis.¹²
- **LED light bulbs:** Dimmable LED bulbs will be installed in tenants' units as an incentive for their participation by reducing their electricity bills. A maximum of 5 LEDs will be installed per dwelling unit, each saving about \$15 per year (not including avoided bulb replacement savings). If there are any property owner-supplied ceiling fixtures in units, LEDs will be installed there first. If possible, bids should be used to obtain lower costs and extended warranties for the bulbs.

Energy Measures

So that participants may install Energy Measures as part of the Pilot, two different approaches will be used.

payment term might fail after nine and a half years of service. Were the repair necessary to fix the toilet so expensive that the repair costs would require extending the payment term beyond the useful life of the toilet, the remaining payment obligation would instead be cancelled.

¹⁰ Pre-existing conditions include, but are not limited to, rotting bathroom floor boards, waste water lines with a history of clogging or root penetration, and corroded pipes or faucets that would prevent easy removal of the existing equipment.

¹¹ The qualifying conditions outlined in this section would allow a participant to have Basic Measures installed with no upfront copay. However, the Pilot will allow a participant to replace existing efficient measures, such as a low flow 1.6 gpf toilets, even if such installation would require a copay, at the participant's discretion.

¹² Customers who want to replace additional 1.6 gpf toilets and agree to the required copay may do so.

“Whole Building” Energy Measure Installations: To effectively leverage rebates for more comprehensive Energy Measure installations (e.g. whole building retrofits), as noted in Section 5 with the Bay Area Multifamily Building Enhancements pilot (BAMBE) while it is available, the Pilot tariff will allow building owners to install measures eligible for CPUC-approved rebates with little or no upfront out-of-pocket cost.¹³

The Certification Agent will work with rebate program staff, when possible, to use rebate values coupled with bid prices from Energy Measures or Customer-Choice Contractors to evaluate measure cost effectiveness. Using actual measure costs (e.g., any costs for required assessments, permit fees, interest on capital), and the Energy Measure Screen, the Certification Agent can easily determine which Energy Measures and how much of their cost are eligible for the tariff and the amount, if any, of an upfront copay. The Certification Agent is ultimately responsible for ensuring that the participant is likely to receive at least the estimated level of savings based upon the assessment methodologies sanctioned by Hayward, and if necessary, the Certification Agent may adjust any assessment’s estimated savings downwards to be more conservative and offer greater protection that participants will save more than they pay. If a contractor is willing to meet all contractor certification requirements (see *Section 9: Certified Contractors*), the Certification Agent may qualify all or part of the cost of the installed measure for the tariff.

Single Energy Measure Installations: When rebates for more comprehensive Energy Measure installations are not available or not appropriate for a specific property, Hayward’s Pilot will focus on those energy-efficiency projects that are most cost-effective in multifamily buildings, including: retrofits of indoor and outdoor lighting fixtures when usage is billed to the Hayward water customer, and hot water distribution system retrofits (e.g.; pipe insulation for supply and return pipes; hot water demand and hot water circulation controls; etc.). The Energy Measure Contractor (and Customer-Choice Contractors) will propose lighting measures based on a lighting-inventory.¹⁴ For Energy Measure projects that involve hot water distribution measures, a prescriptive list of measures approved by Hayward and developed by the Design Team will be used. Significant energy is often wasted if water heating systems have circulators running continuously to provide hot water on demand. Energy savings can be attained by a control system that limits hot water circulation to times when return water is below a set temperature and when a unit is calling for hot water. Customers who already have, or arrange to obtain, savings estimates from a CPUC-approved assessment or a nationally recognized multifamily audit may use the Pilot to install these measures and request the Certification Agent to screen them using the Energy Measure Screen.

Landscaping

Landscaping projects will test the viability of installing WBIC to reduce irrigation water waste. Access to WBIC will be limited to customers with well-irrigated turf, an existing controller, estimated usage of at

¹³ The Design Team recommends that for Hayward to accept an Energy Measure as eligible for the tariff, the resources savings to be delivered by that measure should use an assessment approved by the CPUC for rebates or on-bill programs that can estimate annual energy savings in kilowatt hours and therms, or a nationally recognized multifamily audit such as TREAT or RESNET.

¹⁴ Because lighting retrofits have few if any interactive effects in multifamily buildings, a simple watts-removed multiplied by hours of daily use calculation will be acceptable. Because the payment duration for lighting retrofits will be ten years, either the new lighting must be warranted to last ten years or estimated to last 12.5 years, and the cost effectiveness calculation must show that the measure is cost effective even with any additional cost of anticipated component replacement costs if these costs are higher than reasonably expected cost for current components.

least 175% the MAWA for the customer's landscaping, and an area to be treated of at least 4,000 square feet. Landscaping contractors must include the following work if that work is required to ensure the WBIC system will result in immediate net savings: repairing leaks; installing pressure reducing valves to reduce fogging or misting; and repairing, realigning, or replacing inefficient spray heads. Any portion of these costs cannot be covered by the tariff must be paid for with a copay.

The Design Team recommends that any weather-based irrigation controller selected for the Pilot does not require a subscription service and includes a ten-year warranty. The selected WBIC should be easy to program, and must have been determined to be effective by an independent third party evaluator. Selecting one system for testing will simplify evaluation of Pilot results.¹⁵ Reducing life-cycle system costs and being able to spread payments over a ten year period are likely to result in installations for multifamily, residential, and commercial customers with little or no copay or rebate funding required.

Hayward staff or the local landscaping contractor they work with should make Pilot offers to selected customers. Hayward should monitor the customer participation rate to determine the Pilot's effectiveness, and continue to monitor the installation sites to assess the effectiveness of the installed system or landscaping. The installing contractor will be required to educate the participant (and his landscape manager if not the contractor) on effective landscape watering techniques and how they relate to the smart irrigation controller given the importance of customer behavior on water end use.

Community Solar

Once Hayward approves this Program Design and selects a Capital Provider, the Design Team will work with Hayward staff to identify customers interested in Community Solar projects, most likely solar hot water (SWH) but possibly photovoltaic systems. These projects may be structured as purchases or as third party leases, providing there are sufficient consumer protections to avoid problems associated with such leases (e.g., weak guarantees for savings, high maintenance costs not considered in the savings calculation and/or costly end-of-lease fees). Solar projects will be treated as Energy Measures and their feasibility will be determined using the Energy Measure Screen with actual prices and proposals obtained from vendors willing to become Certified Contractors.

For installation of SWH systems to have significant savings, customers must have access to adequate insolation (e.g., a south facing, unobstructed roof) and a sufficient hot water load. While SHW systems may provide sufficient savings to be offered by the Pilot to retrofit gas water heating systems, installing SWH systems to supplement an electric water heater will produce even greater savings because of the higher price per British thermal unit (Btu) for electricity.

Measure Costs, Copays, and Rebates

The Multifamily Measure and Energy Measure Screens will determine the portion of a participant's measure costs that is eligible to be paid through the Pilot tariff. For less cost effective measures, a portion of the measure cost must be covered by customer copays, third party rebates, or both.

Basic measures will be eligible for the tariff with no up-front copay required from participants if contractor and supplier bid prices for products and services are comparable to the Design Team's preliminary estimates. Hayward's rebate for replacing 3.5 gpf toilets in multifamily units will help overall

¹⁵ The Design Team has identified one WBIC that meets its recommended criteria. Accurate Weatherset controllers (<http://www.weatherset.com>) generated the greatest percentage reduction in water use (average 33%; significant at $p=0.05$) among all controllers employed for landscapes surveyed in a 2009 Study by Aquacraft on behalf of the Metropolitan Water District of Southern California and East Bay Municipal Utility District.

project cost effectiveness. Replacing all inefficient toilets (e.g. those flushing at 1.6 gpf or greater) with the Pilot's selected toilet may require participants to pay a portion of the installation cost as a copay.¹⁶

Most Energy Measures will require some copay or rebate. Customers who value benefits other than savings or who expect utility rates to increase may still want to install such measures. Multifamily property owners also have access to non-on-bill loan products to finance upfront costs. The recommended RFP process to select Pilot Contractors will ensure that Energy Measure Contractors provide good value for customers. Contractors installing Energy Measures will be encouraged to prioritize and emphasize measures that, when coupled with existing rebates such as those offered by BAMBE, will not require a copay.

PG&E offers rebates for showerheads as well as potential Energy Measures such as lighting fixture replacement. These rebates, as well as PG&E rebates for SWH or PV systems, will be included in the Energy Measure Screen only if they can be assigned to the installing contractor and the contractor reduces its installation cost by the rebate amount. Otherwise they will not be included in the screen and the participant will retain the right to rebates.

Contractors are responsible for collecting copays from participants before ordering materials or beginning work. Hayward and the Certification Agent will assume no responsibility for participants' copays.

Upselling

Many contractors find that customers who purchase cost-effective measures often decide to install measures with significant non-financial benefits (e.g., new windows) at the same time. Upselling refers to the contractor practice of offering customers the opportunity to include such purchases in their project. However, to ensure that customers and Certified Contractors understand that up-selling, while not prohibited, is separate from the Pilot program and not associated with the same benefits as an offer that works:

- Installation of non-Pilot measures will not be included in Pilot agreements and forms;
- The Pilot will require the contractor use its standard (and separate) contracts and/or invoices between the contractor and the property owner; and
- The Certification Agent will make sure the participant knows only Pilot measures have the Pilot assurances and "upsold" measures are outside of the purview of Hayward and the Certification Agent.

5. Leveraging Bay Area Multifamily Building Enhancements Pilot

The Pilot will leverage the rebates available through the BayREN Multifamily Pilot (this program has been named the Bay Area Multifamily Building Enhancement Program, or BAMBE) in order to expand the scope and quantity of energy-saving projects completed in Hayward's Pilot. The BAMBE pilot rebates

¹⁶ The PAYS system allows current fixed rebates for most measures to be significantly reduced or eliminated when the Measure Screens indicate that measures are sufficiently cost effective to not require the full rebate. The Design Team recommends utilities shift from fixed rebates to variable rebates required to make individual projects qualify for the tariff without a copay. Instead of each customer getting the same rebate regardless of its cost effectiveness or their ability to pay a copay, all customers receive installation with an offer that works.

will help “buy down” the total cost of installing these energy-saving measures, making them eligible for the tariff with no (or a greatly reduced) copay.

The BAMBE pilot provides incentives for comprehensive energy upgrades in multifamily buildings throughout the nine Bay Area counties by offering no-cost technical assistance and a rebate of \$750 per unit for any upgrade package that reduces modeled energy use (combined electricity and natural gas) by 10% or more. The BAMBE pilot seeks to upgrade 5,000 dwelling units in 225 buildings by the end of 2014. More information about the BAMBE Program is available at <https://multifamily.energyupgradeca.org/>.

Upgrade Measures

The BAMBE pilot encompasses all upgrade measures that save electricity or natural gas, whether for the tenant or property owner, and whose energy savings can be captured by the program’s energy modeling and custom calculation techniques. Green Hayward PAYS helps multifamily building owners install measures that reduce the property owner’s utility bills, including measures that reduce water use.

Because of these different criteria (the BAMBE pilot includes measures that save tenants money and excludes water measures; Hayward’s Pilot excludes measures that save tenants money, but includes water measures), not all BAMBE pilot measures are eligible for the tariff, and not all Hayward measures will qualify for an BAMBE pilot rebate. Further, some energy saving measures may not be eligible for Hayward’s tariff based on who pays the utility bills (i.e., which in-unit water and energy usages are not paid by the property owner).

The following table identifies measures that apply to the BAMBE pilot, Green Hayward PAYS, or both, assuming the Pilot’s target utility payment configuration (the property owner pays for in-unit water, water heating, and all common area utilities and tenants pay for in-unit electricity, space heating, and appliance fuel). Measures that apply to both programs are highlighted in blue. Some measures that are potentially eligible for the tariff may require a large copay to be eligible under the 80% Rule.

Upgrade measures potentially applicable to Green Hayward PAYS (GHP) and/or BAMBE Pilot¹⁷

Measure	Measure end-use location	Eligible for GHP ¹⁸	Eligible for BAMBE rebate
Clothes washer	Common	Yes	Yes
Clothes washer	In-unit	Yes	Yes
Duct replacement/sealing/insulation	Common	Yes	Yes
Duct replacement/sealing/insulation	In-unit	No	Yes
Faucet aerator	In-unit	Yes	Yes
Lighting	Common	Yes	Yes
Lighting	In-unit	No	Yes
Pool cover/heating	Common	Yes	Yes
Pool lighting/pumps	Common	Yes	Yes
Showerhead	In-unit	Yes	Yes

¹⁷ Assumes pilot’s target utility payment configuration: property owner pays for in-unit water, water heating, and all common area utilities, and tenant pays for in-unit electricity, space heating, and appliance fuel.

¹⁸ Under the Pilot’s assumed utility payment configuration, a measure is indicated as eligible for Green Hayward PAYS (“Yes”) if that measure reduces the property owner’s utility bills. Some measures that are eligible for the tariff may require a large rebate or copay to be eligible under the 80% Rule. If property owner pays for in-unit energy costs, additional measures will qualify.

Space cooling measures	Common	Yes	Yes
Space cooling measures	In-unit	No	Yes
Space heating measures	Common	Yes	Yes
Space heating measures	In-unit	No	Yes
Weather Based Irrigation Controllers	Common	Yes	No
Toilet	In-unit	Yes	No
Vending machine controls	Common	Yes	Yes
Water heating measures	In-unit	Yes	Yes
Water heating measures	Common	Yes	Yes

Role of BAMBE Services in Green Hayward PAYS

While BAMBE services are available, BAMBE staff will always be invited to work with Hayward Pilot participants in order to maximize energy and water savings for each upgrade project.

In order to include BAMBE pilot measures in the Green Hayward PAYS Pilot, there are several aspects of Pilot implementation that need to be coordinated to ensure the success of this relationship. Key opportunities for cooperation and coordination include:

- mutual marketing and outreach efforts;
- aligning data collection and documentation tools to minimize paperwork and maximize data quality;
- cross-training Certified Contractors to ensure consistent application of each program's guidelines;
- cross-training technical assistance staff to ensure resource savings evaluations and scope of work recommendations meet the needs of both programs;
- cross-training on-site inspectors so one field inspection can meet the needs of both programs; and
- determining how to assign claimed energy savings for each program for the purpose of reporting to the CPUC for upgrade measures installed on one property under both the BAMBE pilot and Green Hayward PAYS Pilot.

Additional Research Needed

The Design Team working with BAMBE staff has confirmed that the BAMBE's modeled energy savings estimates can be used to reliably calculate eligibility for Hayward's tariff. The Design Team will work further with BAMBE pilot implementers to coordinate program designs.

6. Marketing, Education & Outreach (MEO)

Creating a PAYS offer that works requires a strategic marketing plan. The promise of the PAYS system is that when customers accept the pilot as legitimate, the Certification Agent or a Certified Contractor with an offer "too good to refuse" should be all that is required to market measures in this PAYS pilot.

The MEO activities for this Pilot should be rooted in the objective of meeting the Pilot's target of 2,000 units served without creating excessive demand for services before Hayward commits to continuing or expanding its Pilot. This MEO will be launched in two phases. First, Hayward staff will directly contact targeted customers to familiarize eligible customers with this unique offer and determine whether there is interest. Second, Hayward, or the Certification Agent, will follow up with customers to market specific

goods and services. The Certification Agent will bring in Certified Contractors as appropriate when the customer is ready to discuss product, installation, and cost specifics.

Though saving money will be a primary motivator for customers to participate in the Pilot, the overall marketing, education, and outreach message will emphasize the many reasons customers will want to participate. In addition to getting immediate positive cash flow, participants will enjoy upgraded equipment, reduce their own carbon footprint, reduce water and energy waste, help create jobs, and get to be part of a city-wide effort to save energy, save money, and improve the environment.

Brand Name

Green Hayward PAYS® has been chosen as the brand name for this Pilot. Before launching the MEO program for the Pilot, the Design Team will confirm that the final Pilot design conforms to the requirements for using the registered PAYS® trademark.

A tag line could be used in marketing this Pilot; the Windsor Efficiency PAYS® pilot used “Water and energy upgrades that pay you to save.” The tag line makes clear which type of efficiency measures the pilot addresses. It also hints at the offer that works. Creating awareness of the brand name and tag line in the community may help create interest, understanding, and awareness in this Pilot. Hayward should decide whether this or any tag line should be used.

Key Messages and Communications Goal

The key message for the program will focus on “an offer that works”: an opportunity to purchase resource efficiency products with no upfront payment, no new debt, and none of the risks property owners are likely to associate with contractors installing measures in their buildings or installing products based on future savings.

The communication goal for the Pilot should follow the marketing principle outlined in Lawrence Berkeley National Laboratory’s *Driving Demand* study: “One touch is not enough. A message must be delivered multiple times before a consumer will engage in learning more about a product or service.”

Supporting Messages/Features:

- Save money;
- Upgrade your building’s equipment;
- Eliminate water and energy waste; reduce demand for limited resources;
- Install weather-based irrigation controllers (WBIC) to save money on irrigation;
- Be confident about measure quality and workmanship in your building by hiring pre-selected and bonded contractors using Pilot approved products;
- Purchase products with no out-of-pocket costs, credit checks, or new debt; and
- Reduce your carbon footprint and help protect the environment.

Customer Offers

The promise of the PAYS system is an offer that is “too good to refuse.” The Certification Agent or a Certified Contractor should only need this offer that works to successfully market measures in this PAYS Pilot. Each customer interaction from Hayward, the Certification Agent, or a Certified Contractor should include some version of the following four key points of the offer:

1. Green Hayward PAYS® reduces your water and energy bills with measures that effectively cost you nothing. Here's how it works.
2. I install water and energy saving measures in your building, and you pay me nothing.
3. Once the work is completed, your water utility pays me. They put a fixed charge on your water bill that is significantly less than the estimated water and energy savings from these measures. Your utility bills go down without you having to spend a penny.
4. You have no loan, no lien, and no debt associated with this transaction; just lower utility bills.

Hayward Staff, the Certification Agent, and Certified Contractors should focus on this basic message to customers and not clutter the conversation with a lot of detail. At the same time, it is critical that customers get their questions answered (see *Attachment M* for responses to frequently asked questions).

A Focused MEO Campaign

The MEO plan recommended for Hayward Efficiency PAYS will avoid broad-based marketing yet be effective at securing participation. It is possible that by targeting high users and serving buildings with an average of 100 units, the Pilot could reach its goal of retrofitting 2,000 units by serving only twenty buildings ($2,000 \text{ units} \div \text{buildings with 100 units} = 20 \text{ buildings}$). However, because customers are not familiar with the Pilot's offer, the Design Team wants to caution Hayward that it may be necessary to supplement the proposed MEO with a broader effort to create confidence and interest in the Pilot offer. *Attachment O* is a description of a more typical MEO campaign, designed to create interest and trust for a unique program offer. Early monitoring of Pilot uptake will help ensure that there will still be time to adapt some of the approaches described in the attachment.

Phase 1: Hayward Outreach

The Design Team recommends that Hayward staff first meet with interested property owner groups such as the Rental Owners Association with the goal of:

- creating trust in the program;
- explaining how the Pilot will reduce costs for participants;
- showing how the Pilot provides customers with a practical way to reduce energy and water usage, save money, and reduce harmful environmental impacts;
- generating interest in attendees being among the few allowed to participate in this limited Pilot; and
- collecting the names of building owners who indicate that they want or do not want to be contacted by the Certification Agent.

Additionally, Hayward staff should work with the Design Team to develop an appropriate press release and meet with the local press to ensure proper but not excessive media coverage.

Then, Hayward staff should contact eligible high-using multifamily building customers by phone to secure permission for the Certification Agent to call them to explain the program and gauge their interest. Hayward will document the results of these calls by answering the questions in *Attachment P: Survey Questions*, for each call. If phone calls prove too time consuming, Hayward will send a letter to groups of customers (to avoid over subscription) informing them of the program and allowing them to reply, including the option to indicate that they do not want to be contacted by the Certification Agent.

Every customer contact should include the four key points of the Pilot offer. Finally, if these efforts are not sufficient to generate understanding of an offer that works and interest in participating in the Pilot, Hayward may send out bill stuffers, approve robo-calls by the Certification Agent, and issue additional press releases as part of its education efforts. A limited amount of BayREN funding provided by the CPUC may be available to assist with these efforts.

Early in Phase 1, it is also recommended that Hayward create a subpage within its own website that provides general information on the program, including the program offer, eligible measures, information for how to participate and how to contact the Certification Agent, a list of Certified Contractors, and responses to frequently asked questions.

Customer Opt Out and Opt In

All Hayward customers eligible for components of the Pilot will be “opted in” to the Pilot, provided their billing history is in good standing (see *Section 11: Bad Debt*). Customers will have the right to opt out of marketing efforts at any time. Their first opportunity to opt out will be during the initial contact from Hayward. No contractor may contact any customer who has opted out. Their names will not appear on lists for contractors. If a contractor is contacted by a customer whose name is not on their list, the customer should be directed to contact the Certification Agent to avoid potential problems with different decision makers at a location disagreeing about participation. A customer who has opted out may, at any time, change his/her mind and once again be available for a contractor to contact him/her about program measures. The Certification Agent will update lists to contractors when there are changes to avoid customer complaints.

If a customer wants to be contacted by the Certification Agent or a Certified Contractor, they may make such a request to Hayward or the Certification Agent, which moves them to the top of the list to be contacted, even if they are not one of the highest using Hayward water customers. Customers may also make similar requests to be prioritized for contact about the Pilot’s Landscaping component.

Phase 2: Certification Agent & Contractor Marketing and Outreach to Customers

The Certification Agent will follow up with individual high-use multifamily building customers referred by Hayward staff to explain the Pilot offer. Certification Agent staff will document the results of these calls by answering the questions in *Attachment P: Survey Questions*, for each call. Printed materials (e.g., a brochure with Hayward and program logos) and a Pilot FAQ should be available to send to potential participants who want to think about the offer and verify its legitimacy.

If an owner expresses interest, the Certification Agent will, prior to scheduling an On-Site Screening with the customer (and if a different part, the property owner), bring along the appropriate contractors and, if appropriate, rebate program (such as BAMBE) staff. The purpose of the On-Site Screening is to:

- explain the Pilot offer and the program (especially the use of national averages for tenant usage);
- tailor the Multifamily Measure Performance Screen to mirror the property owner’s assessments;
- gather accurate data about the building to determine rebates and estimate savings;
- determine which Basic Measures qualify for the PAYS tariff and to make an offer to the customer;
- gauge the owner’s interest in Energy Measures; and
- as appropriate, conduct the Pre-Installation Inspection .

Protocols for the On-Site Screening and the Pre-Installation Inspection, including details for coordination with rebate program (such as BAMBE) staff or the Energy Measure Contractor, are detailed in *Section 7: Pilot Process*.

If Contractors (either Basic or Energy Measure Contractors) seek to market the Pilot directly to Hayward Multifamily Building Owners who are on Hayward's list of eligible customers, all marketing efforts must be approved by the Certification Agent. Marketing effort should be allowed by the Certification Agent only if would-be participants will be adequately informed of the Pilot offer and utility bill savings opportunities from both Basic and Energy Measures. Energy Measure contractors must explain that Basic Measures must be installed in order for the participant to qualify for Energy Measures. Basic Measure Contractors must explain that the Energy Measure Contractor will assess which Energy Measures can be installed. Certified Contractors must also ask survey questions described in *Attachment P* and document answers. All contractor marketing collateral must be approved by the Certification Agent prior to distribution to Hayward customers.

Experience has shown that when two contractors are involved (e.g., one to install LED lights and toilets in units and another to work on space and water heating systems), coordination problems tend to undermine program success. This is why the Design Team recommends that the Certification Agent handle the majority of marketing for the Pilot and pre-approve any Contractor marketing to ensure clear communication with potential participants, provide accurate information, and facilitate installation of both Basic and Energy Measures. The Certification Agent's Pre-Approval phone call or inspection will allow the Certification Agent to easily check with potential participants introduced to the Pilot by a contractor that the participant was properly informed of all savings opportunities and that no false or misleading claims were made.

Referrals to Other Programs

Certified Contractors will be trained about other program opportunities that might be appropriate for customers or that might enable participants to supplement their installation of Basic Measures.

Program materials will be prepared and left with all participating customers. This approach could be used to promote Energy Upgrade California, California Solar Initiative, low income Energy Assistance Programs, the Bay Area Multifamily Building Enhancements Program, the Hayward "Lawn Be Gone" Program, and other such initiatives.¹⁹

A Broad MEO Campaign

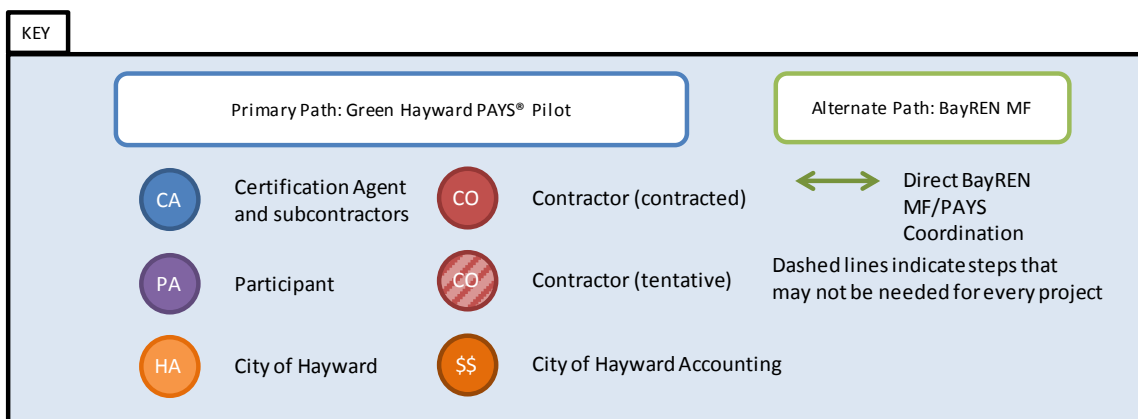
If Hayward decides to expand the Pilot to all multifamily customers at some future time, it should review the more traditional and thorough consumer education campaign summarized in *Attachment O*. An offer too good to refuse is likely to sound like an offer too good to be true, especially if the first time a customer hears the offer it is delivered by an unknown Certification Agent or contractor. If the Pilot is expanded or if additional measures or types of customers are targeted, *Attachment O* explains how to mobilize "trusted messengers" such as local media and community and opinion leaders.

At this time the Design Team does not recommend a broad MEO campaign for this Pilot, as such activity could create greater demand than can be met before Hayward has the opportunity to evaluate the costs and issues associated with implementing programs based on the PAYS system.

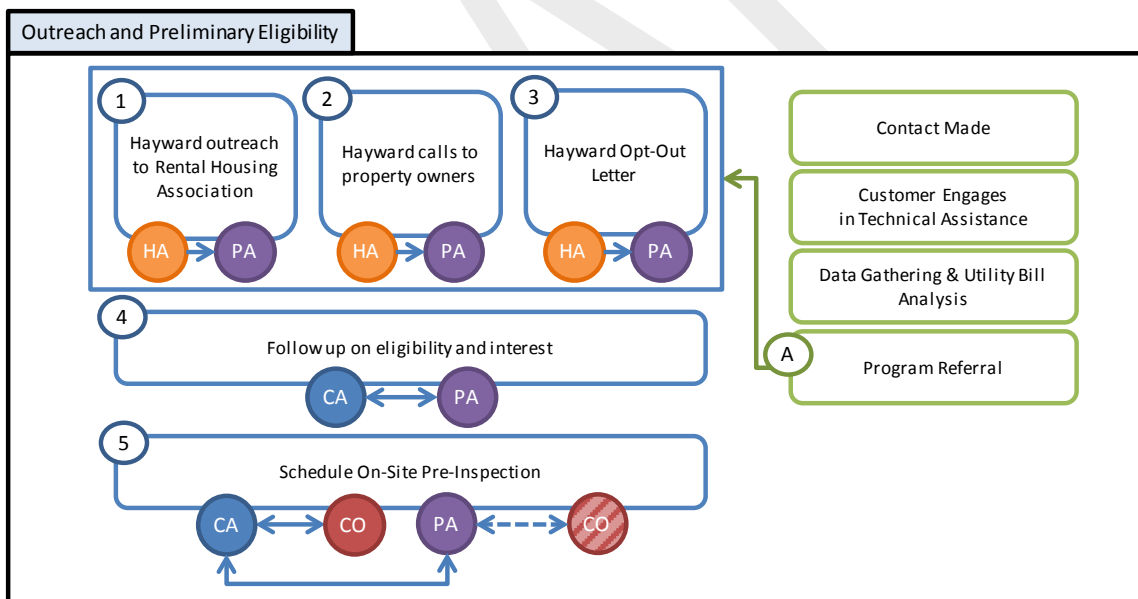
¹⁹ This approach led to Energy Upgrade referrals in Windsor Efficiency PAYS.

7. Pilot Process

For the Pilot to be successful, the roles of the key members of the Green Hayward PAYS team need to be carefully choreographed. The actions and interactions of Hayward, the Certification Agent, Certified Contractors and Suppliers, and BAMBE staff are described below for each of the four Pilot program activity categories. Note that Basic Measure and Energy Measure paths can be performed either simultaneously or separately.



Outreach and Preliminary Eligibility



Pilot Path

- Hayward initiates contact with customers per program MEO design.
 - Hayward provides the Certification Agent a list of high-use multifamily building owners who have been contacted, have not opted-out, and are in good standing.
- The Certification Agent calls referred multifamily customers to explain the Pilot and the offer.

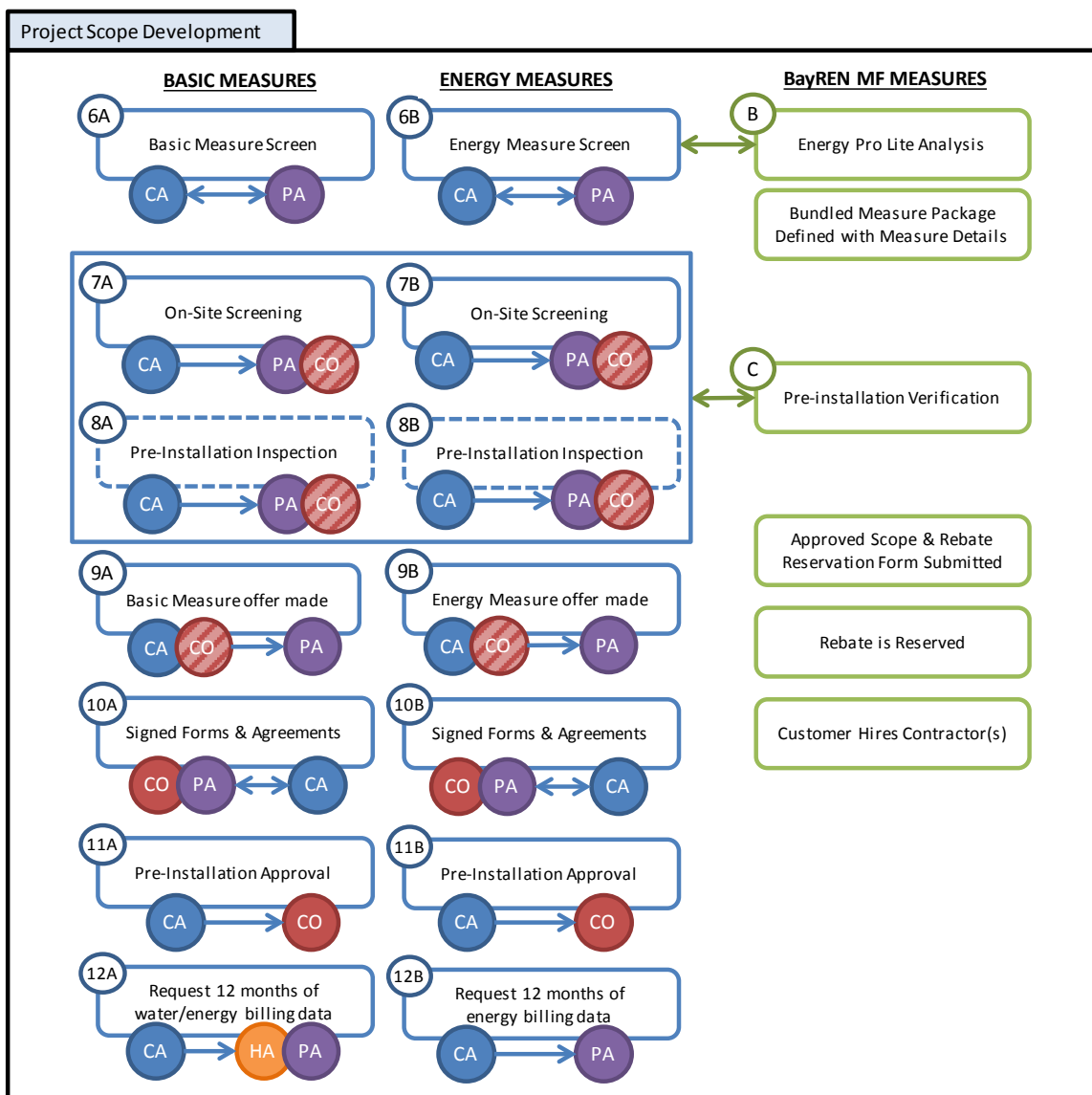
- Depending on customer interest, the Certification Agent may send the customer a Pilot brochure and FAQ, schedule another call, or schedule a visit.
5. Certification Agent schedules an On-Site Screening and requests either the Pilot's Basic Measure Contractor, or the participant requests the Customer Choice Contractor.
- If participant is considering selecting Customer Choice Contractor, that contractor is required to attend the On-Site Screening.

BAMBE Actions

Note: Only those steps in the BAMBE pilot that require direct interaction with the Pilot are described here. Additional BAMBE steps not interdependent with Pilot activities are shown in the diagram.

- A. After performing technical assistance and preliminary data collection and analysis of the property, BAMBE pilot staff will make referrals to Hayward, explaining to the customer how some or all of the copay for energy measures can be paid through Hayward's tariffed on-bill program with no upfront payment.
- Hayward will determine if the customer is in good standing and, if so, refer the customer to the Certification Agent for follow up as in the Pilot Path above.

Project Scope Development



Pilot Path for Basic Measures

- 6A. Either during initial call or On-Site Screening, Certification Agent works with participant to determine if Basic Measures are appropriate for the property by completing the Basic Measure Screen and answers customer questions about Purchase Agreement terms.
- 7A-11A. At the On-Site Screening, the Certification Agent confirms Basic Measures are appropriate for the property by completing the Basic Measure Screen, confirms program requirements with Customer Choice Contractor (if necessary), and answers customer questions about Purchase Agreement terms.
- For 10% of projects for which a Purchase Agreement is signed, Certification Agent will perform a more thorough Pre-Installation Inspection (step 8A).
 - Certification Agent presents customer with PAYS offer.

- If the customer is ready to proceed, the Certification Agreement can secure signature of Purchase Agreement and required forms and approve work scope on site.
- If the customer is not ready to proceed, the Basic Measure/Customer Choice Contractor continues project scope development with participant. If and when customer is ready to proceed, the Basic Measure/Customer Choice Contractor secures signature of Purchase Agreement and required forms and forwards Agreement to Certification Agent for work scope Pre-Installation Approval.
 - Certification Agent calls participating customer (participant), confirms receipt of Purchase Agreement and verifies submitted information.
 - Certification Agent emails (and calls if requested) Basic Measure/Customer Choice Contractor with work scope Pre-Installation Approval.

12A. Certification Agent obtains 12 months of participant utility bill data

- Certification Agent emails Hayward Finance Department to request 12 months of Hayward billing information. Certification Agent records this information in the participant's project file to facilitate evaluation.
- Certification Agent submits signed "PG&E Authorization to Receive Customer Information" form to PG&E and obtains bill data directly from participant.

Pilot Path for Energy Measures

6B. Either during initial call or On-Site Screening, Certification Agent works with participant to determine if Energy Measures are appropriate for the property by completing the Energy Measure Screen and answers customer questions about Purchase Agreement terms.

7B-11B. At the On-Site Screening, Certification Agent confirms information for the Energy Measure Screen and confirms program requirements with Customer Choice Contractor (if necessary).

- For 10% of projects for which a Purchase Agreement is signed, Certification Agent will perform a more thorough Pre-Installation Inspection (step 8B).
- Once the Purchase Agreement for Basic Measures, which includes a small fee for a visit by the Energy Measures Contractor, has been signed, the Energy Measure/Contractor Choice Contractor visits the building to inspect the building and develop a scope of work and bid.
- Certification Agent presents customer with PAYS offer based on actual bid prices.
- If the customer is not ready to proceed, the Energy Measure/Customer Choice Contractor continues project scope development with customer. If and when customer is ready to proceed, the Energy Measure/Customer Choice Contractor secures signature of Purchase Agreement and required forms and forwards Agreement to Certification Agent for work scope Pre-Installation Approval.
 - Certification Agent calls participant, confirms receipt of Purchase Agreement and verifies submitted information.
 - Certification Agent emails (and calls if requested) Energy Measure/Customer Choice Contractor with work scope Pre-Installation Approval.

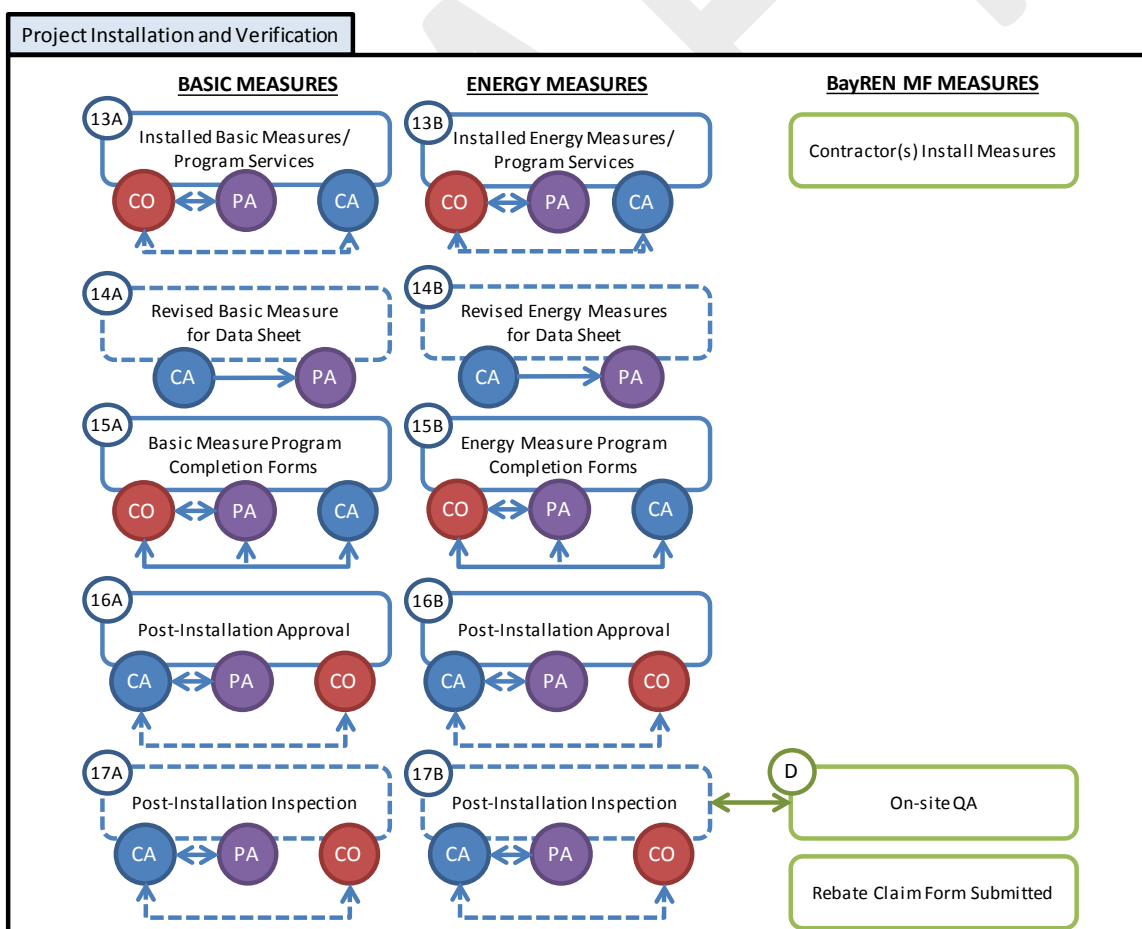
12B. Certification Agent obtains 12 months of property utility bill data.

- Certification Agent submits signed “PG&E Authorization to Receive Customer Information” form to PG&E and obtains bill data directly from participant.

BAMBE Actions

- B. BAMBE staff performs an EnergyPro Lite analysis to determine estimated energy savings achieved by a comprehensive energy upgrade.
- BAMBE staff develop a second report that isolates energy savings from measures that (1) reduce the water customer’s (e.g. property owner’s) utility bills and (b) are likely to be cost effective (i.e., likely to qualify for the PAYS tariff with no copay).
 - BAMBE staff email this second report to the Certification Agent so the results can be used in the Energy Measure Screen
- C. BAMBE staff performs the BAMBE Pre-Installation Verification.
- If possible, this is scheduled to coincide with the PAYS On-Site Screening for Energy Measures to help reduce participant inconvenience and facilitate efficient sharing of on-site findings.

Project Installation and Verification



Pilot Path for Basic Measures

13A-14A. Basic Measure/Customer Choice Contractor installs approved scope of work.

- Basic Measure/Customer Choice Contractor initiates project with participant and identifies any changes in scope prior to starting in-unit installation. Scope change by must be confirmed with and approved by Certification Agent.
 - The Pilot's Basic Measure Contractor may use the Measure Screen to reevaluate whether projects with scope changes still qualify for the Pilot's Tariff and, if so, begin work while Certification Agent approval of the scope change is pending. Basic Measure Contractors do so at their own risk.
 - Customer Choice Contractors must wait for Certification Agent approval of scope changes prior to beginning work.

15A. Basic Measure/Customer Choice Contractor sends all completed paperwork to the Certification Agent.

16A. Certification Agent performs Post-Installation Approval duties (see *Attachment X: Certification Agent Responsibilities*).

- For 20% of completed projects, Certification Agent will perform a more thorough Post-Installation Inspection (step 17A)²⁰.

Pilot Path for Energy Measures

13A-14A. Energy Measure/Customer Choice Contractor installs approved scope of work.

- Energy Measure/Customer Choice Contractor initiates project with participant and identifies any changes in scope prior to starting in-unit installation. Scope change by must be confirmed with and approved by Certification Agent.
 - The Pilot's Energy Measure Contractor may use the Energy Measure Screen to reevaluate whether projects with scope changes still qualify for the Pilot's Tariff and, if so, begin work while Certification Agent approval of the scope change is pending. Energy Measure Contractors do so at their own risk.
 - Customer Choice Contractors must wait for Certification Agent approval of scope changes prior to beginning work.

15B. Energy Measure/Customer Choice Contractor sends all completed paperwork to the Certification Agent.

16B. Certification Agent performs Post-Installation Approval duties (see *Attachment X: Certification Agent Responsibilities*).

- For 20% of completed projects, Certification Agent will perform a more thorough Post-Installation Inspection (step 17b)²¹.

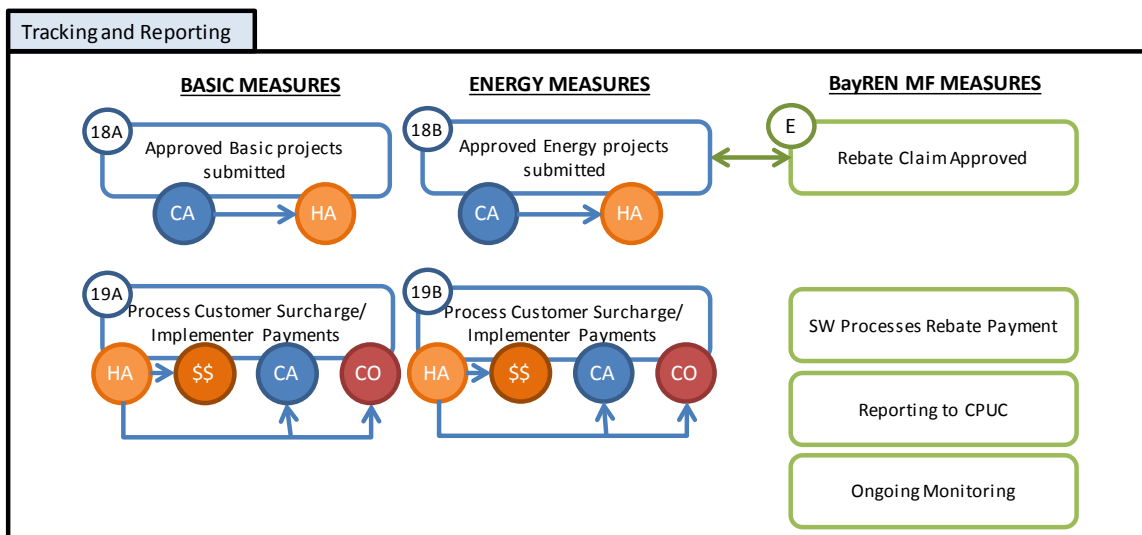
²⁰ The Design Team will work with Hayward and the Certification Agent to adjust this percentage based upon Contractor performance.

²¹ Ibid.

BAMBE Actions

- D. BAMBE staff perform a Post-Installation Verification (QA).
- If possible, this is scheduled to coincide with the PAYS On-Site Post-Installation Inspection for Energy Measures to help reduce participant inconvenience and facilitate efficient sharing of on-site findings.

Tracking and Reporting



Pilot Path

- 18A/B. Certification Agent approves Basic and/or Energy Measure projects and submits all Pilot Agreements and Forms to Hayward for billing and Pilot tracking.
- Payment information will be submitted to Hayward Finance Department staff in time for the next issuance of checks.
- 19A/B. Hayward Finance Department Staff processes payments and tariff.
- Hayward issues payment to Certification Agent, Contractor, and Measure Suppliers.
 - After 45-day waiting period (or until after the first billing cycle during the irrigation season for WBIC installations), Hayward Finance Department staff add tariffed charges to participants' bills.

BAMBE Actions

- E. BAMBE staff emails Certification Agent the final BAMBE rebate value so the Certification Agent can adjust Hayward's payment to the Energy Measure/Contractor Choice Contractor accordingly.
- Directly accounting for the BAMBE rebate in the Pilot tariff value for Energy Measures requires that the BAMBE rebate can be assigned to the contractor rather than the participant. The Design Team is currently confirming that BAMBE supports rebate reassignment.

8. Certification Agent

The Certification Agent is the Pilot's program operator and the gatekeeper to all Pilot activity. Since Pilot Agreements (*Attachments D1, E1, E2, F, and G*) establish the Certification Agent as the agent of participating Hayward customers, the entity that takes on this role needs to be widely trusted by customers. Hayward will serve as the Pilot's Certification Agent. Participants will know there is someone to whom they can turn if something goes wrong, who has the power to make it right, and who will make it right. As Certification Agent, Hayward staff will field all customer inquiries and resolve issues.

At some point, Hayward may choose to delegate Certification Agent responsibilities to a third party (e.g., if the pilot is expanded to additional multifamily customers or to different customer classes). Should Hayward ever decide to delegate these responsibilities, the Design Team recommends Hayward issue an RFP with *Attachment D2: Certification Agent Responsibilities*, to obtain the highest quality services at the best possible price.²²

The Certification Agent will be responsible for daily implementation of the Pilot and fulfill three basic functions:²³

- **Marketing:** Upon referral from Hayward's initial contacts, the Certification Agent will be responsible for conveying the Pilot's offer to interested Hayward multifamily property owners and contractors. To the extent potential participants understand the offer that works and contractors fully understand the responsibilities of being a Certified Contractor, the Pilot should be able to meet its goals.
- **Ensuring measures are appropriate, cost effective, and correctly installed:** The Certification Agent is responsible for approving all projects prior to any work being done, for making sure participants understand the offer, the measures, and the basis for savings estimates, and for assessing the appropriateness of the work. The Certification Agent is responsible for ensuring projects meet the 80% Rule and performs quality control after project installation.
- **Ensuring paperwork and data are complete and accurate:** The Certification Agent is responsible for making sure that all Agreements are complete and signed, all forms required for a specific job are complete and accurate (and signed if appropriate), and that all data on forms and agreements are correct based on quality control verification. Estimated participant savings and bi-monthly payments will be based on the information in these agreements and forms.

In addition to the details discussed below, a comprehensive list of Certification Agent duties is listed in *Attachment D2: Certification Agent Responsibilities*. Certification Agent staff is responsible for understanding and carrying out all of these duties.

Certification Agent Marketing Responsibilities

As described in Section 6, Marketing, Education, and Outreach, the Certification Agent will handle the majority of marketing for the Pilot and approve any Contractor marketing to ensure clear

²² Since Hayward staff have discussed the possibility of eventually contracting with a third party to provide Certification Agent services, this Program Design continues to refer to the Certification Agent by its role rather than who implements these services.

²³ The Certification Agent will fulfill these roles for all Basic or Energy Measures. If the proposed cost for oversight of WBIC projects is too high to qualify installations, the Hayward utility staff will perform these functions for those projects.

communication with potential participants, provide accurate information, and facilitate installation of both Basic and Energy Measures. Its duties will include:

- Handling all customer and contractor inquiries about the Pilot program. The Certification Agent will be expected to have a thorough understanding of the Program Design and its Attachments to ensure it provides accurate information.
- Managing the list of customers who are high users and in good standing (updated on a monthly basis by Hayward) and eligible for program services. The Certification Agent will provide these lists to the selected Contractors who want to market Pilot services.
- Handling calls from customers who want to opt out, or who opted out of the Pilot and now want to participate, and referring them or their contact information to the Pilot's Basic Measure Contractor.
- Asking the survey questions described in *Attachment P* and documenting answers.

Certification Agent Project Installation Responsibilities²⁴

Potential purchasers of Pilot measures must have confidence that there will be savings and that measures will last throughout the payment term. Independent verification of product savings estimates is crucial to creating consumer confidence. Additionally, customers need to know that products meet standards for operability, safety and efficiency; are appropriate for the customer's application; and are properly installed. Certification also assures Hayward of a reliable payment stream from installed products that produce reliable savings for enough years to recover all costs.

The Certification Agent will certify Pilot Contractors and Suppliers,²⁵ including arranging for them to sign Contractor and Supplier Agreements, which will entail verifying insurance coverage, ensuring Contractors provide proof of bonding that protects owners/customers and Hayward, and training contractors to adhere to program standards. The Certification Agent will, if necessary, de-certify contractors and suppliers for failure to adhere to the requirements in their Agreements.

For each project, the Certification Agent has detailed responsibilities designed to ensure that measures are appropriate, cost effective, and correctly installed through Pre- and Post-Installation Approval Processes and Pre- and Post-Installation Inspections of a select number of project sites. This also involves working with participants to ensure they understand the terms and conditions within the Pilot's Purchase Agreement, including Pilot and Certified Contractor responsibilities for measure installation and warranty protections and participant responsibilities for measure maintenance and measure and tariff disclosure to successor owners or occupants.

For all customer and participation contacts, it is the Certification Agent's responsibility to ensure that all Pilot paperwork and data are complete and accurate. In doing so, it is also the Certification Agent's responsibility to assure the program limits on participation and capital funding are not exceeded.

Staffing & Staff Training

One office/field staff person (i.e., one FTE) should be able to manage the Certification Agent responsibilities for this Pilot. If the Pilot meets its goal of retrofitting 2,000 units, the maximum number

²⁴ A comprehensive list of Certification Agent duties is listed in *Attachment D2: Certification Agent Responsibilities*. Certification Agent staff is responsible for understanding and carrying out all of these duties as assigned

²⁵ The initial pilot Basic Measure and Energy Measure Contractors will be certified by the Design Team and Hayward.

of projects is estimated to be about 100 (based upon a 20 unit/building minimum; buildings with more units would mean fewer project sites in total). If this Pilot produces the same offer acceptance rate (i.e., 50% or higher) as every other program based on the PAYS system, the number of initial customer contacts should not exceed 200, and could be as low as 40.

The Design Team estimates this staff person would be able to provide visits to up to 300 buildings during the Pilot year especially if it uses the recommended process of using telephone calls to screen participants to avoid wasted visits.

At a minimum, the Certification Agent must provide Pre-Installation Inspections for at least 10 percent of all participants (estimated to be up to 10 properties) and Post-Installation Inspections for at least 20 percent of all participants (estimated to be up to 20 properties).²⁶ Almost all Pre-Inspections will not entail an additional visit and will take place during Screening Visits.²⁷ The Certification Agent should set up its own internal tracking system for Pre- and Post-Installation Inspections to ensure the two required minimum percentages are met regardless of demand and that any Certification Agent staff concerns about a Certified Contractor's work are either verified or addressed by successful inspections. Penalty fees will ensure that as many inspections as necessary can be performed to assure high quality installations.

Only staff certified by Design Team (which will offer initial Pilot Trainings) or the Certification Agent may perform program functions. Multiple staff may be certified and provide services. Multiple trained staff will better enable the Certification Agent to avoid backlogs, respond to staff illness or staff turnover. The Certification Agent will arrange to have any of its staff that may be working in the Pilot (e.g., customer service staff, Pilot managers, etc.) attend the Initial Green Hayward PAYS Training session currently planned for January 2014. The Certification Agent will train and certify any of its staff hired subsequent to Initial Pilot Trainings.

For this small Pilot, the benefit of being able to use multiple existing staff part time is that it allows the Certification Agent to meet market demand even if unforeseen events prevent one or even two key staff from fulfilling their responsibilities.

Certification Agent Reimbursement

The Certification Agent will be paid for all required activities as described in this Program Design based on its bid fee per completed job. Certification Agent payment will be made at the same time Certified Contractors and measure Suppliers are paid. Participants installing Basic, Energy and Landscaping measures may have final inspections, approvals, and tariffed charges completed at different times. Given this, the Certification Agent may pay itself upon its final approval of the Basic Measures installation with the understanding that it must fulfill its responsibilities for the second (and third if the participant also installs a WBIC system) installation for a participant.

Additionally the Certification Agent will be paid for overseeing post-warranty or non-warranty repairs based on its bid price for this work. Post-warranty repair refers to repairs required when the warranty does not extend to the full term of the tariffed Charges. Non-warranty repairs are repairs outside of the warranty, for example, those necessitated by customer- or owner-caused damage, lack of maintenance, or an act of God.

²⁶ The Design Team will work with Hayward and the Certification Agent to adjust this percentage based upon Contractor performance.

²⁷ The exception would be an on-site Pre-Inspection of a property where a Contractor marketed Pilot services and no On-Site Screening had occurred.

9. Certified Contractors

Only Certified Contractors can install measures in the Pilot.

Pilot Contractors

There are two types of Certified Contractors in the Green Hayward PAYS® pilot: Program Contractors and Customer-Choice Contractors. Program Contractors will be selected to install the Pilot's Basic and Energy Measures through an RFP process. This RFP process will include an interview and references check so that all customers, whether or not they value and trust the people currently maintaining their buildings, will have access to skilled and trusted contractors selected by Hayward because of their ability to install program measures correctly. Participants who want to use their own contractors to have Pilot Basic and Energy Measures installed may do so if their contractors sign the Contractor Agreement and agree to abide by all program rules, becoming Customer-Choice Contractors. All Landscaping Measures will be installed by Customer-Choice Contractors.

Program Contractor - Basic Measures. A Program Contractor will be selected based on its price, references, and demonstrated success installing the Pilot's Basic Measures in multifamily buildings. The Contractor's price for Basic Measures will be a fixed price per unit retrofitted. The bid price will not include the cost of measures (to be supplied by the Basic Measures Supplier) but will include ancillary materials (e.g., wax toilet seals, replacement supply line, and an acceptable new toilet seat).

Program Contractor - Energy Measures. A Program Contractor will be selected based on bid prices for typical jobs, references, and demonstrated success installing measures most likely to qualify for the tariff (e.g., demand controls and pipe insulation and lighting upgrades). This contractor will be recommended to property owners for installation of these energy saving measures. One contractor may apply to be both the Basic and Energy Measures Contractor if it has all identified program skills and certifications.

Customer-Choice Contractors. Whether they install Basic Measures, Energy Measures, or Landscaping, these contractors will not undergo the same vetting process as those selected by Hayward. Participants will be responsible for establishing their credentials and qualifications. If a Customer-Choice Contractor installs Basic or Landscaping Measures, it must do so for the established program price or the property owner must pay the difference (i.e. treating any additional cost as a copay).

Although the Certification Agent will recommend the use of Program Contractors, any customer that prefers that another contractor install measures may select their preferred contractor and pay for the installation through the tariff, providing that their contractor is willing meet the terms of the Pilot's Contractor Agreement (see below).

One Basic Measure Program Contractor should be sufficient for a Pilot of this magnitude or even double its size. Assuming an Energy Measures Program Contractor who can handle installation of lighting and hot water distribution retrofit projects can be identified through the RFP process, one contractor should easily be able to serve the envisioned Pilot maximum of 100 buildings. Full scale operation of a program might require more than one Basic Measure and one Energy Measure Program Contractor.

All Basic Measure Suppliers must be willing to take back unused products at no additional cost, offer materials warranties for the duration of customer payments, and have sufficient product availability to fulfill demand for a successful Pilot.

In addition to these requirements and the details discussed below, a comprehensive list of Contractor duties is listed in *Attachment E3: Contractor Responsibilities*. Contractor staff is responsible for understanding and carrying out all of these duties.

Contractor Agreement and Associated Requirements

The Contractor Agreement requires Certified Contractors to provide a high level of assurance to customers. The Contractor Agreement that allows the Certification Agent to act as the participant's agent and binds the Contractor to fulfill all of its responsibilities as assigned in this agreement. Contractors must adhere to the requirements in this agreement including the requirements to:

- be responsible for the work quality as well as compliance with federal, state and local standards;
- hold the appropriate California licenses for the work performed;
- be responsible for identifying any pre-existing conditions that would preclude installation of program measures (e.g., a rotted floor under the toilet or corroded shower pipes);
- secure required permits and include this cost in their proposed project price;
- be bonded or provide an irrevocable letter of credit from a bank to assure compliance;
- warrant labor;
- market services only as permitted in *Section 6: Marketing, Education, & Outreach* and below with materials approved by Certification Agent.
- pay any required training fees and any penalties related to failed program inspections, which will be used to pay for additional quality control inspections;
- have sufficient staff to deal directly with participants; and
- have those staff members successfully complete required training.

Training programs will be provided at no cost to the selected Program Contractors. All Customer-Choice Contractors must be willing to have their staff meet with the Certification Agent on site prior to starting any work to go over program guidelines (i.e., to be trained). There will be a one-time cost (this training fee is to be determined) paid by the prospective Certified Contractor to the Certification Agent prior to this meeting.

Contractor Summary

	Basic Measure Contractor	Energy Measure Contractor	Customer-Choice Contractors
Procurement Method	RFP	RFP	Customer selection
Customer Assurances	Licensed for measures installed Insured and bonded to program requirements Minimum 1-year parts and labor warranty		
Pricing	Standard price set by RFP for Basic Measures	Variable by project	Basic Measures price set by RFP; Variable by project for Energy Measures and WBIC
Training	Trained by Program Design Team as part of launch	Trained by Program Design Team as part of launch	Trained on site by Certification Agent (fee)

Responsibilities When Contractor Markets Pilot

Only Certified Contractors may market the Pilot. Basic Measure Contractors may market their services directly to Hayward Multifamily Building Owners who are on Hayward's list of eligible customers, have buildings with 20 or more units, provide water and hot water to their tenants, and have primarily 3.5 gpf toilets in their buildings. The Certified Contractor is responsible for ensuring that any customer to whom it is selling Pilot services meets these criteria, for asking survey questions described in *Attachment P* and documenting answers, and for notifying the Certification Agent of the contact. Failure to notify the Certification Agent upon the first contact will be considered a failure to do work correctly, and incur consequences, including a penalty payment. Failure to notify the Certification Agent could lead to unnecessary, multiple contacts with Hayward customers and an inability to track program uptake rate.

Certified Contractors must inform Hayward customers to whom they directly market their services that they must install Basic Measures in order to be eligible for Energy Measures and that since the Basic Measure charge includes the cost of a visit by the Energy Measure Contractor, the participant should find out whether there are other measures that can be installed through the tariff and provide immediate net savings with no upfront payment. Certified Contractors will also arrange for the Certification Agent to contact the customer to discuss Basic and/or Energy Measures.

Contractor Responsibilities for Measure Qualification and Installation²⁸

Certified Contractors are responsible for the appropriate selection and installation of eligible resource efficiency measures and for securing any permits required for installation. Contractors or their representatives shall direct the performance of all workers and subcontractors, ensure that workers and subcontractors are competent and qualified, and assume responsibility and liability for their work, behavior and actions.

Contractors will use the *Attachment A: Pilot Data Sheet* to document Pilot activity including documenting every new customer contact not arranged by the Certification Agent so Hayward can track the percentage of participants who received bona fide offers of all customers who were contacted.

There are times when Contractors should not or cannot install measures. For example, toilets cannot be replaced if the underlying floor is rotted, and showerheads cannot be replaced if the plumbing is old and rusted and removal of the old showerhead is likely to cause damage. Landscapers should not work on valves or plumbing that are deficient or install a WBIC without fixing damaged spray heads or leaks.

²⁸ A comprehensive list of Contractor duties is listed in *Attachment E3: Contract Responsibilities*. Contractor staff is responsible for understanding and carrying out all of these duties as assigned

Contractors do not need to install eligible measures if they fear doing so will create problems. If a Contractor has the skills and licenses, it can offer to do the repairs and be paid directly by the customer, providing the repair offer is made before the Pilot measure work starts and any damage occurs. If Contractors start work and cause damage, even if they think the condition was unforeseeable, it is their responsibility to fix the damage, and install the program measure at their or their insurer's cost. Customers cannot be charged extra for repairs once the Contractor starts work on an approved measure installation.

To ensure smooth Pilot functioning and to document whether it has been successful and can be replicated, there are a number of forms, agreements, and a Data Sheet that Certified Contractors need to manage as part of their participation in the program. Certified Contractors are responsible for their staff knowing which Pilot forms are required and how to correctly fill them out, and for filling them out correctly. Failure to submit correct forms or making errors filling out forms will delay Contractor payments and if they require the Certification Agent to travel to the participant's worksite, may entail a penalty.

Required forms are identified and described in *Attachment E3: Contractor Responsibilities*.

Payment

Participants who have Basic and Energy Measures installed are likely to require multiple contractors working on different schedules as well as tariffed charges with different start and end dates. However, there will be one tariffed charge linked to a single contractor's work at a location. Basic Measure contractors installing both Basic and Energy Measures will be advised to schedule their work so they are not waiting a long period for payment after the first part of their work has been completed. If there are participants who have Basic Measures, Energy Measures, and WBIC installed, there could be three tariffed charges associated with their building.

Contractors who correctly submit all paperwork for completed work and whose work is approved by the Certification Agent will be paid by Hayward during the next payment cycle. The Contractor must submit the completed Data Sheets and supporting invoice documentation to the Certification Agent by the date each month as set by Hayward (to be determined). Contractors are responsible for working with the Certification Agent to arrange for their paperwork to be submitted with sufficient time for the Certification Agent to inspect their work, review the paperwork, and submit payment requests to Hayward.

Once the Certification Agent has been notified by the Contractor that work has been completed, it has received all required program forms, and its Post-Installation Approval has been completed, the Certification Agent will notify Hayward before its next regularly scheduled payment period (payments will be made every month) how much to pay Contractors, Suppliers, and the Certification Agent. Hayward will pay Contractors and Suppliers their bid prices for successfully completed work. Any payment questions from Contractors or Suppliers should be directed to the Certification Agent.

Not all upgrades will be verified by the Certification Agent with Post-Installation Inspections. The Certified Contractor is solely responsible for installing the prescribed measures in accordance with its Agreement regardless of actions or lack of actions by the Certification Agent. If a Contractor's non-compliance is discovered at any time during installation or when the customer is billed charges for measures, the Certified Contractor is responsible for correcting errors, including assumption of any consequential damages. If an error (such as contractor installation of a measure not eligible for the Pilot) may have prevented the customer from receiving savings, the Contractor will be responsible for reimbursing the customer for tariffed charge payments for the months affected by the error.

10. Capital

Hayward has decided to seek third party capital to fund the upfront costs for its Pilot. To sufficiently fund Hayward's Pilot, the Design Team recommends Hayward secure access to up to \$4,000,000.²⁹ If Hayward determines it will seek third-party capital in this amount, the Design Team further recommends that Hayward seek a Non-Revolving Guidance Line of Credit with terms that will work for the Pilot. The Line of Credit will need to allow Hayward to make up to 15 draws in one year (monthly draws for multifamily building and WBIC projects and up to 3 draws for community solar projects). The payment duration for all but the community solar projects will be ten years, further simplifying the request for capital.

Except for an origination fee, the City of Hayward's financial obligations will be incurred only when it draws down funds to pay the Certification Agent and vendors for approved, completed projects. There will be no obligation to pay for unused funds made available by the Capital Provider for this Pilot. Each month, Hayward would draw down the funds from the Line of Credit it will need to issue checks to the parties implementing its Pilot (e.g., the Certification Agent, Certified Contractors, and Certified Suppliers) and for permits and Hayward program fees, based on the number of measures installed in approved completed projects. Hayward would add PAYS charges to participants' bi-monthly bills and track their payments. And it would repay the Capital Provider on a monthly or bi-monthly basis regardless of its collections from customers.³⁰

The Design Team has already begun the search for a Capital Provider interested in providing affordable capital to cover the upfront costs for measures and Pilot services. Based on the Windsor experience, locating a capital provider willing to make a loan to Hayward without any traditional security (e.g., liens, the right to remove equipment from the premises if payments are not made on time, credit enhancements, etc.) may be a time consuming project.

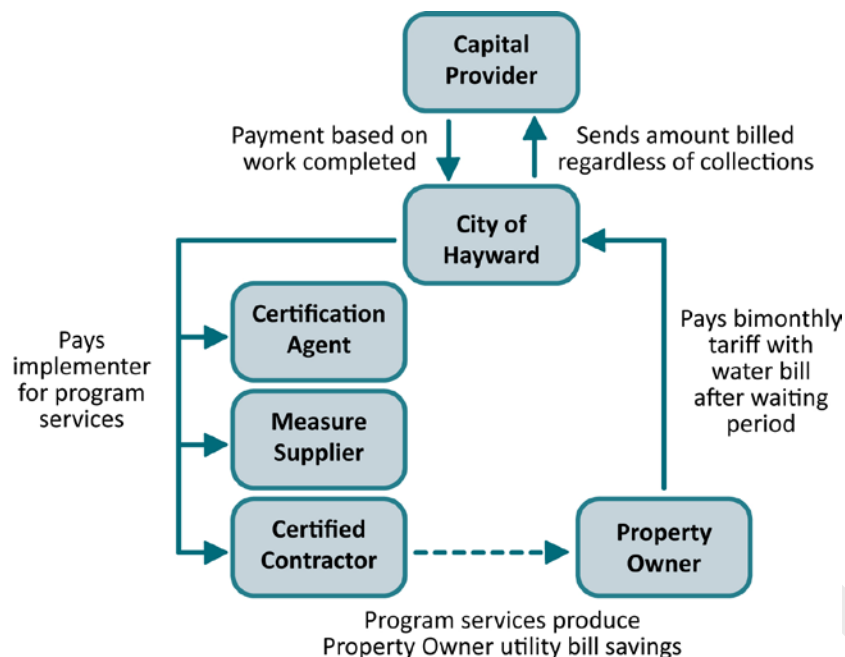
Inasmuch as there are a number of utilities expressing interest in the PAYS system, the Design Team is looking for a new program partner: one able to provide capital for municipalities implementing programs based on the PAYS system at the lowest possible rate and most flexible terms (e.g., low origination fees and one year of interest rates at the quoted rate). Variable rate financing will not be acceptable. Capital Providers may bid fixed rate capital for a period less than a full year, but they will be required to provide at least 90-day notice of any interest rate increase before any increase takes effect.

The Design Team's search for a Capital Provider will likely entail working with potential capital providers who will want to assess Hayward's credit quality using readily available information. Any interest rate below or equal to 8% will facilitate an offer that works. Lower interest rates will enable more measures to qualify for the Pilot without copays. The final selection of a Capital Provider will be made by Hayward.

²⁹ The exact sum of capital will be negotiated between Hayward and the Capital Provider with the Design Team's assistance.

³⁰ The Design Team will investigate the benefits and challenges of interest only payments during all or a portion of the first year to ensure positive cash flow for Hayward and to allow Hayward to delay issuing charges to customers as recommended in this Program Design (i.e., 45 days after project approval and one cycle for WBIC installations).

Capital flow in the PAYS® program



If commitments for third party capital, subject to approval of this Program Design by the Hayward City Council, cannot be obtained by January 1, 2014, Hayward will have to decide whether to self-finance its Pilot. The Town of Windsor self-financed its PAYS pilot, which allowed Windsor to repay itself for the cost of capital rather than repay interest to a third-party capital provider, to increase revenues on money now held in banks, avoid a third-party origination fee, and create a rate stabilization fund.

Actual capital requirements will depend on variables including:

- the number of participating buildings;
- the specific measures that qualify;
- the bid prices for installation of these measures;
- whether there are any funds available from the Bay Area Multifamily Building Enhancements pilot (which should generate a significant amount of the financing required to meet the customer's out of pocket expense for energy saving measures);
- demand for WBIC installations and the viability of community solar projects; and
- whether customers are interested in Energy Measures and measures with copays.

In consideration of these variables it is likely that if the Pilot is successful, at a minimum about \$1.6 million will be required if the following conservative estimates are achieved:

Capital Requirements

Measure	Est. Number per Unit	Cost per Unit/Building	Total (2,000 units)
Replacement Toilet	1.2	\$270.00	\$648,000
Showerhead Package	1.1	\$ 50.00	\$110,000
LEDs	5	\$ 15.00	\$150,000
Weather Based Irrigation Controllers	Assume 100 sites	\$1,000	\$100,000
Certification Agent	Assume 30 units per building and 67 buildings	\$1,000	\$ 67,000
Energy Measure Contractor Fee	Assume 100 units per building and 67 buildings	\$200	\$ 13,400
Permits & Hayward fees	Assume 100 units per building and 67 buildings	\$309	\$ 20,703
Energy Measures			TBD
Community Solar ³¹			\$500,000
TOTAL			\$1,609,103

The requirement for at least \$4 million assures that if the Pilot is as successful as everyone hopes, there will be sufficient capital available to pay for measures. If, for example, coordination with the Bay Area Multifamily Building Enhancements pilot results in this Pilot financing a substantial number of energy saving measures, the Pilot's capital need could easily exceed \$3 million.

11. Bad Debt

Bad debt can result from missed customer payments, measure failure without possibility of repair (resulting in Hayward stopping billing before all installation costs can be recovered), or extended vacancy at a location. Any bad debt will be the responsibility of Hayward.

To date, all programs based on the PAYS system have experienced higher than normal utility customer payment rates with minimal program-associated bad debt³². To ensure similarly high payment rates for this Pilot, Hayward is urged to follow its normal collection protocols including disconnection for non-payment and referral of any customers to credit and collection agencies.

To minimize risk of bad debt, customers will be required to be in good standing with their Hayward utility billing account³³ in order to be eligible for this program. Additionally, careful screening of program-eligible measures and the use of Contractor Agreements and Certified Contractors will help to minimize bad debt. Finally, telephone and on-site inspections by the Certification Agent with the threat of contractor penalty payments has been an important design feature to minimize customer dissatisfaction and the possibility of bad debt. If there is any bad debt, some or all of it may be

³¹ The \$500,000 value for Community Solar projects is offered as the Design Team's recommended upper limit for this measure within the Pilot.

³² Of the eleven programs based on the PAYS system operating in five states, the combination of disconnection for non-payment, rigid standards for Certified Contractors, oversight by a Certification Agent, and the ability to repair measures have resulted in bad debt from all programs combined of less than one-thousandth of one percent of the \$18 million total installed costs for customer-purchased efficiency measures.

³³ "Good standing" is defined as a customer who has not missed or been late on a payment in the last 24 months or last 12 bills. A payment is not considered "late" until it is 30 days past due.

recovered by extending the payment term at the project location in accordance with the Green Hayward PAYS® tariff as long as the measure is still functioning.

As a practical matter, it is unlikely that any customer will withhold payment of the tarified charge separate from the rest of their bill. More likely, customers will make a partial payment of their water bill that includes the Charge. The Design Team recommends any partial payments from customers be booked on a prorated basis. Pilot bad debt will be defined as the total amount of the Charge due less the amount of payment credited from partial payments, not recovered through normal collection efforts or by extending payment durations. Any Pilot-related bad debt will be collected from all ratepayers the same as any other Hayward bad debt.

12. Pilot Fees

Each participant's tarified charge will consist of a number of Pilot related charges. Fees will be automatically calculated in the Measure Screens and Data Sheets. If Hayward delegates oversight responsibilities to a third party Certification Agent, it may add a small fee to offset its administrative costs for the Pilot.

Certification Agent Fee

Participants will be charged a Certification Agent fee for Basic Measure and Landscaping projects. Since all Energy Measure projects require a Basic Measure project, no additional Certification Agent fee will be charged.

The amount of the Certification Agent fee will be determined by Hayward prior to the Training Program described in *Section 14: Training*.

Program Activity Charge

Participants will be charged a Program Activity fee. This fee will be 8% of all costs related to measure installation including contractor labor, measure costs, permits, and the Hayward Participation Charge (described below). If Hayward is able to use third party capital, if its cost of capital is less than 8%, Hayward will retain the difference between its cost of capital and the Program Activity Charge to offset its costs for designing and participating in this Pilot.

Regardless of whether Hayward uses third party capital or self-finances its Pilot, interest on capital is a real cost Hayward must recover. Since a tarified charge assigned to a meter is not a loan or any type of traditional financing to an individual or corporate entity, assigning participants "interest" does not make sense. None of the financing requirements apply to this obligation and the utility does not have the rights possessed by other lenders who make loans to individuals. For example, the utility has no security in the installations and cannot remove toilets or showerheads from units or remove a replaced heating systems from buildings. It does have other regulator mechanisms such as automatic transfer to successor customers and the ability to extend payment duration for missed payments or repairs.

Other utilities that use a Program Activity Charge to cover their cost for capital have addressed truth in lending concerns, which may or may not apply since the customer's obligation is not a loan but a tarified charge, by disclosing the charge and the way it is calculated to customers.

Other Charges

The cost of permits required by the City of Hayward will be included in the project costs. Finally, every participant installing Basic Measures will be charged a \$100 - \$200 fee for a visit by the Energy Measure Contractor. As contractor services for a lighting inventory or hot water distribution assessment are

typically associated with bidding for work, the \$100-200 is designed to be a sufficient incentive (i.e., reimbursement for time and transportation to the property) to get these contractors to make timely visits to properties regardless of their workload.

13. Billing & Information System Requirements

When Pilot participants or successor customers at locations where Green Hayward PAYS measures have been installed call Finance Department staff with questions, staff will want to have easy access to information related to those measures and associated meter location. The Design Team recommends that an enhanced billing system identify any customer occupying a location with a Green Hayward PAYS® Charge with a noticeable “red flag” (e.g., a flashing colored warning). The Customer Service staff should then be able to click on the red flag to go a page with all available program related information for that customer number and/or that account number.

When a participant or successor customer calls, Finance Department staff or water efficiency program managers will need to quickly be able to identify:

- the measures installed at that location;
- the bi-monthly payment amount(s) currently in effect for measures installed at that location;
- the remaining payment term(s) for measures adjusted for missed payments and repairs;
- the current payoff amount to end further Charges; and
- payments billed, payment amounts made, and payments missed.

To accurately obtain this information (i.e., both in aggregate and for a specific participant), the billing and information system will need to track Basic and Energy measures (including installations) separately since they are likely to have different start dates. The Design Team thinks Finance Department staff or Water Efficiency program managers will also want to know – if possible:

- the date the Certification Agent reported the work completed and arranged for Hayward payment to the Certified Contractor(s), and number of each measure installed at that location;
- electronic or physical access to the participant’s Basic and Energy Measure Screens and the replaced and new equipment design specifications that were used to estimate savings (i.e., including the estimated monthly savings for measures, individually and totals, in 2014 dollars);
- the percentage of savings to be realized on the water bill (as opposed to PG&E bills);
- program fees, the interest rate associated with the Charge, and total program activity charge to be paid;
- the name and phone number of the contractor(s) that installed the measures;
- any amounts associated with repairs of installed measures;
- the amount of bad debt associated with the Pilot on an ongoing basis (the system will need to reduce this amount by the number of missed payments recovered from a location by extending the duration of the tariff).

If possible, Hayward's billing system should allow the Certification Agent or Hayward staff to electronically attach a participating customer's data from the final Data Sheet including the original Multifamily Basic Measures and Energy Measures' screens and have the system determine when the charge will start for that customer, taking into account the customer's billing cycle and a minimum 45-day grace period from the date the measures installation was approved by the Certification Agent.

Finally, when Pilot participants close out their accounts with remaining payment obligations and new customers sign up for service at that location, the billing system will need to flag the account ID as having a PAYS obligation and automatically generate a *New Customer Form (Attachment L)*, detailing the new customer's benefits and obligations under the program.

A list of potential billing system functions is itemized in *Attachment Q: Billing System Functions*.

Charge Durations

The Pilot will limit initial on-bill charges for Multifamily Basic and Energy Measures and WBIC to a single, ten-year duration to simplify Pilot administration and access to third-party capital. If viable, the payment duration for community solar projects may be extended to 12 years, but for no more than three draws from Pilot Capital.

If Hayward adds new measures to its Pilot, it will need to consider the ability to add additional payment durations for water-bill charges. Some measures require short payment terms because of limited lifespan in order to ensure that payment obligations do not exceed 80% of the useful life of the measures (or at least the length of the measure's warranty period). Other measures require longer payment terms to qualify. The longer the payment term, the longer the simple payback can be for a measure to qualify.

Billing & Information System Changes

The Design Team encourages Hayward's Finance Department staff to work with staff at the Town of Windsor and Tyler Technologies to make sure the Eden modules developed for Windsor Efficiency PAYS® can be used with or adapted for Hayward's Munis system or is quickly modified to do so if feasible. If automated payments are not possible for the start of the Pilot, Hayward will need to set up a temporary manual system to handle the 20 to 100 buildings anticipated for the Pilot.

EEl recommends system function or data protocols that:

- as additional measures with different payment durations are added, Hayward can combine payment obligations with different durations into a single charge on customers' bills to simplify billing for participants.
- if possible, WBIC charges be billed only for usage during peak and swing irrigation months (May through October). Since there will be little or no savings from November through April, there should be no charges during these months so that there are no payments during months with little or no savings.
- and, since it takes time for Landscape Contractors to adapt WBIC to customer's specific landscapes, it would be best, if feasible, to delay billing for WBIC installations for at least one billing cycle for peak and swing irrigation usage months after the 45 day waiting period.

Billing for Failed Measures

Customers will only be billed for working measures, provided customer or tenant action (or the lack-there-of in the case of maintenance) is not the cause of measure failure.³⁴ Many measures will require customers to properly maintain them. For example, weather based irrigation controllers, toilets and showerheads need to be maintained if they are to last for the 10-year payment duration. If customers do not honor their agreements to maintain installed measures, they will need to be charged the balance of payments as well as reimburse the utility for any rebates paid to qualify their system and program charges (including interest on these amounts). If Hayward does not track these amounts and insist on such repayments, all Hayward customers will pay more than they should for this Pilot.

Longer Range System Changes

If Hayward decides at some future date to make its programs based on the PAYS system available to single family customers, the Design Team recommends that Hayward move to water and sewer bills based on single-gallon units rather than CCF (748 gallons). The CCF billing increment is too large to accurately reflect single customer water savings on a bi-monthly basis; with CCF billing, a customer could save 747 gallons and still not save on their bill. Single-gallon billing measures (and rewards) savings more precisely.

With Hayward billing in CCF as of the issue of this Program Design, were it to be used to track single-family customers, fluctuations in bills would be almost certain to leave program participants with insufficient savings in some billing periods to cover the tariffed charge amount (i.e., customers would not save more than they pay). Furthermore, if possible, single-gallon volumetric wastewater billing, would allow a more viable range of measures to qualify for a tariff without a large copay.

Hayward's Pilot has no portable measures. LEDs would typically be a portable measure, however, they are being given away as an incentive and not being billed to building owners as a measure (while participants will pay for LED bulbs, no savings are being counted to offset these costs). If Hayward chooses to add portable measures to future programs, its billing system will need to track portable measures separately. Participants who leave their location and move outside of Hayward's service territory before all tariffed charges have been paid, will have to pay off any remaining balance and take their measures with them when they leave. Utilities in Vermont, Texas, California, and Massachusetts have successfully tracked and billed for portable measures.

14. Training

A detailed Program Design that instructs all parties how to deliver a successful Pilot will have no value if program staff do not read or understand it. While copies of this Program Design should be made available to each person delivering program services to Hayward customers, the Design Team recognizes effective training is critical to allow staff to best fulfill their duties. Training modules tailored for each Pilot role must be implemented prior to anyone delivering Pilot services. EEI recommends that Pilot Training be held no earlier than three to four weeks prior to program start-up if possible.

Training agendas and manuals should be developed once this Program Design has been approved, Pilot roles are filled, and the entities filling Pilot roles have signed Agreements. Everyone delivering Pilot services to Hayward customers needs to understand the vision of the Pilot, including:

³⁴ The Certification Agent will discover customer or tenant actions that result in measure failure when responding to customer initiated report of measure failure or less than expected savings.

- an offer that works and eligible measures;
- why Hayward is implementing this new approach;
- why customers should accept the new offer;
- the commitment of the Pilot to participants who accept Green Hayward PAYS measures; and
- how the trainee's role is essential for this Pilot to be successful.

Understanding these basic program elements and having no questions about them before interacting with Hayward customers is essential to avoiding misinformation and customer confusion.

The Design Team will prepare detailed training agendas and manuals for three trainings, including modules for:

- Certification Agent staff;
- Basic Measure Contractor staff (these materials will also be customized for three additional modules: one for Energy Measure Contractors, one for Landscaping Contractors, and another for training Customer-Choice Contractors³⁵); and
- Hayward customer service staff who process billing information and those who will deal with customer questions once the Certification Agent has completed their role.

Training modules will be tailored so that the persons interacting with Hayward customers (e.g., staff selected by the Certification Agent and the Basic Measure Contractor) know and understand the protocols they are supposed to follow and that their contracts require them to follow. The training sessions will provide sufficient detail to alleviate problems associated with Pilot staff making policy or operational decisions in the field that may not be in alignment with program goals. Certification Agent staff will be required to attend all training sessions to ensure they are knowledgeable about the people whose work they are overseeing and to begin creating working relationships among program parties.

³⁵ The Training sessions for Customer-Choice contractors will be sessions for contractors who may have only one pilot job. The Design Team recommends that the Certification Agent will perform this training on-site for a fee. The Agenda and handouts for the Certification Agent will emphasize what the Contractor needs to do to be paid and not incur a penalty fee. Instead of a post test, it will conclude with the trainee(s) signing an acknowledgement of a list of items that were covered and the trainee(s) understanding of those items.

Sample Training Content Topics

TOPIC	PRESENTER
What “an offer that works” means to each player	Design Team/Certification Agent
Review Measures, Measure Qualification, Inspections	Design Team/Certification Agent
Contractor Offer	Design Team/Certification Agent
Program Measures/Eligibility	Design Team/Certification Agent
Measure Screens/Data Sheets/Program Forms	Design Team/Certification Agent
Installation Inspections	Design Team/Certification Agent
Program Protocols	Design Team/Certification Agent
Script Overview	Design Team/Certification Agent
Copay Protocols	Design Team/Certification Agent
Repairs and Unanticipated Conditions	Design Team/Certification Agent
Referrals to Other Programs	Design Team/Certification Agent
Supplier Instructions	Measure Suppliers
Marketing	Design Team/Certification Agent
Key Messages/Strategies	Design Team/Certification Agent
Contractor Roles/Responsibilities Review	Design Team/Certification Agent

Basic Measure Suppliers will be required to attend the Certification Agent training module and to set up a product booth with information and product samples. The booth will be staffed during breaks and for a half hour at the conclusion of the session. Suppliers should also be required to provide installation and marketing information during the session of the training reserved for their participation. If they have not worked previously with the Basic Measure Contractor, they will also be required to attend the Contractor training as well and provide the same training functions.

Training sessions will generally consist of small groups (approximately eight or fewer participants) and can be held in small rooms. Each participant will be provided a training manual specific to their program function. All training sessions will require audio-visual equipment to show slides and a copy of this Program Design on a screen. The Certification Agent (and possibly the Basic Measure Contractor) training module(s) will also require room for a supplier table(s) that needs to be set-up before the session can begin.

Training manuals will establish a “communication tree” to identify known, and allow for updating of, implementer contact information, so that staff can be trained to access and provide correct contact information to participants. One issue that must be resolved prior to the training sessions is whether there will be a local number for customers to call to reach the Certification Agent, and the possibility this number could be transferred to Hayward when Certification Agent completes its services. This issue should be resolved no later than the end of negotiations with the Certification Agent.

The Design Team envisions separate modules for the different Certified Contractors since there is little Pilot overlap of their services. As the Agendas and the Manuals are developed, this decision will be revisited.

Once the training modules have been developed, the agendas and manuals should be filed with this Program Design as an Attachment.

15. Evaluation

The Pilot’s Measure Screens and forms, historical water and energy usage, and water bill savings achieved by Pilot participants (available from Hayward’s Billing Department) will provide sufficient data

to determine the value of water and customer bill savings achieved by Pilot participants. If PG&E provides billing data as requested by participants, Hayward will have access to the PG&E billing information required to evaluate participants' energy savings. Alternatively, the Design Team and Hayward may work with selected Program Contractors to determine how log-in information to a participant's PG&E "My Energy" account may be confidentially shared and accessed by the Pilot to enable data collection.

In addition to this information, as a matter of best practice, all programs should receive two types of evaluation. Process evaluation is required during operation of a pilot to identify potential process refinements to make the program better for future participants, contractors, and key program staff. Impact evaluation, provided if possible by a party without an interest in the results, is required to determine the results and value of a pilot.

At this time, the CPUC has not yet established evaluation protocols for the BayREN PAYS Pilots. The Design Team is thankful for Hayward's commitment to assist with CPUC evaluation efforts once set.³⁶ However, it is likely that a CPUC evaluation will not eliminate the need for Hayward to implement its own Impact Evaluation. The CPUC's evaluation will focus on the value of its grant expenditures in terms of energy savings. Hayward will be more concerned with the expenditures of time and money made by its staff and its customers and the benefits they receive in water savings and bill (water and energy) savings.

Therefore, regardless of CPUC efforts, the Design Team recommends evaluation as described below.

Type of Evaluation	Timing	Activities	Purpose
Process Evaluation	During 4 th Month	Interviews and focus group, and reviewing survey questions (<i>Attachment P</i>)	Discover enhancements to Pilot to improve results
Impact Evaluation	After 2,000 units or one year (whichever comes first)	Data Review, Billing Comparison	Determine whether Pilot is cost effective and worth doing

Process Evaluation

Process evaluation should begin after three full months of program activity. Typically, process evaluation is an internal process. However, if funds are available for a skilled outside process evaluator, such an evaluation would be preferred. At a minimum the process evaluation should include:

- a survey of impacted utility staff (including Pilot managers), Certification Agent staff, and Certified Contractors;
- a review of answers to survey questions asked by Hayward staff, the Certification Agent and Certified Contractors during conversations with Hayward customers, and
- a focus group of customers who chose to become participants and those who did not.

Surveys and focus groups should be structured to answer the following questions:

- After the first few months (and any start-up issues), did the program operate as described in the Program Design?
- Does the Pilot overcome the key market barriers to customer installation of efficiency measures?

³⁶ As addressed with Hayward's Memorandum of Understanding in support of the BayREN PAYS® Pilot.

- Do more customers accept installation of targeted measures with PAYS than with other programs?
- What would make customers accept more measures?
- Do customers express interest in the Pilot offer, and if some do not, why not?
- Do most customers who are presented with a bona fide offer say yes and what are reasons some customers say no?
- What comments, if any, have been received from Pilot participants (and do focus group participants agree with such comments)?
- Would customers recommend the program to other building owners? What, if any, problems have customers experienced with contractors?
- What worked well and what could be improved?
- What, if any, bill problems have been experienced by customers?
- Were there adequate sources of capital for efficiency measures?
- Can Hayward document that capital providers were paid on time?
- Do customers want specific measures to be added to the program?
- What improvements should be made to the Pilot delivery structure?

Although it is likely to be too soon to determine savings and billing impacts after only four months of operation, the evaluator should try to identify:

- What, if any, utility bad debt was associated with the tariff?
- Has any customer been disconnected because of Pilot related bad debt?

If program goals are not being met (i.e., the Pilot is not on track to retrofit 2,000 units via sufficient multifamily customers accepting offers and at least 35% of bona fide offers accepted, the minimum acceptance rate to meet program goals) the process evaluation should attempt to identify the reasons why not.

Impact Evaluation

Impact evaluation should begin after the Pilot is over (i.e., one year or serving multifamily buildings with 2,000 units have been served. Typically, experienced third party evaluators perform impact evaluations and depending on the depth of the review can be expensive. However, if funds are not available for a skilled outside evaluator, there should be sufficient data to perform a reasonable impact evaluation.

Programs based on the PAYS system require the Certification Agent to review and approve every project. The requirements to enter historical billing data into all project files, for the Data Sheet to record customer reported usage data, and the information provided by the Measure Screens will facilitate impact evaluation. Impact evaluation should report the:

- Number of customers receiving bona fide offers
- Number of customers accepting bona fide offers to install measures
- Number and type of measures installed
- Total cost of measures installed (includes rebates and up-front customer copays)

- Total cost of installed measures financed by tariff, including program fees
- Total yearly payments (assuming a full year regardless of when payments started)
- Percent of each measure installed per unit and per building
- Percent of each eligible measure installed per unit and per building (e.g., existing or medical conditions may preclude eligible measures from being installed)
- Total amount of up-front copays
- The amount of billed payments not collected (through billing or normal collection efforts), the percentage of this amount of all charges billed for measures, and, if relevant, itemizing bad debt by the reasons for non-payment
- The number of customers disconnected for non-payment

To keep impact costs affordable, unless the CPUC or another source provides grant funds, cost savings data should be based on engineering estimates reported by the Measure Screens (e.g., actual kilowatts, therms and gallons of water saved). If feasible, estimated savings should be reported for units, common areas, and central water and space heating retrofits.

Furthermore, if possible, all data should be put into three groups to identify whether start-up or winding down operations had significant impact on program results:

- Customers who participated during the first five months
- Customers who participated in months five through ten
- Customers who participated in months ten through twelve (important if the Pilot will not be continued)

While all program's results suffer from start-up hiccups and winding down operations, segregating savings data as recommended above will better enable Hayward and other utilities to estimate results should they replicate this program (i.e., minimizing the impact of start-up and winding down on overall program results if, in fact, they are significant).

16. Next Steps

The Design Team has worked with Hayward staff to establish the following milestones in order to meet the goal of a February 2014 Pilot start-up and ensure the Design Team's availability to complete work on this project with current CPUC funding.

Delivery of a Program Design and Revised Contracts/Forms

Date: November 8, 2013

The Design Team will continue to work with potential contractors and measure suppliers, and will incorporate suggestions from staff, the Sustainability Council, and the City Council as appropriate to ensure the program brings an offer that works to its customers.

Release of RFPs

Date: December 13, 2013

The Design Team will work with Hayward Staff through the course of Program Design activities to develop RFPs for key program roles, for example Basic and Energy Measures Contractors, and Basic Measures Suppliers.

PAYS® Program Design | City of Hayward | December 19, 2013

43

Contract/Forms Review and Approval***Date: December 19, 2013***

Lawyers and other interested parties need to complete review of the Design Team's proposed suite of contracts, forms, and worksheets to ensure that there is time to make any changes required by California law and to meet the needs of the City of Hayward. This review should be completed as soon as possible to ensure required reviews are completed and any needed changes are made, leaving time for copies to be printed and for the package to be available as part of the procurement process.

RFPs Due***Date: January 24 2014***

At the direction of Hayward staff, the Design Team will offer input in the review of RFPs to help facilitate Hayward's selection of key Pilot partners such as the Basic and Energy Measures Contractors, Basic Measures Suppliers and other key program parties.

Approval of Program Design***Date: February 18, 2014***

The Green Hayward PAYS Pilot will only be implemented if the Program Design is approved by the Sustainability Committee on January 29, 2014 and City Council on February 18, 2014.

Training***Date: Early March, 2014***

As part of the Program Design, the Design Team will provide training agendas and training manual materials for the Certification Agent, Hayward Staff, and Certified Contractors. Training will be produced and presented by the Design Team with assistance from key program parties.

Implementation***Date: March, 2014***

The Pilot, as described in the final draft of the Program Design will be ready for implementation.

17. Glossary of Terms

80% Rule

When calculating PAYS tariffed charges and payment terms for a measure, the 80% Rule states that the customer's annual payments cannot exceed 80% of the estimated annual utility bill savings from installation of the measure, and the maximum repayment term cannot exceed 80% of the useful life of the measure.

BayREN

Bay Area Regional Energy Network. BayREN is a joint effort of the Association of Bay Area Governments and the nine Bay Area counties: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma. BayREN represents 20% of the state's population and half the population within the Pacific Gas and Electric Company (PG&E) service territory.

Customer

A City of Hayward water utility customer.

Data Sheet

A tool completed by Certified Contractors while performing work that the Certification Agent will use to record what measures were actually installed, cost and savings estimates for each project, and payment information to assist Hayward's Finance Department issuing payments.

Design Team

The Sonoma County Regional Climate Protection Authority (RCPA), on behalf of the Bay Area Regional Energy Network as funded by the California Public Utilities Commission, leads a consultant team that is developing pilot programs that conserve water and energy.

BKi is the project manager. BKi oversees the work of the Design Team and assists BayREN in meeting its responsibilities to the CPUC.

Energy Efficiency Institute, Inc. (EEI), the developers of the PAYS system, are helping develop the Pilot into a program that effectively meets the needs of Hayward's multifamily property owners and their residents.

Resource Performance Partners (RPP) is providing EEI and Hayward with economic as well as water and energy savings analyses to ensure Hayward's program benefits participants.

Measure Screen

A tool within the Data Sheet to help the Certification Agent and Certified Contractors determine which measures will qualify for the Pilot.

On-Site Screening

An in-person visit to a potential participating property to market Pilot services, confirm measures are appropriate for the property by completing the Measure Screen, confirm program requirements with the Customer Choice Contractor (if necessary), and answer customer questions.

Participant

A City of Hayward water utility customer that participates in the Pilot. The participant can be a multifamily property owner, building manager, or other representative authorized to make decisions on the property owner's and Hayward utility customer's account.

Pre-Installation Approval

The processes, forms, and documentation verification duties the Certification Agent completes before approving a Contractor to proceed with measure installation.

Pre-Installation Inspection

An in-person inspection at which the Certification Agent verifies that pre-installation building conditions necessary for installation of the proposed measures are possible and accurately reported in the Measure Screen. This is performed for 10% of participating properties.

Post-Installation Approval

The processes, forms, and documentation verification duties the Certification Agent completes before approving a Contractor's final work.

Post-Installation Inspection

An in-person inspection at which the Certification Agent verifies that post-installation building conditions and installed program measures are accurately reported in the Data Sheet. This is performed for 20% of completed projects.

Project Close Out

The duties the Certification Agent completes to authorize Hayward to implement the tariff and make payments to the Contractors, Suppliers, and the Certification Agent.

Property owner

The owner of a multifamily property in Hayward that is the Pilot's primary target market.

Tenant

A resident of a unit within a multifamily property.

Unit

One apartment within a multifamily property.

18. Changes to this Program Design

Contractors', Suppliers', and Certification Agent's Agreements reference and bind key parties to the protocols detailed in this Program Design.

However, even the best program designs benefit from changes as contractors, suppliers, oversight personnel and other parties (especially customers providing feedback) become the experts. Therefore, this Program Design is intended to be enhanced and modified during the course of this Pilot.

Any party (e.g., the Certification Agent, any Contractor or Supplier, or Hayward) may request changes to this document. If Hayward's Environmental Services Manager determines the change will not weaken "an offer that works" and will enhance the program (i.e., based on conversations with informed parties, possibly including Design team members), (s)he will issue official letters to all parties instituting such changes. Each official letter will note the date the change will go into effect to avoid questions about whether a change was in effect during a specific customer interaction. Each official letter will note the language to be replaced and the replacement language. When an official letter takes effect, it will be considered to be part of this Program Design and supersede the referenced existing language.

All program parties are urged to establish a Letter Series Manual to store any official letters and to circulate them to and review them with impacted program staff.

DATE: February 18, 2014

TO: Mayor and City Council

FROM: Information Technology Director

SUBJECT: Approval of Network Infrastructure Maintenance Agreement Renewal

RECOMMENDATION

That Council adopts the attached resolutions authorizing the City Manager to execute a three-year lease agreement for Cisco SmartNet with Cisco Capitol for network infrastructure maintenance; and appropriating \$50,416 from reserves to the Information Technology Internal Service Fund for the fiscal year 2014 lease payment.

BACKGROUND

The City's network infrastructure utilizes Cisco equipment. The Cisco SmartNet maintenance agreement for this equipment is typically renewed annually. Cisco offers a discount if this maintenance is purchased in a three year contract. Cisco is offering a 0% lease option for a three-year maintenance agreement, which would result in substantial cost savings to the City.

DISCUSSION

The Cisco SmartNet maintenance agreement covers replacement of any failed component of the City's network infrastructure, technical assistance in troubleshooting and identifying such failures, and any software or firmware upgrades that become available from Cisco. Staff has negotiated the term of this maintenance agreement to run from October 16, 2013 through October 15, 2016. This will allow staff sufficient time to complete a scheduled network infrastructure upgrade. The vendor has indicated that the City will receive a credit for the unused period of SmartNet maintenance if the equipment is upgraded prior to the end of the maintenance agreement term.

The current discounted total cost quotation for a three-year agreement is \$302,497, which represents a 20% discount on the cost of renewing annually. The annual cost of the four quarterly lease payments each year would be \$100,832. Cisco is offering a 0% lease option for this three-year agreement. In addition, the City avoids the annual price increases typically seen when renewing annual agreements.

The City requested quotations from three vendors and only received a quote from one vendor, which does reflect a significant discount below list price. The non-responding firms explained to staff that Cisco offers the deepest discount on Smartnet to the vendor who originally sold the

equipment, which was Extrateam. This explains why the other two vendors didn't bother to quote since the cost would be higher. The extended term of the agreement also enables the City to receive additional savings.

About half of the cost is for equipment that was installed in late 2007/early 2008 as part of our VOIP and wireless point-to-point installations. The original purchase included five years of SmartNet. Our network infrastructure is nearing the end of its useful life and needs to be replaced with new equipment that has increased capacity. The balance of the equipment is the Cisco Telepresence teleconferencing system used by Fire, which only included one year of Smartnet support. Again, staff intends to replace all this equipment by October 2016.

FISCAL IMPACT

The SmartNet maintenance agreement for the equipment covered under this proposed agreement was purchased as part of the initial equipment procurement. This three-year lease option will result in cost savings of approximately \$75,624 over the term of the agreement, or approximately \$25,208 per year.

Funding for the cost of renewals is not included in the current operating budget of the Information Technology Internal Service Fund. Therefore, funding for payments due in fiscal year 2014 of approximately \$50,416 will need to be appropriated from reserves. The FY2015 and FY2016 budgets will need to include funding for the annual lease payment.

PUBLIC CONTACT

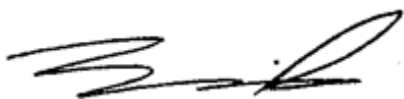
None.

NEXT STEPS

If Council authorizes the City Manager to execute this lease agreement, then staff will renew the Cisco SmartNet agreement for three years and execute the necessary leasing documents.

Prepared and Recommended by: Mark Guenther, Information Technology Director

Approved by:



Fran David, City Manager

Attachments: Attachment I: Resolution
 Attachment II: Resolution

HAYWARD CITY COUNCIL

RESOLUTION NO. 14-

Introduced by Council Member _____

RESOLUTION AUTHORIZING EXECUTION OF A THREE-YEAR
EQUIPMENT MAINTENANCE LEASE AGREEMENT FOR NETWORK
INFRASTRUCTURE MAINTENANCE WITH CISCO CAPITOL

WHEREAS, the City of Hayward's network infrastructure utilizes Cisco equipment that is covered by a Cisco SmartNet maintenance agreement; and

WHEREAS, the City has typically renewed the maintenance agreement on an annual basis; and

WHEREAS, Cisco is offering a discount for purchasing a three-year maintenance agreement; and

WHEREAS, the quoted cost for a three-year network maintenance agreement is \$302,497, which represents a 20% discount on the cost of renewing annually; and

WHEREAS, execution of a three-year maintenance agreement would result in savings of \$75,624 over three years;

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby authorizes and directs the City Manager to execute a three-year Equipment Maintenance Lease Agreement with Cisco Capitol for network infrastructure maintenance, and any other associated documents that may be necessary to complete the transaction on terms satisfactory to the City Manager and in a form approved by the City Attorney. Such lease agreement shall be subject to the City Council's annual appropriation of funds.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2014

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. _____

Introduced by Council Member _____

RESOLUTION APPROVING APPROPRIATION OF FUNDS
FOR THE PURPOSE OF MAKING FISCAL YEAR 2014
PAYMENTS DUE ON THREE-YEAR LEASE AGREEMENT
FOR NETWORK INFRASTRUCTURE MAINTENANCE

BE IT RESOLVED that the City Council of the City of Hayward does hereby approve the appropriation of \$50,416 from reserves to the Information Technology Internal Service Fund for the fiscal year 2014 lease payments due for a three-year lease agreement for Cisco SmartNet with Cisco Capitol for network infrastructure maintenance.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2014

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DATE: February 18, 2014

TO: Mayor and City Council

FROM: Information Technology Director
Finance Director

SUBJECT: Authorization to Negotiate and Execute Contract Amendments with Technology Management Services for additional Enterprise Resource Planning (ERP) Project Management Services and the Government Finance Officers Association for additional ERP Project Consulting Services

RECOMMENDATION

That Council adopts the attached resolution authorizing the City Manager to execute a contract amendment with Technology Management Services (TMS) for additional Enterprise Resource Planning (financial system) project management services in an amount not to exceed \$112,000 for a total contact amount not to exceed \$272,000 with a contract end date of March 31, 2015 ; and a contract amendment with the Government Finance Officers Association (GFOA) for additional project consultation services in an amount not to exceed \$50,000 for a total contact amount not to exceed \$250,000 with a contract end date of March 15, 2015.

BACKGROUND

In September 2009, the City Council approved a Technology Strategic Plan that included the replacement of the City's severely outdated financial system with a new, comprehensive Enterprise Resource Planning (ERP) system. In March 2012, Council authorized the City Manager to execute a contract with Tyler Technologies Inc. for the purchase and implementation of an ERP system called MUNIS, which is replacing the City's current financial system. At that time, Council also authorized the City Manager to procure project management services with Technology Management Services (TMS) in an amount not to exceed \$160,000; and to procure project consultation services from the Government Finance Officers Association (GFOA) in an amount not to exceed \$200,000. The ERP project implementation phase with Tyler Technologies kicked off on June 26, 2012, with Phase 1 consisting of Core Financials going live on July 1, 2013. Implementation of the remaining modules and phases, including Utility Billing, Permitting, Business License, Work Orders, Payroll, Human Resources is ongoing.

DISCUSSION

The ERP project implementation is incredibly complex and touches almost all aspects of City operations, involving a large number of staff members across all city departments. The City contracted with Technology Management Services (TMS) for comprehensive project management services, which include project communications with stakeholders, project functional leads, Tyler implementation consultants and project managers, as well as documentation, project planning, monitoring, assessing, and scheduling meetings and training sessions with city staff implementing the project.

GFOA has consulted with the City during the initial project scoping and implementation. The services provided by GFOA have been invaluable to the City with assistance in mapping existing internal processes, general needs assessment, vetting of qualified vendors, and initial contract negotiations. GFOA is assisting the City with consultation services during the implementation phase in the areas of contract oversight, best practices, and vendor compliance.

Total project management and consultation services provided by TMS and GFOA to date are nearing the not-to-exceed amounts initially authorized by Council, and it is anticipated that additional project consultation services will be required as well – exceeding the initial authorizations. Since the project implementation is expected to last through early 2015, continued project management services from TMS in an amount not to exceed \$112,000 and project consultation services from GFOA in an amount not to exceed \$50,000 are required to successfully complete this large ERP implementation.

Use of these services has been greater than originally anticipated due primarily to the project manager and project consultant performing some tasks that were originally planned to be performed by city staff. Because of vacancies in key positions in both the Information Technology and Finance Departments, there has been an increased reliance on the project manager and project consultant to perform additional tasks, such as, verifying submitted invoices for adherence to contract terms and facilitating meetings and documenting discussions related to functional requirements and technical specifications for modifications and interfaces.

FISCAL IMPACT

City Council originally authorized a \$4.1 million project budget (comprised of General Fund and enterprise fund allocations) as contained in the Capital Improvement Program budget for the entire ERP software purchase and implementation. Current project expenses are well within the authorized budget. The funding for these two requested contract amendments can be covered in the existing ERP capital budget. However, as this and other adjustments are made to the project, including software modifications and temporary staffing, it is possible that additional funds may be necessary. Staff is currently conducting a project budget audit and will provide Council with an update as part of the FY 2014 mid-year budget review in March.

PUBLIC CONTACT


The Information Technology Director and Finance Director have reported project progress and status to the Council Technology Application Committee on several occasions, most recently in November 2013.

SCHEDULE

As previously mentioned, Phase I Core Financials went live in the new ERP system on July 1, 2013. The next portion of the ERP to go-live is the work order and utility billing modules during the second quarter of 2014, and the business license module toward late 2014. Complete implementation of all modules is expected by early 2015.

Prepared by: Mark Guenther, Information Technology Director
Tracy Vesely, Finance Director

Approved by:



Fran David, City Manager

Attachment I: Resolution

HAYWARD CITY COUNCIL

RESOLUTION NO. 14-

Introduced by Council Member

RESOLUTION AUTHORIZING THE CITY MANAGER TO
NEGOTIATE AND AMEND THE EXISTING CONTRACT WITH
TECHNOLOGY MANAGEMENT SERVICES FOR PROJECT
MANAGEMENT SERVICES AND TO NEGOTIATE AND AMEND
THE EXISTING CONTRACT WITH GOVERNMENT FINANCE
OFFICERS ASSOCIATION (GFOA) FOR PROJECT
CONSULTANT SERVICES

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 an amendment to the City's contract with Technology Management Services for project management services related to the City's Enterprise Resource Planning (ERP) project, in an amount not to exceed \$112,000 (for a total contract amount not to exceed \$272,000), in a form to be approved by the City Attorney.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to negotiate and execute an amendment to the City's contract for ERP project consultation services with Government Finance Officers Association (GFOA), in an amount not to exceed \$50,000 (for a total contract amount not to exceed \$250,000), in a form to be approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2014

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

DATE: February 18, 2014

TO: Mayor and City Council

FROM: Human Resources Director

SUBJECT: Adoption of Resolution Approving an Amendment to the City of Hayward Salary Plan for Fiscal Year 2014

RECOMMENDATION

That the City Council adopts the attached Resolution approving an amendment to the City of Hayward Salary Plan for Fiscal Year 2014 (“FY 2014”), which designates all classifications and the corresponding salary range for employment in the City government of the City of Hayward as of January 9, 2014, superseding Resolution No. 13-099 and all amendments thereto.

BACKGROUND

After a public hearing on January 9, 2014, the Personnel Commission recommended that the City Council adopts an amended FY 2014 Salary Plan. The revised Classification and Salary Plan for the classified service adjusts the salary for the Management Fellow.

DISCUSSION

The City of Hayward Municipal Code requires the Human Resources Director to periodically review and revise the City’s classification plan. The Human Resources Director recently reviewed the Management Fellow classification and determined that the established salary schedule for the Management Fellow is below the recommendations set by the Local Government Management Fellow Program (LGMF). The City participates in the LGMF program and in doing so the City agrees to fulfill the financial obligations of hosting a Management Fellow, which includes providing a competitive salary and benefits. The City has not adjusted the salary of its Management Fellow since inception of the program. Consequently, the compensation for this position is well below the recommended salary set by LGMF.

To meet the financial obligations of hosting a Management Fellow, the salary of the Management Fellow position has been adjusted to \$45,000 annually. This is the amount recommended by the LGMF for positions in the San Francisco Bay Area.

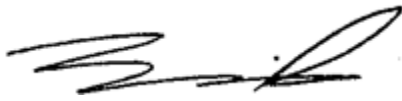
FISCAL IMPACT

There is minimal fiscal impact and additional costs will be absorbed in the FY 2013-2014 approved budget.

Prepared by: Sarah Monnastes, Senior Human Resources Analyst

Recommended by: Frances M. Robustelli, Human Resources Director

Approved by:



Fran David, City Manager

Attachment I: Resolution Approving Amendment to the FY 2014 Salary Plan

Attachment II: Revised FY 2014 Salary Plan

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

RESOLUTION APPROVING THE AMENDED FISCAL YEAR
2014 SALARY PLAN DESIGNATING POSITIONS OF
EMPLOYMENT IN THE CITY GOVERNMENT OF THE CITY
OF HAYWARD AND SALARY RANGE; AND SUPERSEDING
RESOLUTION NO. 13-099 AND ALL AMENDMENTS
THERE TO

BE IT RESOLVED by the City Council of the City of Hayward, as follows:

Section 1. That a revised Positions and Salaries Schedule relating to the positions of employment in the City of Hayward, and the hourly rates of pay for those positions, is hereby set forth in Attachment "II," attached hereto and made a part hereof. The positions enumerated under the columns headed "Class Title" are hereby designated as the positions of employment in the City of Hayward, and the hourly rates of pay shown in the columns under the heading "Hourly Salary Range" are the salary rates or the maximum rates of pay for such positions.

Section 2. Salaries paid to occupants of said positions shall be administered in accordance with the Personnel Rules and Memoranda of Understanding and Side Letter Agreements approved by the City Council and currently in effect.

Section 3. All class titles used herein refer to the specifications of the position classification plan as reviewed by the Personnel Commission of the City of Hayward, or as set forth in the City Charter.

Section 4. The City Manager may approve in advance of an established effective date, payment to certain classifications in the Management Unit of all or a portion of a general salary increase previously approved by the City Council. Such advance payments shall be made only for those management classifications where the salary range is less than ten percent above an immediately subordinate classification. The amount of advance payment approved by the City Manager shall not exceed the amount required to establish a ten percent salary differential between the affected classifications. The City Manager shall advise the City Council and each bargaining unit in advance of any payments made pursuant to the provisions of this section.

Section 5. The salary ranges set forth in Attachment "II" shall be revised to reflect salary changes provided in any Memorandum of Understanding, Side Letters of Agreement, or resolution setting forth the wages, hours, and other terms and conditions of employment for a bargaining unit or group of unrepresented employees of the City. Any revisions made pursuant to the provisions of this section shall be incorporated into a document prepared by the Human Resources Director and distributed to affected employees or their representatives that reflects the date of the revision and cites both the authority provided by this section and the provision of the memorandum or resolution being effectuated by the revision.

Section 6. This resolution supersedes Resolution No. 13-099 and all amendments thereto.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2014

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

**SALARY PLAN FOR ALL CLASSIFICATIONS
(PER MUNI CODE SEC.2-4.30)
FY 2014**

ATTACHMENT II
Recommended by
Personnel Commission
on January 9, 2014
Approved by Council
on _____

Classification Title	A	B	C	D	E	Job Code	Service Type
CITY WIDE ADMINISTRATIVE/ANALYTICAL SUPPORT							
ADMINISTRATIVE ANALYST III	42.64	44.77	47.01	49.36	51.83	723	Classified
ADMINISTRATIVE ANALYST II	38.38	40.30	42.31	44.43	46.65	724	Classified
ADMINISTRATIVE ANALYST I	34.90	36.65	38.48	40.40	42.42	744	Classified
EXECUTIVE ASSISTANT	34.79	36.39	38.03	39.66	41.41	418	Unclassified
ADMINISTRATIVE SECRETARY (CONFIDENTIAL)	32.17	33.49	34.80	36.09	37.53	420	Classified
ADMINISTRATIVE SECRETARY	30.62	31.89	33.14	34.38	35.76	108	Classified
SENIOR SECRETARY (CONFIDENTIAL)	29.40	30.51	31.77	32.93	34.22	414	Classified
SENIOR SECRETARY	27.99	29.09	30.27	31.38	32.59	107	Classified
ADMINISTRATIVE ASSISTANT	27.30	28.67	30.10	31.60	33.18	743	Classified
SECRETARY (CONFIDENTIAL)	25.91	27.07	28.45	29.79	31.13	413	Classified
SECRETARY	24.63	25.76	27.05	28.31	29.66	106	Classified
ADMINISTRATIVE CLERK II (CONFIDENTIAL)	23.85	24.82	25.80	26.93	28.28	401	Classified
ADMINISTRATIVE CLERK II	22.71	23.63	24.59	25.69	26.95	102	Classified
ADMINISTRATIVE CLERK I (CONFIDENTIAL)	21.01	22.07	23.20	24.46	25.71	400	Classified
ADMINISTRATIVE CLERK I	19.99	21.04	22.11	23.28	24.50	101	Classified
ADMINISTRATIVE INTERN				15.00	20.00	907	Classified
MAIL CLERK			12.47	13.12	13.76	134	Classified
CITY WIDE MAINTENANCE							
ELECTRICIAN II	39.14	40.70	42.30	44.09	45.92	329	Classified
ELECTRICIAN I	35.59	37.06	38.53	40.15	41.77	328	Classified
LABORER	22.72	23.56	24.50	25.50	26.42	336	Classified
CITY ATTORNEY DEPARTMENT							
CITY ATTORNEY					88.99	1216	Unclassified
ASSISTANT CITY ATTORNEY	59.90	62.90	66.05	69.35	72.82	1134	Classified
DEPUTY CITY ATTORNEY II	49.50	51.97	54.57	57.30	60.17	1179	Classified
DEPUTY CITY ATTORNEY I	45.01	47.26	49.62	52.10	54.70	1178	Classified
LEGAL SECRETARY II	28.89	30.57	32.87	33.56	35.29	416	Classified
LEGAL SECRETARY I	26.02	27.39	28.83	30.38	32.00	415	Classified
CITY CLERK DEPARTMENT							
CITY CLERK					54.84	1225	Unclassified
DEPUTY CITY CLERK	32.63	34.26	35.97	37.77	39.66	747	Classified
CITY MANAGER DEPARTMENT							
OFFICE OF THE CITY MANAGER							
CITY MANAGER					107.04	1297	Unclassified
ASSISTANT CITY MANAGER	73.72	77.41	81.28	85.34	89.61	1122	Unclassified
DEPUTY CITY MANAGER	64.02	67.22	70.58	74.11	77.82	1121	Unclassified
ASSISTANT TO CITY MANAGER	46.10	48.41	50.83	53.37	56.04	1126	Classified
COMMUNITY AND MEDIA RELATIONS OFFICER	40.34	42.36	44.48	46.70	49.04	1103	Classified
MANAGEMENT FELLOW					21.63	1128	Classified
CODE ENFORCEMENT SUPERVISOR	40.37	42.39	44.51	46.74	49.08	786	Classified
SENIOR CODE ENFORCEMENT INSPECTOR	36.71	38.55	40.48	42.50	44.62		
CODE ENFORCEMENT INSPECTOR II	33.37	35.04	36.79	38.63	40.56		
CODE ENFORCEMENT INSPECTOR I	30.33	31.85	33.44	35.11	36.87		

**SALARY PLAN FOR ALL CLASSIFICATIONS
(PER MUNI CODE SEC.2-4.30)
FY 2014**

ATTACHMENT II
Recommended by
Personnel Commission
on January 9, 2014
Approved by Council
on _____

Classification Title	Hourly Salary Range					Job Code	Service Type
A	B	C	D	E			
ECONOMIC DEVELOPMENT							
ECONOMIC DEVELOPMENT MANAGER	56.50	59.32	62.29	65.40	68.67	709	Classified
ECONOMIC DEVELOPMENT COORDINATOR	50.82	53.36	56.03	58.83	61.77	711	Classified
ECONOMIC DEVELOPMENT SPECIALIST	40.53	42.57	44.65	46.92	49.21	669	Classified
NEIGHBORHOOD PARTNERSHIP SERVICES							
NEIGHBORHOOD DEVELOPMENT MANAGER	56.50	59.32	62.29	65.40	68.67	799	Classified
NEIGHBORHOOD PARTNERSHIP MANAGER	50.82	53.36	56.03	58.83	61.77	703	Classified
REDEVELOPMENT AGENCY							
REDEVELOPMENT DIRECTOR	56.50	59.32	62.29	65.40	68.67	795	Classified
REDEVELOPMENT PROJECT MANAGER	50.82	53.36	56.03	58.83	61.77	794	Classified
REDEVELOPMENT SPECIALIST	40.53	42.57	44.65	46.92	49.21	649	Classified
HOUSING MANAGER	50.82	53.36	56.03	58.83	61.77	726	Classified
HOUSING DEVELOPMENT SPECIALIST	40.53	42.57	44.65	46.92	49.21	674	Classified
HOMEOWNERSHIP COORDINATOR	35.60	37.39	39.19	41.18	43.20	605	Classified
DEVELOPMENT SERVICES DEPARTMENT							
DEVELOPMENT SERVICE ADMINISTRATION							
DIRECTOR OF DEVELOPMENT SERVICES	66.64	69.97	73.47	77.14	81.00	1116	Unclassified
BUILDING DIVISION							
CITY BUILDING OFFICIAL	56.50	59.32	62.29	65.40	68.67	740	Classified
HOUSING REHABILITATION COORDINATOR	37.35	39.29	41.29	43.32	45.44	662	Classified
SUPERVISING BUILDING INSPECTOR	47.97	50.37	52.89	55.53	58.31	741	Classified
SENIOR BUILDING INSPECTOR/STRUCTURAL	40.04	42.17	44.30	46.40	48.71	663	Classified
SENIOR BUILDING INSPECTOR/PLUMBING-MECHANICAL	40.04	42.17	44.30	46.40	48.71	659	Classified
SENIOR BUILDING INSPECTOR/ELECTRICAL	40.04	42.17	44.3	46.4	48.71	658	Classified
BUILDING INSPECTOR	34.57	36.19	38.04	39.97	42.59	656	Classified
PLAN CHECKING ENGINEER	46.81	49.08	51.55	54.23	57.00	610	Classified
SUPERVISING PLAN CHECKER AND EXPEDITOR	40.93	42.98	45.13	47.39	49.76	798	Classified
SENIOR PLAN CHECKER	40.04	42.17	44.30	46.40	48.71	611	Classified
PLAN CHECKER	36.41	38.33	40.27	42.19	44.29	609	Classified
SENIOR PERMIT TECHNICIAN	31.66	32.96	34.24	35.74	37.56	179	Classified
PERMIT TECHNICIAN	28.55	29.69	30.88	32.21	33.85	180	Classified
PLANNING DIVISION							
PLANNING MANAGER	56.50	59.32	62.29	65.40	68.67	797	Classified
PRINCIPAL PLANNER	50.82	53.36	56.03	58.83	61.77	720	Classified
SENIOR PLANNER	45.52	47.80	50.19	52.70	55.34	796	Classified
ASSOCIATE PLANNER	40.65	42.64	44.77	47.07	49.32	650	Classified
ASSISTANT PLANNER	33.36	34.99	36.87	38.67	40.65	624	Classified
JUNIOR PLANNER	29.57	31.14	32.60	34.23	35.90	622	Classified
GRAPHICS/PLANNING ILLUSTRATOR	28.12	29.48	31.04	32.59	34.17	627	Classified
DEVELOPMENT REVIEW ENGINEER	49.19	51.65	54.23	56.94	59.79	781	Classified
DEVELOPMENT REVIEW SPECIALIST	35.54	37.27	39.29	41.22	43.32	604	Classified
LANDSCAPE ARCHITECT	45.52	47.80	50.19	52.70	55.34	753	Classified

**SALARY PLAN FOR ALL CLASSIFICATIONS
(PER MUNI CODE SEC.2-4.30)
FY 2014**

ATTACHMENT II
Recommended by
Personnel Commission
on January 9, 2014
Approved by Council
on _____

Classification Title	Hourly Salary Range					Job Code	Service Type
A	B	C	D	E			
FINANCE DEPARTMENT							
ADMINISTRATION DIVISION							
DIRECTOR OF FINANCE	70.42	73.94	77.64	81.52	85.60	1118	Unclassified
DEPUTY DIRECTOR OF FINANCE	59.17	62.13	65.24	68.50	71.93	1106	Classified
BUDGET OFFICER	45.34	47.61	49.99	52.49	55.11	700	Classified
AUDITOR	45.34	47.61	49.99	52.49	55.11	745	Classified
FINANCIAL ANALYST	41.22	43.28	45.44	47.71	50.10	712	Classified
COLLECTIONS OFFICER	33.40	35.11	36.90	38.75	40.67	653	Classified
ACCOUNTING MANAGER	47.23	49.59	52.07	54.67	57.40	730	Classified
REVENUE MANAGER	47.23	49.59	52.07	54.67	57.40	729	Classified
FINANCE SUPERVISOR	41.2	43.26	45.42	47.69	50.07	734	Classified
SENIOR ACCOUNTANT	41.2	43.26	45.42	47.69	50.07	749	Classified
ACCOUNTANT	33.02	34.67	36.40	38.22	40.13		Classified
SENIOR ACCOUNTING TECHNICIAN	31.24	32.78	34.38	36.11	37.94	100	Classified
ACCOUNTING TECHNICIAN	28.39	29.82	31.28	32.83	34.49	140	Classified
FINANCE TECHNICIAN	31.21	32.77	34.41	36.13	37.94	115	Classified
SENIOR ACCOUNT CLERK	26.11	27.38	28.56	29.95	31.34	156	Classified
ACCOUNT CLERK	23.80	24.84	26.02	27.22	28.58	155	Classified
SENIOR CUSTOMER ACCOUNT CLERK	26.11	27.38	28.56	29.95	31.34	130	Classified
CUSTOMER ACCOUNT CLERK	23.80	24.84	26.02	27.22	28.58	125	Classified
PURCHASING DIVISION							
PURCHASING AND SERVICES MANAGER	47.23	49.59	52.07	54.67	57.40	739	Classified
PURCHASING TECHNICIAN	28.39	29.82	31.28	32.83	34.49	110	Classified
PURCHASING ASSISTANT	28.03	29.18	30.33	31.46	32.68	111	Classified
MAIL AND PURCHASING CLERK	21.55	22.63	23.69	24.92	26.15	112	Classified
FIRE DEPARTMENT							
SWORN							
FIRE CHIEF	77.25	81.11	85.17	89.43	93.90	1101	Unclassified
DEPUTY FIRE CHIEF (40 HR)	70.06	73.56	77.24	81.10	85.16	1006	Classified
FIRE MARSHAL (40 HR)	63.70	66.88	70.22	73.73	77.42	1003	Classified
FIRE TRAINING OFFICER (40 HR)	63.70	66.88	70.22	73.73	77.42	1007	Classified
BATTALION CHIEF (56 HR)	41.36	43.43	45.60	47.88	50.27	1004	Classified
BATTALION CHIEF (40 HR)	57.90	60.80	63.84	67.03	70.38	1005	Classified
STAFF FIRE CAPTAIN (40 HR)			55.75	58.54	61.47	244	Classified
FIRE CAPTAIN (56 HR)			36.20	38.01	39.91	245	Classified
FIRE CAPTAIN (40 HR)			50.68	53.21	55.87	246	Classified
FIRE PREVENTION INSPECTOR (40 HR)	42.91	45.06	47.31	49.68	52.16	230	Classified
FIRE PREVENTION INSPECTOR (56 HR)	30.66	32.19	33.80	35.49	37.26	231	Classified
APPARATUS OPERATOR (56 HR)	29.04	30.49	32.01	33.61	35.29	220	Classified
APPARATUS OPERATOR (40 HR)	40.62	42.65	44.78	47.02	49.37	221	Classified
FIREFIGHTER (56 HR)	27.37	28.74	30.18	31.69	33.27	215	Classified
FIREFIGHTER (40 HR)	38.31	40.23	42.24	44.35	46.57	216	Classified
FIREFIGHTER TRAINEE (40 HR)	34.83	36.57				973	Classified
PROFESSIONAL STAFF							
HAZARDOUS MATERIALS PROGRAM COORDINATOR	47.97	50.37	52.89	55.53	58.31	705	Classified
FIRE PROTECTION ENGINEER	46.81	49.08	51.55	54.23	57.00	640	Classified
EMERGENCY MEDICAL SERVICES COORDINATOR	43.05	45.20	47.46	49.83	52.32	710	Classified
HAZARDOUS MATERIALS INVESTIGATOR	39.45	41.42	43.49	45.67	47.93	676	Classified
ENVIRONMENTAL SPECIALIST	39.45	41.42	43.49	45.67	47.93	677	Classified
FIRE SERVICES SUPERVISOR	43.05	45.20	47.46	49.83	52.32	701	Classified
FIRE TECHNICIAN II	27.85	29.24	30.70	32.24	33.85	113	Classified
FIRE TECHNICIAN I	25.30	26.57	27.90	29.30	30.77	109	Classified

**SALARY PLAN FOR ALL CLASSIFICATIONS
(PER MUNI CODE SEC.2-4.30)
FY 2014**

ATTACHMENT II
Recommended by
Personnel Commission
on January 9, 2014
Approved by Council
on _____

Classification Title	Hourly Salary Range					Job Code	Service Type
A	B	C	D	E			
HUMAN RESOURCES DEPARTMENT							
DIRECTOR OF HUMAN RESOURCES	67.45	70.82	74.36	78.08	81.98	1119	Unclassified
HUMAN RESOURCES MANAGER	45.81	48.10	50.50	53.03	55.68	1156	Classified
SENIOR HUMAN RESOURCES ANALYST	41.64	43.72	45.91	48.21	50.62	1155	Classified
HUMAN RESOURCES ANALYST II	37.86	39.75	41.74	43.83	46.02	1177	Classified
HUMAN RESOURCES ANALYST I	34.42	36.14	37.95	39.85	41.84	1176	Classified
HUMAN RESOURCES TECHNICIAN	27.49	28.86	30.30	31.81	33.40	1174	Classified
HUMAN RESOURCES ADMINISTRATIVE SECRETARY	30.88	32.42	34.04	35.74	37.53	1175	Classified
LIBRARY AND COMMUNITY SERVICES DEPARTMENT							
ADMINISTRATION DIVISION							
DIRECTOR OF LIBRARY AND COMMUNITY SERVICES	67.52	70.90	74.45	78.17	82.08	1120	Unclassified
COMMUNITY SERVICES							
COMMUNITY SERVICES MANAGER	51.73	54.32	57.04	59.89	62.88	774	Classified
SOCIAL SERVICES PLANNING MANAGER	50.82	53.36	56.03	58.83	61.77	785	Classified
COMMUNITY DEVELOPMENT SPECIALIST	40.53	42.57	44.65	46.92	49.21	647	Classified
COMMUNITY PROGRAMS SPECIALIST	37.35	39.29	41.29	43.32	45.44	670	Classified
COMMUNITY PROGRAMS AIDE	24.24	25.37	26.60	27.83	29.15	648	Classified
SENIOR PROPERTY REHABILITATION SPECIALIST	41.08	43.21	45.41	47.64	49.97	673	Classified
PROPERTY REHABILITATION SPECIALIST	37.35	39.29	41.29	43.32	45.44	665	Classified
PARATRANSIT COORDINATOR	35.60	37.39	39.19	41.18	43.20	664	Classified
EDUCATIONAL SERVICES COORDINATOR	27.76	29.15	30.61	32.14	33.75	644	Classified
LIBRARY SERVICES DIVISION							
LIBRARY OPERATIONS MANAGER	36.01	37.81	39.70	41.68	43.76	768	Classified
SUPERVISING LIBRARIAN I	36.01	37.81	39.70	41.68	43.76	736	Classified
LIBRARIAN II	30.65	32.18	33.75	35.46	37.13	626	Classified
LIBRARIAN I	27.79	29.19	30.64	32.10	33.75	625	Classified
LEAD LIBRARY ASSISTANT	25.17	26.45	27.71	29.07	30.59	191	Classified
SENIOR LIBRARY ASSISTANT	23.24	24.27	25.39	26.51	27.79	189	Classified
LIBRARY ASSISTANT	21.06	22.04	23.03	24.09	25.22	187	Classified
SENIOR LIBRARY PAGE					16.47	199	Classified
LIBRARY PAGE					15.03	198	Classified
LITERACY PROGRAM COORDINATOR	27.79	29.19	30.64	32.10	33.75	623	Classified
MAINTENANCE SERVICES DEPARTMENT							
ADMINISTRATION DIVISION							
DIRECTOR OF MAINTENANCE SERVICES	67.62	71.00	74.55	78.28	82.19	1113	Unclassified
FACILITIES MANAGEMENT							
FACILITIES AND BUILDING MANAGER	48.18	50.59	53.12	55.78	58.57	760	Classified
FACILITIES LEADWORKER	43.30	45.02	46.78	48.71	50.79	300	Classified
FACILITIES MAINTENANCE SUPERVISOR	35.68	37.46	39.33	41.30	43.37	792	Classified
FACILITIES PAINTER II	31.95	33.25	34.55	35.98	37.48	330	Classified
FACILITIES PAINTER I	29.07	30.24	31.47	32.79	34.08	324	Classified
FACILITIES CARPENTER II	31.82	33.08	34.47	35.89	37.39	327	Classified
FACILITIES CARPENTER I	28.94	30.14	31.38	32.65	34.01	326	Classified
STOREKEEPER - EXPEDITER	25.86	26.93	27.94	29.01	30.13	371	Classified

**SALARY PLAN FOR ALL CLASSIFICATIONS
(PER MUNI CODE SEC.2-4.30)
FY 2014**

ATTACHMENT II
Recommended by
Personnel Commission
on January 9, 2014
Approved by Council
on _____

Classification Title	Hourly Salary Range					Job Code	Service Type
	A	B	C	D	E		
FACILITIES SERVICEWORKER II	23.51	24.45	25.45	26.34	27.39	320	Classified
FACILITIES SERVICEWORKER I	21.42	22.20	23.08	24.03	24.88	318	Classified
FLEET MANAGEMENT DIVISION							
EQUIPMENT MANAGER	48.18	50.59	53.12	55.78	58.57	738	Classified
FLEET MANAGEMENT SUPERVISOR	43.70	45.89	48.18	50.59	53.12	771	Classified
SENIOR EQUIPMENT MECHANIC	32.42	34.04	35.74	37.53	39.40	305	Classified
EQUIPMENT MECHANIC II	29.49	30.87	32.43	34.13	35.82	312	Classified
EQUIPMENT MECHANIC I	26.85	28.20	29.63	31.10	32.62	310	Classified
EQUIPMENT PARTS STOREKEEPER	24.78	26.09	27.35	28.72	30.17	307	Classified
EQUIPMENT SERVICE ATTENDANT	22.86	23.76	24.75	25.58	26.57	308	Classified
LANDSCAPE MAINTENANCE DIVISION							
LANDSCAPE MAINTENANCE MANAGER	48.18	50.59	53.12	55.78	58.57	752	Classified
LANDSCAPE MAINTENANCE SUPERVISOR	43.70	45.89	48.18	50.59	53.12	761	Classified
GROUNDSCKEEPER III	32.41	33.72	35.08	36.56	37.99	343	Classified
GROUNDSCKEEPER II	28.42	29.55	30.76	31.84	33.07	342	Classified
GROUNDSCKEEPER I	25.81	26.84	27.97	28.93	30.08	338	Classified
TREE TRIMMER	29.16	30.32	31.55	32.67	33.95	340	Classified
STREET MAINTENANCE DIVISION							
STREETS MAINTENANCE MANAGER	48.18	50.59	53.12	55.78	58.57	756	Classified
STREETS MAINTENANCE SUPERVISOR	43.70	45.89	48.18	50.59	53.12	764	Classified
SENIOR MAINTENANCE LEADER	33.03	34.35	35.73	37.25	38.71	367	Classified
MAINTENANCE LEADER	29.00	30.13	31.38	32.48	33.73	360	Classified
SENIOR SWEEPER EQUIPMENT OPERATOR	28.57	30.00	31.50	33.07	34.72	306	Classified
SWEEPER EQUIPMENT OPERATOR	27.09	28.00	29.12	30.36	31.56	362	Classified
MAYOR AND COUNCIL DEPARTMENT							
MAYOR	Annual Salary:			39,960.00	1300	Unclassified	
CITY COUNCIL	Annual Salary:			24,975.00	1301	Unclassified	
POLICE DEPARTMENT							
SWORN							
CHIEF OF POLICE	76.21	80.02	84.02	88.22	92.63	1102	Unclassified
POLICE CAPTAIN	65.79	69.08	73.23	76.89	80.73	802	Classified
POLICE LIEUTENANT				66.67	69.91	555	Classified
POLICE SERGEANT			55.06	57.72	60.67	545	Classified
INSPECTOR	47.29	49.65	52.08	54.55	57.22	520	Classified
POLICE OFFICER	41.95	43.96	46.10	48.33	50.62	515	Classified
POLICE OFFICER TRAINEE	29.95	31.44				174	Classified
PROFESSIONAL STAFF							
PERSONNEL AND TRAINING ADMINISTRATOR	54.90	57.65	60.53	63.56	66.74	751	Classified
CRIME ANALYST	42.64	44.77	47.01	49.36	51.83	731	Classified
POLICE PROGRAMS ANALYST	38.38	40.30	42.31	44.43	46.65	704	Classified
FIELD OPERATIONS DIVISION							
CRIME PREVENTION SUPERVISOR	30.19	31.49	32.98	34.50	36.14	190	Classified
SENIOR CRIME PREVENTION SPECIALIST	28.77	29.97	31.42	32.86	34.42	186	Classified
CRIME PREVENTION SPECIALIST	26.16	27.27	28.55	29.89	31.29	188	Classified
TRAFFIC SAFETY ASSISTANT					12.43	901	Classified
SPECIAL OPERATIONS DIVISION							
YOUTH AND FAMILY SERVICES ADMINISTRATOR	54.90	57.65	60.53	63.56	66.74	790	Classified
COUNSELING SUPERVISOR	43.05	45.20	47.46	49.83	52.32	737	Classified

**SALARY PLAN FOR ALL CLASSIFICATIONS
(PER MUNI CODE SEC.2-4.30)
FY 2014**

ATTACHMENT II
Recommended by
Personnel Commission
on January 9, 2014
Approved by Council
on _____

Classification Title	Hourly Salary Range					Job Code	Service Type
	A	B	C	D	E		
FAMILY COUNSELOR I	34.80	36.52	38.36	40.12	42.21	632	Classified
SUPPORT SERVICES DIVISION							
OPERATIONS SUPPORT SERVICES MANAGER	65.79	69.08	73.23	76.89	80.73	1104	Classified
PUBLIC SAFETY INFORMATION SYSTEMS ADMINISTRATOR	40.08	42.08	44.18	46.39	48.71	708	Classified
PROPERTY/EVIDENCE ADMINISTRATOR	42.57	44.70	46.94	49.29	51.75	725	Classified
PROPERTY AND EVIDENCE SUPERVISOR	38.71	40.65	42.68	44.81	47.05	776	Classified
POLICE ID SPECIALIST	30.68	32.21	33.83	35.53	37.21	652	Classified
CRIME SCENE TECHNICIAN	27.37	28.59	29.91	31.26	32.76	175	Classified
PROPERTY TECHNICIAN	26.23	27.37	28.69	30.00	31.43	170	Classified
ANIMAL SERVICES ADMINISTRATOR	41.44	43.51	45.69	47.97	50.37	714	Classified
ANIMAL SERVICES SUPERVISOR	28.85	30.14	31.54	32.99	34.56	144	Classified
VETERINARY TECHNICIAN	29.79	31.27	32.83	34.49	36.20	103	Classified
ANIMAL SHELTER SUPERVISOR	23.83	24.88	25.84	26.95	28.31	145	Classified
SENIOR ANIMAL CONTROL OFFICER	27.48	28.69	30.05	31.42	32.91	184	Classified
ANIMAL CONTROL OFFICER	24.81	26.09	27.28	28.56	29.90	185	Classified
SENIOR ANIMAL CARE ATTENDANT	22.67	23.69	24.61	25.68	26.96	183	Classified
ANIMAL CARE ATTENDANT	20.65	21.52	22.38	23.36	24.51	181	Classified
COMMUNICATIONS ADMINISTRATOR	42.57	44.70	46.94	49.29	51.75	775	Classified
COMMUNICATIONS SUPERVISOR	35.33	37.11	38.96	40.89	42.96	141	Classified
SENIOR COMMUNICATIONS OPERATOR	33.64	35.34	37.12	38.95	40.91	164	Classified
COMMUNICATIONS OPERATOR	30.65	32.21	33.80	35.51	37.30	165	Classified
RECORDS ADMINISTRATOR	40.46	42.48	44.60	46.83	49.17	707	Classified
RECORDS SUPERVISOR	28.36	29.64	31.15	32.54	34.08	143	Classified
SENIOR POLICE RECORDS CLERK	26.99	28.23	29.66	30.97	32.48	121	Classified
POLICE RECORDS CLERK II	24.92	25.91	26.95	28.14	29.52	120	Classified
POLICE RECORDS CLERK I	21.90	23.04	24.26	25.48	26.84	119	Classified
JAIL ADMINISTRATOR	40.46	42.48	44.60	46.83	49.17	706	Classified
JAIL SUPERVISOR	31.53	32.85	34.44	36.05	37.78	142	Classified
SENIOR JAILER	30.01	31.29	32.81	34.32	35.97	168	Classified
COMMUNITY SERVICE OFFICER	26.23	27.37	28.69	30.00	31.43	169	Classified
PUBLIC WORKS DEPARTMENT							
ADMINISTRATION DIVISION							
DIRECTOR OF PUBLIC WORKS	74.50	78.23	82.14	86.25	90.56	1111	Unclassified
DEPUTY DIRECTOR OF PUBLIC WORKS	64.13	67.34	70.71	74.25	77.96	1112	Classified
SENIOR UTILITY SERVICE REPRESENTATIVE	32.19	33.79	35.40	37.21	39.03	373	Classified
STOREKEEPER - EXPEDITER	25.86	26.93	27.94	29.01	30.13	371	Classified
AIRPORT DIVISION SUMMARY							
AIRPORT MANAGER	56.50	59.32	62.29	65.40	68.67	713	Classified
AIRPORT OPERATIONS SUPERVISOR	45.23	47.49	49.86	52.35	54.97	732	Classified
NOISE ABATEMENT ANALYST	27.79	29.19	30.64	32.10	33.75	643	Classified
SENIOR AIRPORT MAINTENANCE WORKER	30.35	31.47	32.72	34.06	35.43	302	Classified
AIRPORT MAINTENANCEWORKER	27.57	28.58	29.70	30.94	32.21	303	Classified
AIRPORT ATTENDANT	20.64	21.55	22.34	23.32	24.48	301	Classified
ENGINEERING/TRANSPORTATION DIVISION							
ASSISTANT CITY ENGINEER	56.56	59.39	62.36	65.48	68.75	721	Classified
DESIGN AND CONSTRUCTION SERVICES MANAGER	53.97	56.67	59.50	62.48	65.50	787	Classified
SENIOR CIVIL ENGINEER	49.19	51.65	54.23	56.94	59.79	788	Classified
ASSOCIATE CIVIL ENGINEER	43.75	45.95	48.18	50.63	53.10	606	Classified
ASSISTANT CIVIL ENGINEER	37.69	39.63	41.66	43.68	45.85	602	Classified
JUNIOR CIVIL ENGINEER	32.78	34.39	36.05	37.82	39.75	601	Classified
REAL PROPERTY MANAGER	41.46	43.53	45.71	48.00	50.40	763	Classified

**SALARY PLAN FOR ALL CLASSIFICATIONS
(PER MUNI CODE SEC.2-4.30)
FY 2014**

ATTACHMENT II
Recommended by
Personnel Commission
on January 9, 2014
Approved by Council
on _____

Classification Title	Hourly Salary Range					Job Code	Service Type
	A	B	C	D	E		
REAL PROPERTY ASSOCIATE	36.80	38.72	40.67	42.64	44.75	667	Classified
REAL PROPERTY ASSISTANT	31.36	32.92	34.50	36.22	38.05	666	Classified
ENGINEERING TECHNICIAN	29.91	31.35	32.94	34.59	36.24	668	Classified
SENIOR UTILITIES ENGINEER	49.19	51.65	54.23	56.94	59.79	765	Classified
SURVEY ENGINEER	45.52	47.80	50.19	52.70	55.34	778	Classified
SURVEYOR	35.58	37.34	39.20	41.14	43.21	612	Classified
TRANSPORTATION MANAGER	54.11	56.82	59.66	62.64	65.77	757	Classified
SENIOR TRANSPORTATION ENGINEER	49.19	51.65	54.23	56.94	59.79	733	Classified
ASSOCIATE TRANSPORTATION ENGINEER	43.75	45.95	48.18	50.63	53.10	608	Classified
ASSISTANT TRANSPORTATION ENGINEER	37.69	39.63	41.66	43.68	45.85	615	Classified
JUNIOR TRANSPORTATION ENGINEER	32.78	34.39	36.05	37.82	39.75	616	Classified
SENIOR TRANSPORTATION PLANNER	45.52	47.80	50.19	52.70	55.34	770	Classified
ASSOCIATE TRANSPORTATION PLANNER	40.65	42.64	44.77	47.07	49.32	671	Classified
TRAFFIC SIGNAL TECHNICIAN	29.91	31.35	32.94	34.59	36.24	675	Classified
SUPERVISING CONSTRUCTION INSPECTOR	47.97	50.37	52.89	55.53	58.31	780	Classified
SENIOR CONSTRUCTION INSPECTOR	40.04	42.17	44.30	46.40	48.71	642	Classified
CONSTRUCTION INSPECTOR	33.55	35.27	36.92	38.79	40.76	661	Classified
RECYCLING-SOLID WASTE							
SOLID WASTE MANAGER	42.64	44.77	47.01	49.36	51.83	727	Classified
RECYCLING SPECIALIST	31.64	33.20	34.83	36.60	38.42	636	Classified
WATER POLLUTION CONTROL FACILITY (WPCF)							
WATER POLLUTION CONTROL FACILITY MANAGER	54.76	57.50	60.37	63.39	66.56	759	Classified
WPCF OPERATIONS AND MAINTENANCE MANAGER	49.44	51.91	54.51	57.24	60.10	717	Classified
WPCF MAINTENANCE SUPERVISOR	44.59	46.82	49.16	51.62	54.20	719	Classified
WPCF OPERATIONS SUPERVISOR	44.59	46.82	49.16	51.62	54.20	718	Classified
WPCF LEAD OPERATOR	34.66	36.04	37.46	38.94	40.51	351	Classified
WPCF OPERATOR	31.51	32.77	34.08	35.41	36.84	350	Classified
OPERATOR-IN-TRAINING	28.84	29.99	31.24	32.30	33.56	347	Classified
LAB SUPERVISOR	44.59	46.82	49.16	51.62	54.20	702	Classified
LABORATORY TECHNICIAN	32.49	33.71	35.01	36.45	37.81	637	Classified
WATER POLLUTION SOURCE CONTROL							
ENVIRONMENTAL SERVICES MANAGER	51.28	53.84	56.53	59.36	62.33	738	Classified
WATER POLLUTION CONTROL ADMINISTRATOR	44.59	46.82	49.16	51.62	54.20	769	Classified
SENIOR WATER POLLUTION SOURCE CONTROL INSPECTOR	37.15	39.08	41.04	42.98	45.17	680	Classified
WATER POLLUTION SOURCE CONTROL INSPECTOR	33.76	35.52	37.14	39.05	40.99	679	Classified
TECHNICAL INTERN					15.00	908	Classified
WATER DISTRIBUTION							
UTILITIES SUPERINTENDENT	60.24	63.25	66.41	69.73	73.22	735	Classified
UTILITIES OPERATIONS AND MAINTENANCE SUPERINTENDENT	49.44	51.91	54.51	57.24	60.10	716	Classified
UTILITIES OPERATIONS AND MAINTENANCE MANAGER	56.18	58.99	61.94	65.04	68.29	716	Classified
UTILITIES OPERATIONS AND MAINTENANCE SUPERVISOR	46.82	49.16	51.62	54.20	56.91	773	Classified
UTILITIES FIELD SERVICES SUPERVISOR	46.82	49.16	51.62	54.20	56.91	784	Classified
WATER INSTALLATION AND MAINTENANCE SUPERVISOR	38.78	40.72	42.76	44.90	47.14	793	Classified
SENIOR UTILITY CUSTOMER SERVICE LEADER	33.63	34.98	36.37	37.91	39.42	378	Classified
CROSS CONNECTION CONTROL SPECIALIST	29.47	30.49	31.69	33.00	34.31	376	Classified
WATER METER MECHANIC	28.64	29.74	30.97	32.24	33.53	375	Classified
WATER METER READER	25.60	26.61	27.70	28.71	29.85	369	Classified
BACKFLOW/CROSS CONNECTION TESTER	24.77	25.95	27.16	28.48	29.85	370	Classified
UTILITIES MAINTENANCE SUPERVISOR	44.59	46.82	49.16	51.62	54.20	766	Classified

**SALARY PLAN FOR ALL CLASSIFICATIONS
(PER MUNI CODE SEC.2-4.30)
FY 2014**

ATTACHMENT II
Recommended by
Personnel Commission
on January 9, 2014
Approved by Council
on _____

Classification Title	Hourly Salary Range					Job Code	Service Type
	A	B	C	D	E		
UTILITIES SERVICE WORKER	28.24	29.36	30.57	31.64	32.87	368	Classified
GENERAL MAINTENANCE							
EQUIPMENT OPERATOR	28.39	29.43	30.60	31.84	33.13	361	Classified
MAINTENANCE WORKER	26.33	27.39	28.53	29.50	30.68	357	Classified
SENIOR UTILITY LEADER	35.35	36.77	38.23	39.88	41.46	377	Classified
UTILITY LEADER	31.06	32.30	33.64	34.82	36.16	374	Classified
UTILITY WORKER	28.24	29.36	30.57	31.64	32.87	372	Classified
UTILITIES MAINTENANCE MECHANIC	32.39	33.64	34.96	36.37	37.84	325	Classified
TECHNOLOGY SERVICES DEPARTMENT							
DIRECTOR OF INFORMATION TECHNOLOGY/CHIEF INFORMATION OFFICER (CIO)	67.71	71.10	74.65	78.38	82.30	1105	Unclassified
INFORMATION SYSTEMS MANAGER	50.57	53.10	55.76	58.55	61.48	772	Classified
DATA AND SYSTEMS COORDINATOR	45.50	47.78	50.17	52.68	55.31	728	Classified
NETWORK SYSTEMS SPECIALIST	40.90	42.95	45.10	47.35	49.72	755	Classified
GEOGRAPHIC INFO SYSTEMS COORDINATOR	39.30	41.26	43.22	45.40	48.41	635	Classified
PROGRAMMER ANALYST	38.58	40.47	42.57	44.67	46.87	628	Classified
WEB SPECIALIST	38.02	39.94	41.92	44.01	46.21	634	Classified
INFORMATION TECHNOLOGY ANALYST II	38.56	40.49	42.51	44.64	46.87	655	Classified
INFORMATION TECHNOLOGY ANALYST I	35.06	36.81	38.65	40.58	42.61	646	Classified
TECHNOLOGY SOLUTIONS ANALYST II	38.56	40.49	42.51	44.64	46.87	684	Classified
TECHNOLOGY SOLUTIONS ANALYST I	35.06	36.81	38.65	40.58	42.61	683	Classified
NETWORK/MICROCOMPUTER SPECIALIST	35.02	36.77	38.60	40.52	42.58	630	Classified
INFORMATION SYSTEMS SUPPORT TECHNICIAN	28.68	30.11	31.65	33.22	34.83	633	Classified
COMPUTER OPERATOR ANALYST	32.42	34.03	35.69	37.50	39.37	629	Classified
COMPUTER OPERATOR	27.33	28.66	30.13	31.63	33.14	631	Classified
DATA SYSTEMS OPERATOR	24.65	25.78	27.05	28.33	29.67	160	Classified
AUDIO VIDEO SPECIALIST	27.33	28.66	30.13	31.63	33.14	641	Classified
VIDEO ASSISTANT					15.00	645	Classified

DATE: February 18, 2014

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT: Authorization to Amend a Professional Services Agreement with CliffordMoss for Outreach Efforts Related to Potential 2014 Revenue Measure

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment I) authorizing the City Manager to negotiate and execute an amendment to a professional services agreement with CliffordMoss for a total not to exceed amount of \$114,000.

BACKGROUND

In December 2013, the City Council directed staff to proceed with an education and outreach effort related to a potential revenue measure in June 2014. The intent of this effort was to get out in the community and listen to the priorities and concerns of the community related to any potential measure placed on the ballot by the Council.

Staff executed an agreement with CliffordMoss to cover services rendered between August and December 2013 in a not-to-exceed amount of \$25,000. These initial services included work on the poll conducted last fall as well as the design of a possible community outreach effort.

DISCUSSION

Given the Council's desire to engage with the community in a more expansive education and outreach effort, staff has worked with CliffordMoss on an amendment to their agreement that would include the following scope of services:

- Recommend a strategy, tools, calendar, and budget to guide stakeholder and public communications and messaging as City determines whether to place measure on ballot.
- Develop and produce several direct mail pieces to engage with Hayward community.
- Coordinate efforts for tracking poll.
- Provide guidance as City implements above public communications strategy.
- Prepare ballot language if directed.
- Collaborate with City and other consultants to help finalize any decisions on a potential ballot measure.
- Prepare City for information-only communications environment (web, content, fact sheets,

- FAQs, etc.).
- Provide ongoing project-related strategic counsel as needed.

FISCAL IMPACT

The professional services fee for the balance of services provided by CliffordMoss from January – March 2014 will be \$24,000. In addition, CliffordMoss will coordinate the design, production, and mailing of up to three direct mail pieces, upon direction from the City. These direct mail pieces (printing and mailing) each cost approximately \$20,000.

Agreement Budget:

Professional Services August – December 2013	\$25,000
Professional Services January – March 2014	\$24,000
Up to Three Direct Mail Pieces (\$20,000 each)	<u>\$60,000</u>
<i>Total</i>	<i>\$109,000</i>


Staff recommends including a \$5,000 contingency amount in the agreement , bringing the total not-to-exceed agreement amount to \$114,000. Funding for this agreement is available from funds received by the City from Calpine for a new library facility.

NEXT STEPS

Following Council approval at this meeting, staff will finalize amendment to the agreement.

Prepared and Recommended by: Kelly McAdoo, Assistant City Manager

Approved by:



Fran David, City Manager

Attachments:

I: Resolution Authorizing Execution of Amendment to Agreement for Professional Services

HAYWARD CITY COUNCIL

RESOLUTION NO. 14-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE
AND EXECUTE AN AMENDMENT TO A PROFESSIONAL SERVICES
AGREEMENT WITH CLIFFORDMOSS TO ASSIST IN THE EDUCATION
AND OUTREACH EFFORT RELATED TO A POTENTIAL 2014 REVENUE
MEASURE

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 an amendment to a professional services agreement with CliffordMoss for outreach and educational efforts related to a potential 2014 revenue measure in an amount not to exceed \$114,000, which is the total amount of contract funds from the City, in a form to be approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2014

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

DATE: February 18, 2014

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Presentation of Fact Finder's Report and City's Rebuttal on City's Impasse with Service Employees International Union (SEIU) Local 1021 – Maintenance and Operations Unit and SEIU Local 1021 – Clerical and Related Unit; and Consideration of Action on Impasse and Imposition of City's Last, Best, and Final Offer to these Units

RECOMMENDATION

That Council holds the required public hearing on the impasse in the City's labor negotiations with the Service Employees International Union (SEIU) Local 1021, including consideration of the fact finding report (Attachment I) issued by the Fact Finding Panel as part of the impasse process, and approves the attached resolutions imposing terms and conditions of employment on the Maintenance, Clerical and Confidential bargaining units pursuant to Government Code Section 3505.7, effective February 24, 2014.

SUMMARY

Throughout the fact finding process, the City has stretched to reach an agreement with SEIU 1021 in an attempt to avoid imposition. Recent discussions included an option which presented a dramatically reduced (and in many cases eliminated) paycheck impact to SEIU employees. [These offers](#) have been summarily dismissed by SEIU leadership and they have refused to take the offers to the membership for consideration.

Given the continuing impasse, staff is recommending that Council adopts the attached resolutions implementing terms and conditions of employment on SEIU 1021 employees consistent with the terms of the City's one-year last, best, and final offer, which was presented when the impasse began. Government Code Section 3505.7 authorizes the City to implement terms and conditions of employment. Section 3505.7 provides:

After any applicable mediation and fact finding procedures have been exhausted, but no earlier than 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Section 3505.5, a public agency that is not required to proceed to interest arbitration may, after holding a public hearing regarding the impasse, implement its last, best, and final offer, but shall not implement a

memorandum of understanding. The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.

BACKGROUND

The City of Hayward and SEIU 1021 have been involved in an ongoing labor negotiation process since September 2012. After the City experienced lengthy procedural and scheduling challenges with the Union, bargaining for a new contract began in February 2013. City negotiators proposed an agreement based upon a series of Council-directed compensation goals:

- All employees are to complete the remainder of a five-year period with no across-the-board wage increases.
- All employees are to share in the cost of their benefits.
- All employees are to achieve a specified amount (17%) of on-going structural savings¹ in their compensation² packages.
- Employee groups are to have flexibility in how they achieve these goals.

These goals are not unique to negotiations with SEIU. Many of the City's other bargaining units have already achieved these savings targets through a variety of approaches. These groups include elected officials, City executives, unrepresented employees, management employees, firefighters, fire management, fire chiefs, and police management. All have worked hard with City leaders to craft compensation packages that are fair to their members while contributing to the City's long-term fiscal stability.

Throughout the negotiations with SEIU Local 1021, the City consistently communicated and explained its need for long-term, structural reductions in employee compensation costs. The City's General Fund ten-year financial plan projects increasing budget deficits each year despite increasing revenue. Unless the City and its employees structurally change the compensation model, ongoing budget deficits are inevitable. This will occur because known and projected employee-related benefits costs will out-pace projected revenue growth for the foreseeable future.

Although City negotiators worked hard and creatively to reach agreement on a number of issues, SEIU Local 1021 representatives steadfastly refused to bridge significant economic issues, making a mutually acceptable agreement impossible. Some of the major obstacles running contrary to the Council-directed goals include SEIU's insistence on 100% City-paid employee health care premiums, the union's refusal to consider employee contributions to a retiree medical trust, and the union's demand for compensation increases throughout the term of the agreement.

¹ "Structural Savings" means a change that is on-going into the future and which can be unconditionally incorporated into and made a part of the City's long-term financial planning.

² "Compensation" refers to the total cost of an employee's salary, benefits, and any other pay associated with individual classifications, excluding overtime.

On April 30, 2013, SEIU 1021's contract expired. The City continued negotiating in good faith even as the union voted to authorize a strike in June of 2013. On July 26, 2013, after months of negotiation and no real movement by SEIU Local 1021 on any of the core economic issues, the City declared impasse. On August 13, 2013, SEIU 1021 members staged a three-day strike. After a subsequent mediation session failed to produce an agreement, the Public Employment Relations Board (PERB) certified the impasse for fact finding. The fact finding hearings occurred on November 18, 19, and 22, and December 17, 2013. On February 14, 2014, the fact finder's report was released publicly.

The fact finder's report agreed with a number of the City's proposals on specific bargaining issues. However, some compensation and employee benefit recommendations fail to recognize the City's continuing struggle with rapidly rising employee retirement and post-employment benefit costs, employee health care costs, the City's unfunded infrastructure liabilities, and even the inherent fluctuations of the City's tax revenues contingent upon normal business and economic cycles.

Unfortunately, the fact finding report prioritizes the achievement of short-term employee wage demands at the expense of the City's long-term fiscal health. Perhaps because the subject matter is simply too nuanced and complex to be adequately understood over a period of only four days, the fact finding report also contains a host of factual errors, inconsistencies, and opinion-based judgments. Examples of these are discussed in detail in the City's rebuttal to the fact finding report.

The factual errors, inconsistencies, and opinion-based judgments reflected in the report would put the City in a deficit spending position. To make recommendations for raises based on a slim margin of surplus/deficit spending is illogical and fiscally irresponsible. As the report demonstrates on page 24, one letter (in this instance from the State retirement system, CalPERS) can increase the City's expenses in a fiscal year by \$1.2 million, which even the author of the fact finding report admits is a low estimate; and the City has no control over the retirement rates established by CalPERS. In fact, there is clear and convincing evidence that at least two such increases from CalPERS will be coming to California cities in the next two years. The report also assumes that the City Council should simply put all excess revenues received straight into employee compensation instead of investing in services to or infrastructure for the community, paying towards unfunded liabilities, maintaining and replacing aging City facilities, or honoring the long-term benefit obligations made to existing employees.

DISCUSSION

On July 24, 2013, after months of unsuccessful good faith negotiations with SEIU 1021, the City received an economic demand and strike threat letter from the bargaining unit's Chief Labor Negotiator. The economic demand made it clear that the parties were hopelessly far apart on the economic issues and the City declared impasse on July 26, 2013. As part of the declaration, the City included last, best, and final proposals for each SEIU bargaining unit that included a one-year term and a five-year term. The bargaining units were offered the opportunity to accept either offer.

FIVE-YEAR PROPOSAL (Table-1 Clerical and Table-2 Maintenance): This proposal allowed for a phase-in of the requested concessions, implemented cost-sharing for health care premiums and retiree health care benefits in the third year of the contract term, and gave credit for foregoing 2%

cost of living adjustments that were not even owed to the employees in order to help the unit reach the established city savings target.

Table-1 Summary of the Clerical Five-Year Last, Best, and Final Offer

Table 1. Clerical 5-Year

Credit Towards Target	5 Year Proposal				
FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
8% Employee PERS	No Raise	No Raise	10% Medical Contribution	CPI Adjustment, Cap 2.0%	CPI Adjustment, Cap 2.0%
No ER Paid Deferred Comp	20% Dental Contribution		\$16.50/pp OPEB Cont		
No ER Paid VEBA	50% Vision Contribution		CPI Adjustment, Cap 2.0%		
	FLSA Minimum for Overtime				
	WC Paid at Legal Mandate				
Average Per Pay Period Paycheck Impact	\$23.09 ¹	\$0.00	Salary Increase Offered to Help Offset Employee Benefit Contributions	+ 2% Wage Increase ²	+ 2% Wage Increase ²

Table-2 Summary of the Maintenance Five-Year Last, Best, and Final Offer

Table 2. Maintenance 5-Year

Credit Towards Target	5 Year Proposal				
FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
8% Employee PERS	No Raise	No Raise	7.5% Medical Contribution	CPI Adjustment, Cap 2.0%	CPI Adjustment, Cap 2.0%
No ER Paid Deferred Comp	FLSA Minimum for Overtime		\$17.95/pp OPEB Cont		
No ER Paid VEBA	WC Paid at Legal Mandate		CPI Adjustment, Cap 2.0%		
20% Dental Contribution					
50% Vision Contribution					
Average Per Pay Period Paycheck Impact	\$0.00	\$0.00	Salary Increase Offered to Help Offset Employee Benefit Contributions	+ 2% Wage Increase ²	+ 2% Wage Increase ²

Table 1 and 2 Notes: Estimate - Assumes benefit enrollment at Kaiser family rate. Dental, vision and medical contributions are pre-tax. Actual impact will be less. Assumes CPI of 2%.

ONE-YEAR PROPOSAL (Table-3 Clerical and Table-4 Maintenance): The one-year term provided for the full savings to be achieved immediately and achieved those savings through cost sharing of health care premiums and retiree health care benefits, and payment of overtime and worker's compensation benefits at the legally mandated standard.

Table-3 Summary of the Clerical One-Year Last, Best, and Final Offer

Table 3. Clerical 1-Year

Credit Towards Target	1 Year Proposal
FY 2013	FY 2014
8% Employee PERS	15% Medical Contribution
No ER Paid Deferred Comp	20% Dental Contributions
No ER Paid VEBA	50% Vision Contributions
	FLSA Minimum for Overtime
	WC Paid at Legal Mandate
	\$44/pp OPEB Contribution
Average Per Pay Period Paycheck Impact	\$197.47 ¹

Table-4 Summary of the Maintenance One-Year Last, Best, and Final Offer

Table 4. Maintenance 1-Year

Credit Towards Target	1 Year Proposal
FY 2013	FY 2014
8% Employee PERS	15% Medical Contribution
No ER Paid Deferred Comp	FLSA Minimum for Overtime
No ER Paid VEBA	WC Paid at Legal Mandate
20% Dental Contribution	\$33.50/pp OPEB Contribution
50% Vision Contribution	
Average Per Pay Period Paycheck Impact	\$163.88 ¹

Table 3 and 4 Notes: Estimate - Assumes benefit enrollment at Kaiser family rate. Dental, vision and medical contributions are pre-tax. Actual impact may be less.

The representatives from SEIU rejected both options and apparently refused to take either proposal back to the membership for consideration. Furthermore, the City continued to seek agreement with SEIU Local 1021 even as the fact finder finished her report. SEIU representatives continued to refuse to accept alternatives. Instead, representatives demanded unaffordable raises and immediate signing bonuses as part of any deal. The Last, Best and Final Offer for Clerical and Confidential (Attachment II) and the Last, Best and Final Offer for Maintenance (Attachment III) contain a complete description of the details of the economic items above, as well as several work place rule and administrative changes which will result in operational and MOU administration efficiencies.

Unfortunately, staff recommends imposing the terms outlined in Table-3 and Table-4. The City Council, pursuant to Government Code, Section 3505.7, may only impose the first year of the Last, Best, and Final Offer. The imposed terms remain in effect until the parties complete subsequent negotiations.

Staff is recommending the one-year offer because it allows the City to reach its financial goals while further attempting to resolve the long-term issues with SEIU membership. Due to the inability to reach agreement with SEIU at the end of their contract, the City has had to absorb approximately \$870,000 of unplanned and unbudgeted expenses for the months beginning July 2013 through most of February 2014. The one-year plan affords the City the best opportunity to reclaim some, although not all, of this unplanned and unbudgeted expense.

Staff also acknowledges the City Council's desire for SEIU Local 1021 and the City to reach agreement on a more permanent, long-term agreement. Staff looks forward to continuing to work with SEIU Local 1021 and will bring a tentative agreement for a new MOU to the City Council if and when the parties are able to reach such an agreement following the Council's action tonight.

FISCAL IMPACT

The City projected an all-funds savings of approximately \$1.3 million in FY 2014 from concessions achieved by SEIU 1021, which were not achieved. Implementation of the One-Year Last, Best and Final Offer will achieve 25% of the projected savings in FY 2014. The annual savings projected from the terms imposed beginning with FY 2015, is approximately \$760,000 in savings for the General Fund and \$530,000 for other City funds such as the utilities and other enterprise funds.

ECONOMIC IMPACT

The restructuring of employee benefit packages will have a significant positive economic impact for the Hayward Community and tax and rate payers who ultimately fund City services and have an expectation of excellent service delivery. The City has been mindful to maintain competitive wage and benefit packages to attract and retain a highly skilled workforce, while at the same time being fiscally responsible in order to preserve critical services and work towards funding existing liabilities and infrastructure needs. The restructuring of benefit packages, resulting in cost sharing arrangements with city employees, ensures long term fiscal stability for the City to ensure quality services can be provided to the Community; and is consistent with what is happening in cities all over California.

Prepared by: Fran Robustelli, Director of Human Resources
Kelly McAdoo, Assistant City Manager

Approved by:



Fran David, City Manager

Attachments:

- | | |
|----------------|---|
| Attachment I | Fact Finding Report and City Rebuttal (City Rebuttal begins on page 82 of the attachment; no SEIU Rebuttal submitted) |
| Attachment II | Resolution – Clerical & Related Unit (Exhibit A to the Resolution will be available on the City’s website on February 15, 2014) |
| Attachment III | Resolution – Maintenance & Operations Unit (Exhibit A to the Resolution will be available on the City’s website on February 15, 2014) |

Report of Factfinding Panel

**IN FACTFINDING PROCEEDINGS PURSUANT TO
CALIFORNIA GOVERNMENT CODE SECTIONS 3505.4 AND 3505.5**

In the Matter of a Dispute between

CITY of HAYWARD

and

SEIU, Local 1021.

**REPORT OF
FACTFINDING PANEL**

February 3, 2014

PERB Case No. SF-IM-124-M

FACTFINDING PANEL:

Katherine J. Thomson, Impartial Chairperson, El Cerrito

John Stead-Mendez, SEIU Local 1021, Oakland

Kelly McAdoo, Assistant City Manager, City of Hayward

APPEARANCES AND WITNESSES:

On behalf of SEIU Local 1021:

Stephen Sommers, Sommers Employment Law
Ashley Ernst Baltazar, Sommers Employment Law
Nick Peraino
Gilbert Hesla
Linda Reid
Ariana Casanova
Suzanne Philis
Daryl Lockhart
Brian Lee
Nely Obligacion
Jordan G. Levine, Beacon Economics

On behalf of the City of Hayward:

Jack Hughes, Liebert Cassidy Whitmore
Fran Robustelli
Matt McGrath
Seema Vashi
Sarah Monnastes
Nina Collins
Tracy Vesely

Report of Factfinding Panel

I. BACKGROUND**A. Employer Description**

The City of Hayward is a public agency employer within the meaning of Sections 3500-3511 of the Government Code. The City employs approximately 169 full-time equivalent clerical and related employees (Clerical unit) and 112 full-time equivalent maintenance employees (Maintenance unit) represented by SEIU Local 1021, which has been recognized as the exclusive representative of both units. The City operates water and wastewater facilities as well as an airport.

B. Procedural History

The City and Local 1021 are parties to two collective bargaining agreements, effective May 1, 2007, through April 30, 2011, which were extended through April 30, 2013. After compliance with the public notice provisions of the Government Code, the parties began negotiations for a successor contract in February 2013. The City declared impasse on July 26, 2013, and made last, best and final offers (LBFOs) to each unit. Sessions with a mediator were unsuccessful, and the matter was certified for factfinding.

The factfinding hearing was conducted on November 18, 19, and 22, and December 17, 2013. The parties had a full opportunity to introduce relevant data and exhibits, and present oral testimony and argument. The parties agreed to present testimony on wages, health and welfare benefits, retiree medical benefits, and the City's financial ability, but relied solely on written evidence and arguments in their briefs for the remainder of the issues. The briefs were timely submitted on January 3, 2014. The panel met in executive session by conference call on November 7, December 2 and 12, and January 10 and 15, 2014, and in person on January 30, 2014.

II. ISSUES

The Chair strongly encouraged the parties to meet to narrow the number of issues. There was some success, but there remained dozens of issues. The following issues, most

Report of Factfinding Panel

of which contain many sub-issues that are explained below, were submitted to the factfinding Panel for both units:

- * Salary for Fiscal Year 2014 (2013-14) and the ensuing two to four fiscal years
- * Health and welfare benefits for the same period
- * OPEB - Retiree health and welfare benefits
- * Management Rights
- * Severance Pay
- * Layoffs, including Order of Layoffs, Seniority, Notice of Layoff, Employee Options, Right of Return Following Layoff (Maintenance only)
- * Overtime Work
- * Meal Period and Rest Period
- * Bilingual Pay
- * Longevity Pay
- * Medical Insurance, including Flexible Benefit Allowance, Federal or State Health Plan, Alternative Benefit, Supplemental Retirement Benefit
- * Dental Insurance
- * Vision Care
- * Retired Employees
- * Change in Pay Upon Reclassification
- * Working Out of Class
- * Retirement Program
- * Holidays, including Holidays for Certain Part-Time Employees (M only), Qualifying for Holiday Pay, Compensation for Holidays Worked, Holiday-New Year's Eve, Holiday Pay for Twenty-Four Hour Employees
- * Vacation Leave Policy, including, Vacation Accrual for Full-Time Employees, Vacation Accruals for Permanent Part-Time Employees
- * Sick Leave Policy, including Sick Leave Accruals for Part-time Employees, Sick Leave Notice and Certification, Payment for Unused Sick Leave
- * Industrial Disability Leave
- * Leaves of Absence
- * Parental Leave
- * Temporary Positions/Employment Agencies
- * Restrictions on Outside Work
- * No Strike

The following issues involve only the Maintenance unit:

- * Overtime Regulations
- * Night Shift Differential
- * Certification Fees
- * Sewer Maintenance Differential
- * Standby Provisions
- * Pesticide Differential
- * Water Treatment Certification Differential
- * Heavy Equipment Repair Differential
- * Distribution Certification Differential

Report of Factfinding Panel

- * Thermal Plastic Hazard Differential
- * Homeless Encampment Cleanup Differential
- * Arborist License Differential
- * Pesticide License Differential
- * Safety Shoes

The following issues involve only the Clerical contract:

- * Attendance at Evening Meetings
- * Police Department Training Pay
- * Participation in Promotional Examination
- * Introduction of New Equipment

Neither party identified the duration of the contract as an issue. However, the City offered a one-year and a five-year economic proposal, whereas the Union offered a three-year economic proposal.

III. ANALYSIS AND RECOMMENDATIONS

The panel has based these recommendations on factors commonly used in factfinding and similar to those listed in Government Code Section 3505.4 for consideration in factfinding in the public agencies. Primary among those are 1) state and federal laws that are applicable to the employer, 2) local rules or ordinances, 3) The interests and welfare of the public and the financial ability of the public agency, 4) comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services for comparable public agencies, and 5) the consumer price index for goods and services, commonly known as the cost of living, and 6) the overall compensation presently received by the employees, including direct wage compensation, leave, pensions, medical benefits, the continuity and stability of employment, and all other benefits. The evidence cited necessarily does not include up-to-the-moment information.

A. COMPENSATION

The City does not claim an inability to pay higher wages, but argues that it is facing deficits over the long-term that will result in negative general fund balances

Report of Factfinding Panel

beginning in FY 2018. It asserts that it needs a structural change to compensation, or it will have to cut back on other public service priorities. For planning purposes the City has a 10-year plan, which it updates periodically. The plan as updated May 2013 (CX 24) shows actual deficit spending in FY 2012, and projected deficit spending for all years following, even assuming that it could prevail on the 5% labor concessions it is demanding from all its units.

The City's one-year proposal would take all the compensation concessions it is demanding – about 5 % for maintenance and 5.6 % for clerical – in FY 2014, rather than spreading out its proposed structural changes over five years. The City explained that it framed this one-year proposal only for purposes of implementing a last, best and final offer, but that its preferred proposal is the five-year plan.

The City's five-year proposal for both units would provide no salary increases in FY 2014 and FY 2015. It would adjust salaries by the percent change in the CPI-All Urban Wage Earners for the San Francisco-Oakland-San Jose Area, up to 2%, in each of the final three years of the contract. Other provisions of the Clerical unit proposal appear in the table below:

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
No Raise	No Raise	10% Medical Contribution	CPI Adjustment, Cap 2.0%	CPI Adjustment, Cap 2.0%
20% Dental Contribution		\$16.50/pp OPEB Cont		
50% Vision Contribution		CPI Adjustment, Cap 2.0%		
FLSA Minimum for Overtime				
WC Paid at Legal Mandate				

The City would reduce its obligation to pay overtime to the minimum requirements of the Fair Labor Standards Act, and would reduce the amount it pays for workers compensation benefits to the minimum required. Employees would begin to make contributions to a trust for retiree medical benefits in FY 2016. The City has estimated that its five-year proposal would have a negative \$23 impact on the paycheck of a clerical employee in FY 2014, assuming the employee chooses the Kaiser health plan. (CX 52)

The five-year proposal for the Maintenance unit, which already agreed to dental and vision contributions for FY 2013, appears in this table:

Report of Factfinding Panel

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
No Raise	No Raise	7.5% Medical Contribution	CPI Adjustment, Cap 2.0%	CPI Adjustment, Cap 2.0%
FLSA Minimum for Overtime		\$17.95/pp OPEB Cont		
WC Paid at Legal Mandate		CPI Adjustment, Cap 2.0%		

To view the dispute in a fuller context, it is also necessary to understand that, like many local agency workers, the employees suffered 5% furloughs during FY 2010, FY 2011, and FY 2012. In addition, the two units already gave up the equivalent of nearly 12% of pay in concessions in FY 2013, as explained below.

Before addressing the City's economic argument, the various components of these compensation proposals are discussed separately, although the Panel recognizes that viewing salary alone does not give a complete picture of an employee's compensation.

1. WAGES

City Proposal: The City would hold wages steady for the first two years to achieve a structural correction, and then provide cost-of-living raises of up to 2% for the remaining three years of a five-year contract.

Union Proposal: At the conclusion of mediation, the Union's demand was a 4% raise in FY 2014, no raise in FY 2015, and a 3% raise in FY 2016, with a \$1,000 ratification bonus.

a. Comparability with other Agencies

The City contends its external comparability data supports the City's five-year compensation proposals. The MOUs call for joint salary surveys paid for equally by the Union and the City. (CX 7, 8, Sec. 9.02 and side letters) The Union declined to participate in the survey, so the City conducted a study of total compensation at its own cost. Total compensation included employer PERS contributions and the concessions of 12% that the City had negotiated for FY 2013.

Report of Factfinding Panel

The City asserts that, beginning with an external consultant's survey in the 1990s, the parties have had a 20-year history of using the following comparable municipalities: Alameda, Berkeley, Daly City, Fremont, Palo Alto, Richmond, San Leandro, San Mateo, Santa Clara, and Vallejo. The Union objects that other utility agencies are not included in the survey. The City counters that, because five of the cities have wastewater or other utility facilities, there is enough information to gauge the market for utility workers. The Panel agrees with the City that inclusion of special utility districts, such as EBMUD, among the comparators would be inappropriate because they have different revenue sources and enjoy economies of scale unavailable to the City.

The City conducted the survey in late 2012 and early 2013. When data on a benchmark position was not available from at least four cities, no results were reported. For example, there was no data on airport maintenance workers from other cities. The results were presented to the Union at the first bargaining session. As the Union has not objected that any of the data is incorrect, the Panel assumes that the results are accurate.

Out of 21 Maintenance positions, there was insufficient data on 9 jobs. For the remainder, the survey showed that total compensation was at least 4.73% above the mean of the compensation for the similar position in the surveyed cities. (CX 21) Of 24 Clerical positions, there was insufficient data for 7 of them. Hayward's total compensation for one, records supervisor, was .52% below the market average. Library assistant compensation was only 2.44% above the mean. The remainder of the positions were compensated at least 4.5% above the market average. (CX 42)

The City asserts that the data demonstrates that the modest structural changes sought by the City (with a cost to employees equivalent to approximately 2% of salary) will not cause employees to be paid less than employees in comparable classifications in comparable agencies, and in many cases, employees will continue to be paid 10% or more than their counterparts in other major Bay Area cities. The Panel finds that, while this data tends to support the City's claim that its clerical and maintenance workers are compensated above the comparator mean, it is not as conclusive or as clear as the City asserts.

Report of Factfinding Panel

The Union claims, however, that this assertion makes no logical sense. In 2010, SEIU brought all classifications to market average with an average equity adjustment of 2.7% for the Maintenance Unit and 4.2% for the Clerical Unit.¹ Since being brought to market average in FY 2010, SEIU employees have received no increases and have given numerous concessions. Thus, the Union argues, it is illogical to conclude these classifications are above market rate.

Unfortunately, the Union did not provide any data to back up its assertion that the City's data is incorrect. It introduced evidence on salary increases in 3 localities in Northern California (UX 18), but those do not counter the comparability data introduced by the City because they do not show the results for the comparator cities. Oakland's workers did gain a 3% raise over two years and beat back concessions, but Oakland is a much larger city that historically has not been included among the City's comparators. Santa Rosa and Sebastapol also have not been comparators. They are geographically distant from Hayward and would not compete for the same workers. Small increases in compensation in other geographically distant cities — Fairfield (employer-paid medical premium increases), Jackson (\$1,800 bonus) and Chico (12 hours paid time off) — also do not support the Union's demand for 7% in raises over the next three years.²

In addition, the City's study surveyed total compensation, which makes it improper to extrapolate or draw inferences from prior salary-only surveys. As the City's evidence also shows that City employees are eligible for higher employer contributions to health and welfare benefits than they would be in comparator cities (CX 68), it is not illogical that total compensation of City clerical and maintenance workers could be higher than the average, despite the concessions.

In addition, the City's Human Resources Director, Fran Robustelli, testified the City has had low turnover and no trouble attracting applicants for employment. There

¹ Equity increases were raises designed to bring City workers in various classifications to market rates in FY 2007-2009. They ranged from 4.2% to 33.25% for clerical workers and .24% to 22.72% for maintenance workers. (CX 16 and CX 7, 8)

² The Union's information on contract settlements in K-12 and community college districts (UX 17) is not persuasive, since the districts have different revenue sources, work years, etc.

Report of Factfinding Panel

were 14 voluntary resignations in FY 2012, a turnover rate of 1.78%. This supports the assertion that City compensation is competitive with that of comparator cities.

Going forward, the comparability of the City's compensation is less certain. The City introduced evidence on COLAs for maintenance employees at the comparator cities. (CX 43, p. 17) In Alameda, the workers will receive at least a 1.5% increase in 2014 and a 2% increase in 2015, more if there are higher local taxes. San Mateo workers gained 2% raises in July 2013, 2014, and 2015. As Berkeley's contract with service workers is closed until September 2014, those employees will likely receive no COLAs in the next year. (UX 18) The remainder of the municipalities studied were in negotiations at the time of the survey or have had MOUs expire since that time. Thus, their workers could receive a COLA before July 2014, but the amount is unknown. The status and results of comparators' negotiations for clerical workers is essentially the same. (CX 44, p. 5)

The Panel concludes that, without a wage increase in FY 2014, clerical or maintenance employees' total compensation may remain at or above the average of those who work for comparators, but will likely fall below the average after two years of flat wages. Below average compensation is likely to occur sooner if the employees here begin contributing to health and welfare benefits, as recommended below.

b. Consumer Price Index

Annual increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the San Francisco-Oakland-San Jose area totaled approximately 14.5 percent from June 2006 through June 2012. The total for the CPI-U for all urban consumers in the area was 13.9%. (CX 45) During that time, the cost of living raises of the clerical unit amounted to 14%, and average equity raises added to 12.6%. The cost of living raises of the maintenance unit totaled 14%, and average equity raises of the unit were 8.1%. (CX 45, p. 3) The CPI for the area rose another 2.6 percent from June 2012 to June 2013, but the employees received no raises.

Thus, the employees' COLAs have not kept up with inflation as measured by the CPI, but equity adjustments in some classifications allowed the wages of many City

Report of Factfinding Panel

employees to keep pace with or beat inflation. This is true historically looking back to FY 2000. (CX 45, p.3)

Neither party attempted to compare total compensation increases to the CPI. However, it must be noted that the employees paid 7% of pay more toward their pensions beginning July 1, 2012. Therefore, the paycheck of the average maintenance worker is trailing the CPI-W by approximately 2%, and the average clerical worker is only 2.5% ahead since June 2006.

The City argues that the employees' wage increases have sufficiently surpassed inflation that they should be able to contribute to insurance premiums and retirement health and welfare benefit funding.

In fact, in FY 2009, there was deflation of .2%, while the clerical and maintenance workers received an average of 8.2 % and 6.7% increases in pay, respectively. However, this boost in purchasing power was fleeting, since the following year they were subject to a 5% furlough at the same time as receiving a 4% COLA while the CPI-W rose 1.4%. The next two years they had 5% furloughs (CX 7, 8 side letters), while the CPI-W rose 2.9% and 2.7%. (CX 45) In FY 2013, furloughs ended, but both units resumed paying an additional 7% of their wages toward their pensions and the maintenance employees contributed to their dental and vision benefits for the first time. (CX 50, 52). In addition, the CPI-W rose 2.6% in FY 2013. Not only did the PERS contribution wipe away all or nearly all of the average employee's FY 2009 pay increase, inflation cost them purchasing power.

The Panel finds that the CPI does not support the City's position, particularly with regard to maintenance workers, since FY 2013 concessions have actually decreased the employees' purchasing power despite the appearance on paper that their wages have surpassed inflation. In addition, some employees received small or no equity increases, not the average equity increases discussed here.

c. Internal compensation comparisons

No bargaining unit or group of unrepresented employees received any COLAs in FY 2011 through FY 2013. Rank and file and management fire units bargained 2% increases in FY 2014, FY 2015, and 3% in FY 2016. (CX 16) The firefighters are paying 15% of salary towards their pensions, including 6% of the employer's 33% obligation. Police are paying 8.62% of the employer's 35% obligation in FY 2014. (CX 26)

Between July 2006 and June 2010, it is difficult to compare the pay raises of safety units and other units because the safety unit increases were based on surveys of compensation in other agencies. Compared to the COLAs of 14% over this time period for non-safety represented employees, police officers received nearly 19% raises, and firefighters received 17% raises. Police management pay was boosted over 19%, and fire management received 17.15% in salary increases (not including 7.23% equity raises for fire management). (CX 16) But, because those survey-based wages take comparator rates of compensation into consideration, it is fair to look at equity raises of the clerical and maintenance units during the time period, which amounted to an average of 12.6 % for the Clerical unit and 8.1% for the Maintenance unit. Of course, some employees in the Clerical unit received only 4.2 % equity increases over the three years, and some in the Maintenance unit received no equity increase. (CX 7, 8)

The City has been able to gain further concessions from the fire employee units and from management that have reached a target of 17% structural decrease in compensation. The details of these agreements were not in evidence.

The Union argues that large raises for police and fire from FY 2007 through FY 2010, as well as statements by city representatives to Union representatives, indicate that the City does not want to treat the SEIU units comparably when increasing salaries, but now wants to have them share in concessions to the same extent. The City counters that police officers experienced flat wages in FY 2008 and FY 2009, and fire employees had no raises in FY 2009 and FY 2010, while the clerical and maintenance units benefitted from COLAs. (CX 16) While this is true, the flat pay for the safety units in each case followed double digit raises. The most accurate way to characterize the raises across the

Report of Factfinding Panel

units is that the City boosted the pay of most of its employees (except unrepresented employees) by large amounts to reach market pay before holding wages steady in FY 2011. The equity increases were spread out over a longer time for the SEIU units than for the safety employees.

As the evidence regarding other units' concessions in recent contracts is spotty and somewhat conclusory, comparisons between them do not support the City's proposals.

2. HEALTH AND WELFARE BENEFITS

City Proposal on Flexible Benefit Allowance:

The City shall provide a contribution to the City's Flexible Benefits plan (125 Plan) for each full-time employee in regular or probationary status who is enrolled in one of the PERS medical insurance plans offered by the City. Employees can use this contribution to offset the cost of benefits purchased through the plan. The value of any flexible benefit allowance provided by the City under this Section shall be determined as follows:

A. Effective the pay period that includes July 1, 2015, the allowance provided to an eligible employee, shall be equal to ninety-two and a half percent (92.5%) [90% for clerical employees] of the premium cost for health insurance coverage based on the employee's plan selection and participation level eligibility (e.g. Employee only coverage, Employee + 1 coverage, or Employee + 2 coverage), less the amount of any contribution provided under Section 6.01 above. The City's maximum contribution under this section shall not exceed the cost of ninety-two and a half percent (92.5%) [90% for clerical employees] of the premium for the second most expensive benefit plan (currently Blue Shield) as determined by the employee's participation level, less the City's contribution towards medical benefits under PEMHCA. except that, in no event shall the sum of the City's contributions pursuant to the provisions of Sections 7.01 and 7.02 of this Memorandum of Understanding exceed ninety-two and a half percent (92.5%) [90% for clerical employees] of the premium cost for the PERS medical insurance plan in which the employee is enrolled.

The remainder of the proposed changes to the Flexible Benefit Allowance section in proposed B, C, D and E were not addressed by the City, and therefore will not be considered by the Panel. The City is not proposing to make substantive changes to the following current language:

The City will not treat any contributions made to the Flexible Benefits plan as compensation subject to income tax withholding unless the Internal Revenue Service and/or the Franchise Tax Board indicates that such contributions are taxable income subject to withholding. Each employee shall be solely and personally responsible for any Federal, State, or local tax liability of the employee that may arise out of the implementation of this section or any penalty that may be imposed therefore.

City Proposal on Dental Insurance:

The City shall contribute towards dental insurance premiums coverage for full time employees, other than temporary and provisional employees, and their eligible dependents. Beginning with the pay period that includes July 1, 2012, the City's contribution on behalf of an eligible employee participating in a City-sponsored dental plan shall be equal to eighty percent (80%) of the monthly premium for dental insurance, as determined by the employee's enrolled participation level in the City sponsored dental plan. Employees enrolled in dental insurance are required to contribute the remaining twenty percent (20%) of the premium costs for dental insurance coverage.

Monthly premium rates are established on a calendar year basis by the insurance provider, or in the case of a self-funded plan, by a third party examining plan utilization review, market trends, overall plan costs and any other industry standard metrics deemed necessary by the third party.

Currently, the City provides insurance coverage through the Delta Dental plan which includes the following: 100% payment of diagnostic and preventative services (exempt from deductible); 80% payment for other basic services, and crowns and cast restorations; 70% payment for prosthodontics; 50% payment for orthodontics (adults and children). Deductibles each calendar year shall be Twenty Five Dollars (\$25) per person with a maximum of Seventy Five Dollars (\$75) per family. Maximum benefit payments shall be Two Thousand Dollars (\$2000) per year for each patient except for orthodontics which shall carry a Twenty Five Hundred Dollars (\$2,500) lifetime maximum benefit per patient.

The City reserves the right to provide dental care benefits under a plan or through a carrier of its choice. Alternate coverage may be provided through a consortium of public agencies or private employers, which may be formed for the purpose of providing dental care benefits for employees; or through a program of self-insurance. In the event the City exercises this option the alternate coverage shall be substantially equivalent to the coverage in effect at such time as a change in carriers takes effect.

City Proposal on Vision Care:

The City shall contribute towards vision care insurance for full-time employees, other than temporary and provisional employees, and their eligible dependents. Currently, the City provides vision coverage through VSP, under a plan that provides for Fifteen Dollar (\$15.00) deductible for an eye examination, lenses and frames once per year. Beginning with the pay period that includes July 1, 2013, the cost of the monthly premium shall be shared equally (50/50) between the employee and the City.

Monthly premium rates are established on a calendar year basis by the insurance provider, or in the case of a self-funded plan, by a third party examining plan utilization review, market trends, and overall plan costs and any other industry standard metrics deemed necessary by the third party.

The City reserves the right to provide vision care benefits under a self-funded plan or through a carrier of its choice. Alternate coverage may be provided through a consortium of public agencies or private employers which may be formed for the purpose of providing vision care benefits for employees or through a program of self-insurance. In the event the City exercises its option to move to a self-funded plan or to change insurance carriers, any new benefit plan shall provide coverage that is substantially equivalent to the coverage available at the time this option is exercised.

Union Proposal: No changes to any of these sections.

The City currently contributes an amount up to the full premium cost of the second-highest plan for family health insurance. The City estimates that under the Affordable Care Act the medical insurance rates will increase about 10% annually. From FY 2010 through FY 2013, the actual medical premium costs to the City have increased an equivalent of about 3.5 % of pay in four years. (CX 32)

The City's proposal equates to an employee contribution of 10% towards medical premiums for the Clerical unit and 7.5% for the Maintenance unit.³ Proposed employee contributions would be paid with pre-tax wages, which affects take-home pay less than if they were an after-tax deduction from the paycheck.

³ The City did not explain the difference in proposed medical contribution rates for Maintenance and Clerical employees.

Report of Factfinding Panel

For some units, such as the Clerical unit, the City also pays the full premium for dental and vision benefits. The City's proposal would equate to a 20% employee contribution towards dental premiums and a 50% employee contribution towards vision premiums for the Clerical group only. (In exchange for the opportunity to cash out up to 30 hours of vacation leave, the Maintenance unit assumed these contributions as part of their concessions package in FY 2013. [CX7, side letter 7])

The Union states the Maintenance unit conceded 20% towards dental insurance coverage and 50% toward vision care as a short term fix to an immediate financial need. The Clerical unit did not agree to such concessions. At this juncture, the Maintenance Unit wants dental insurance and vision care coverage returned to 100%.

In addition, the Union points out the City's vision care proposal eliminates coverage for temporary and provisional employees. It claims this proposal was not made prior to the declaration of impasse.

a. Comparability

The City introduced evidence showing that its maximum contractual contributions for 2014 toward medical, dental and vision insurance benefits are at least 25% above the average for clerical and maintenance workers among the 8 comparator municipalities that provided final numbers to the City. (CX 68) The City's 2013 maximum contribution of approximately \$2,040 is higher than the 2013 rates shown for Vallejo (\$1,463 for IBEW-represented employees and \$1,612 for administrative employees) and higher than for AFSCME-represented employees in Santa Clara (\$1,142).

The Union argues that few employees require the City to expend the maximum amount in health and welfare contributions. The Union calculated averages of actual medical contributions for both units for 2013 and what those averages would be with 10% increases in 2014. In 2013, the City actually paid an average of \$1,527 for maintenance employees and \$1,356 for clerical employees; in 2014, a 10% increase would boost these amounts to \$1,679 and \$1,492. The Panel finds that the best way to compare medical benefits is to compare the contractually obligated maximum, whether or

Report of Factfinding Panel

not employees take advantage of that maximum contribution. In addition, it notes the Union provided no information on actual costs for comparator municipalities.

The comparability information shows that several comparators provide no vision care coverage, and most do not contribute an amount as high as the City does for its clerical workers. The amount contributed for maintenance employees is about average. (CX 68) Comparators all provide dental coverage, but only one contributes more than the City does to clerical workers' coverage. About half contribute more than the City contributes to its maintenance workers' dental coverage, but several of those are less than \$5 more.

The City's proposal for FY 2016 would not provide a medical plan under which an employee could cover his or her family without contributions. The evidence indicates, however, that the full family premium for other plans (rather than the second most expensive plan), such as the 2014 Anthem Traditional HMO (\$1,894) or PERS Care (\$1872), is close to the median of the comparators. (CX 39) At the same time, providing full premiums only for a less expensive plan would address the City's interest in motivating employees to be more cognizant of the cost of benefits and make more economical choices in their selection and use of medical plans.

b. Internal Compensation Comparisons

The Maintenance unit already agreed for FY 2013 to contribute toward dental and vision benefits in exchange for the opportunity to cash out up to 30 hours of earned vacation leave. The City asserts that other units will be making the same medical benefit contributions in FY 2016, but did not provide details. The evidence available during the hearing indicates that only the firefighter unit and management have accepted the 5% concessions, but there was no indication what that agreement comprises.

c. Other considerations

The Affordable Care Act as enacted requires a "Cadillac tax" for medical benefits above a designated threshold. The City has been advised by its health benefit vendor, Alliant, that its benefits are likely to become subject to a \$1.5 million tax in 2018 if its

Report of Factfinding Panel

medical benefit costs climb by 10% each year as predicted. At this point, however, the imposition of any tax is highly uncertain, as plans change. In 2014, for example, the District's maximum medical contribution actually decreased because plan features and premiums changed. (CX 39)

The Panel recommends that the Clerical unit pay the same contributions to dental and vision coverage as the Maintenance employees do, effective January 1, 2014. The Chair recommends that these contributions be required only if a \$750 payment is made at the time of ratification. The Panel also recommends the City reduce its maximum contribution, effective January 2015, to an amount sufficient to pay the premiums for the fourth highest family plan.

3. OPEB – RETIREMENT HEALTH BENEFITS – Sec. 7.09 (new Sec. 7.05)

City Proposal:

Employees who retire from the City with at least ten (10) years of continuous City service are eligible to receive a supplemental retirement benefit. This benefit shall be equal to \$274.72, less the amount provided for under the section 6.01 above. This supplemental benefit is provided in the form of cash to the retiree on a monthly basis. In order to receive this benefit, the employee must begin receiving pension benefits within one hundred and twenty days (120) of leaving City employment. Retirees are solely responsible for any tax consequences associated with the receipt of benefits under this section.

Beginning with the pay period including July 1, 2013, all members of the bargaining unit shall contribute \$16.50 [\$17.95 for maintenance employees] per pay period, and until otherwise negotiated to fund this benefit, which shall be placed in an irrevocable trust to fund such enhanced retiree medical benefits.

(Other language deleted from Section 7.09 was not addressed by the City and will not be considered by the Panel.)

Union Proposal: No change.

The City's retiree medical program pays a defined monthly amount to CalPERS on behalf of each employee who retired in 1982 or afterward and is eligible for a PERS retirement benefit, and a supplemental benefit to each employee who retires with at least

Report of Factfinding Panel

10 years of service (5 years for police and fire employees). The current total amount is \$274.72. Unlike benefits in some other public agencies, the City's retiree health contributions are not open-ended or uncapped, except with respect to the police benefit that is tied to Kaiser medical plan rates. These payments, however, are not prefunded for miscellaneous employees and are only partially funded for police and fire employees. The City is paying \$2.4 million currently in retiree health care contributions this year. Payments to retirees are expected to increase from \$2.5 million in FY 2013 to \$2.8 million in FY 2018. (CX 24) The actuarial projections in 2011 were higher (CX 36, p. 10), but have been modified in the 10-year plan.

In July 2011, the City received an actuarial report that calculated the annual contribution required (ARC) to fully prefund the benefits in 26 years, including unfunded accrued liabilities to date. For the miscellaneous units in 2011, that ARC was 4.12% of payroll, or approximately \$1,659,000. The ARC includes the normal cost of the benefit, which was calculated at 1.34% of pay. The ARC was 17% of pay for rank-and-file police and over 11% of pay for firefighters, partially because these employees are eligible for \$569 and \$508 monthly, respectively. Normal costs for those groups were calculated at 6.18% and 2.83% of pay. (CX 36) Based on the increase in the ARC from 2009 to 2011, the City projects the ARC for all units to increase from \$6.6 million in FY 2012 to \$7.5 million in FY 2014. (CX 24) It is not clear to the Panel whether the downward changes in actual retiree medical costs experienced in FY 2013 and FY 2014 to date have yet been considered in new actuarial projections.

The City's five-year proposal would require a \$16.50 contribution per biweekly pay period to the retiree medical benefit trust for clerical workers (1% of pay for the lowest-paid clerical worker) and a \$17.95 contribution per pay period for maintenance employees (1.1% of pay for the lowest-paid maintenance worker). The City would credit these contributions as 0.63% and 0.68% toward its 5% concessions target.

a. Comparability

The City's survey of comparators shows that it pays less than most of the comparators in retiree medical contributions, although the structure of retiree medical

Report of Factfinding Panel

contributions varies. There is a trend toward reducing this liability by changing eligibility and benefit levels, as shown by recent reductions in Fremont and Palo Alto, but those cities have not cut the contribution for all new employees below the amount the City currently pays. (CX 43, p.11, CX 44, p. 2)

b. Internal Comparisons

Fire employees are already contributing 1% to the OPEB trust in FY 2014 (when they also receive a 2% COLA), and police officers begin 1% contributions in FY 2015. (CX 36, CX 16)

The Union voiced its contention that benefits of police and fire employees cost the City more money than those of the clerical and maintenance units. The City argues that the Union's position is unfair because it suggests that employees who work in dangerous classifications or jobs that require considerable knowledge, education and/or experience should give back more in a recession.

The Panel recognizes that the labor market rewards hard work, career advancement, and working in dangerous public safety classifications. Here, that includes a medical retiree benefit almost twice the amount of the non-safety personnel. At the same time, the rising retiree medical liabilities are due predominantly to the police and fire units. Asking clerical and maintenance employees to pay 1% of salary (nearly 75% of the normal cost of their benefit) toward the liability is hugely disproportionate, since 1% of police pay is less than 1/6th of the normal cost of their benefit and 1% of fire pay is 36% of the normal cost of a fire fighter's benefit.

4. THE INTERESTS AND WELFARE OF THE PUBLIC AND THE CITY'S ABILITY TO PAY

The City asserts that it needs a structural 17% change to compensation or it will need to cut back on other public service priorities. The basis for this percentage was not explained. For FY 2013, the City was able to negotiate concessions from both units of approximately 12%. In addition to a cancelled 3.5 percent raise for FY 2012, the components of the Clerical unit givebacks were: 1) 7% employee contribution to PERS;

Report of Factfinding Panel

2) no employer paid deferred compensation; and 3) no employer-paid Voluntary Employee Benefit Association contribution (for extra savings for retiree medical benefits). Similarly, the Maintenance unit gave up the following concessions: 1) 7% employee contribution to PERS; 2) no employer paid deferred compensation; 3) no employer paid VEBA contribution; 4) a 20% dental contribution and 50% vision contribution. The Union calculates that these concessions, along with furloughs in FY 2011 and FY 2012, have cost an average of \$14,548 per worker and saved the City \$4.1 million. (UX 3) The Panel notes that furloughs dramatically affect an employee's paycheck, but are essentially one-time savings to the employer and do not assist in correcting a structural deficit.

The City is demanding further concessions of 5% over the next five years. (The Clerical unit did not agree to dental and vision contributions that the Maintenance unit accepted, resulting in a slightly higher concession demand from the Clerical unit.) The City's method of figuring the 5% concession, however, credits the loss of COLAs of up to 2% in each of the first two years of the contract. Thus, the City is not looking for a 4% decrease in wages along with the benefit contribution deductions. It acknowledges that the benefit concessions are equivalent to nearly 2%, spread out over three years.

The Panel has concentrated its focus on the first five years of the City's 10-year plan, due to the inherent unreliability of projections further than five years into the future. The plan as updated May 2013 (CX 24) shows actual deficit spending in FY 2012, and projected deficit spending for all years following, even assuming that it could prevail on the additional 5% labor concessions it is demanding from all its units. The projected deficits do not assume full funding of the retiree medical program's Annual Required Contribution, which would increase costs by \$3.9 million annually in the short term. (CX 23) The projected deficits also do not assume any additional funding to bring the City's Workers Compensation program to recommended funding levels (see Section D below) or additional funding towards identified critical capital needs.

Fortunately, a projected \$3 million deficit in FY 2013 was avoided when additional revenues of \$2.4 million and deferred expenditures caused the City to end the

Report of Factfinding Panel

year with a surplus of about \$293,000, leaving a reserve of approximately \$28 million in its general fund reserve.⁴ This reserve level equates to approximately 22.7% of the City's FY 2013 General Fund expenditures. Approximately \$1.98 million of the unanticipated FY 2013 revenue consisted of property tax revenues — \$1.1 million in one-time distribution of redevelopment agency property tax funds, as well as recurring redistribution amounts of \$350,000, and \$580,000 attributable to improved secured property tax income. In addition, an unexpected \$596,000 in property transfer tax revenues and an additional \$379,000 in transient occupancy tax from motels came into city coffers. There were also some small unanticipated decreases in revenue and approximately \$1 million in deferred expenditures. If the one-time revenue were not counted, there would have been a deficit of about \$1.6 million. (CX 37 and CX 23)

a. Revenues

Property tax is the City's largest source of revenue. Although property taxes decreased during the housing market crisis of the Great Recession as homes were reassessed to reflect lower values, the Alameda County Assessor's Office released a statement in July 2013 that the assessed value of the local assessment roll increased 5.17% for FY 2014. (UX 1) The City, however, figured an increase of only 2.5% from the adjusted FY 2013 projection to the FY 2014 updated property tax projections in the 10-year plan. (CX 24) Based on revenue improvements during the 4th quarter of FY 2013, a minimum increase of \$580,000 in secured property tax should be considered in addition to the projected amount of \$38,141,000. (CX 23) During her testimony, City Finance Director Tracy Vesely indicated that further unanticipated increases in property tax revenue in FY 2013 were tentatively causing her to upgrade her projection of FY 2014 property tax revenues by \$2 million over the 10-year plan. The \$2 million also would be added in projections for later years. The City believes the bump in property tax revenue is temporary, however, and will subside once properties regain their pre-recession values. At that point, increases in assessed value will be limited to 2% annually under Prop 13.

⁴ The City's Comprehensive Annual Financial Report for the period ending June 30, 2013 will not be available until February 2014.

Report of Factfinding Panel

The Union counters that the Legislative Analyst's Office projects an average 7% increase in property taxes statewide over the next five years. (See UX 12) It entered into evidence the revenue forecast of its consultant, Beacon Economics. In making its assessment, Beacon looked at detailed forecasts of the nation, state, and East Bay and how historical revenue figures for the City have related to the national, state, and regional trends to forecast City revenues out to 2017-18. (City of Hayward Revenue Forecast, December 2013) Beacon sees property tax revenues growing 6.12% to \$41,579,000 in FY 2014. This would be higher than Vesely's tentative estimate of about \$40,200,000. For FY 2015, Beacon predicts a 6.33 % increase in property taxes to \$44,212,222. Another 5.62 % increase in FY 2016 would yield \$46,696,000 according to Beacon. Thereafter, Beacon forecasts property tax revenue growth to be between 4% and 5%.

The City argues that, to project higher property taxes, it would have to find that there are a significant number of properties being sold, resulting in a new, higher tax basis, and/or that there are significant numbers of new properties being built in Hayward. The City contends that most of the new residences under construction cited by the Union have either already been built – and therefore are already factored into the tax roll projections – or are planned by a contractor but not yet permitted (CX 65 and 66). The City also explained that it works with a consulting firm that tracks the residential real estate market to be able to project property turnover into the future.

The City asserts that Beacon's lack of local, Hayward-specific insights renders the consulting firm's projections less reliable than the City's. Certainly there is a different approach, but Beacon's representative, Jordan Levine, indicated that local information, such as number of building permits, was considered. Assessed valuation of Hayward properties and actual Hayward property tax revenue was included in the report. (p. 3) The Union's evidence shows that housing prices in Hayward increased 44% each month over the prior year in both May and June 2013. (UX 13) The Beacon report shows that the price appreciation continued into this fall, with prices rising nearly 40% in the third quarter of 2013 from the same time period in 2012. The Panel recognizes the need to be wary of any projection, but it finds no more reason to disregard the Beacon property tax predictions than to disregard the City's projections, which underestimated property tax in

Report of Factfinding Panel

FY 2013 and property transfer tax in both FY 2012 (by more than 35%) and FY 2013 (by 17%). (CX 37) Like property taxes, property transfer taxes are affected by both the number of sales and sales prices.

The Union points out the City has under-projected revenue in the past. In FY 2007, revenue was under-projected by \$4.7 million; FY 2008 by \$.5 million; FY 2009 by \$1.8 million; FY 2010 \$5.4 million; FY 2011 by \$5.1 million; FY 2012 by \$3.4 million; and FY 2013 by \$4.8 million. (See UX 8.) The City's numbers differ. Looking at its adjusted projections mid-way through each year, the City claims it received \$3.7 million more revenue than expected in FY 2010, \$2.6 million more in FY 2011 (\$2.1 of which was one-time revenue), \$2.6 million more in FY 2012, and \$2.4 million additional in FY 2013 (\$1.1 million in one-time funds). (CX 37) Discounting one-time revenue, over the last three years, the adopted budget has underprojected revenue by about 2.5 to 3% each year. This accuracy rate is acceptable, according to advice from the Government Finance Officers Association (CX 40), but does demonstrate a conservative approach.

Beacon projects sales tax revenue and business license revenue to be lower than the City's projections. Its predictions for Transient Occupancy taxes (TOT) begin \$300,000 higher than the City's in FY 2014 and climb 3.5% to 4.5% each of the following four years. City Finance Director Vesely asserted that she does not expect TOT to climb since occupancy is already high in the City, and no new beds are planned. However, TOT revenue in FY 2013 was higher than projected by \$379,000, an amount not yet reflected in the City's 10-year plan.

Beacon forecasts monumental Property Transfer tax growth in FY 2014 through FY 2016. It asserts that rising housing prices (up 40% over a year ago) and more home sales (about 500 more annually by 2017-18 due to new housing developments and fewer distressed properties) will increase property transfer taxes. While Vesely pointed out that Hayward is not a high-income city and its public schools do not attract families, Jordan Levine testified that Beacon expects that Hayward's relative affordability will draw homebuyers from other places in the Bay Area.

Report of Factfinding Panel

Even with Beacon's higher revenue forecasts, however, the City would begin deficit spending by FY 2018, before factoring back in any unrealized labor cost savings if the City does not prevail in its 5% concession demand from all units.

b. Expenditures

The City's FY 2018 deficit arises primarily from two rapidly expanding expenditures – CalPERS contributions and transfers out of the general fund to that of the retiree medical trust and workers compensation fund.

The City's 10-year plan adopted the rates that CalPERS forecast in October 2012 for FY 2015, but for FY 2016 it used higher projections because of the indications at CalPERS that the board would change some of its assumptions and because of a change in rate methodology that the board adopted in April 2013. The projections for FY 2016 were provided by a third-party actuary, John Bartel, in July 2013. (CX 26) Unfortunately, even these higher projections are likely to be optimistic. In November 2013, the City was notified that the projections for miscellaneous PERS contributions were too low by 1% for FY 2015 and by 3% and 1.5%, respectively, for police and fire employees. The City's projections for FY 2016 were on target for miscellaneous employees but too low for police and fire by 2.5% and 1.2%. (CX 67) While the additional costs from the SEIU units are small since they comprise only 60% of the miscellaneous employees (UX 15), the costs for the City will increase \$1.2 million for all its employees in FY 2015 and \$790,000 in FY 2016. (CX 67, p. 4)⁵

The City has no choice how much it contributes to PERS. While the rates in the 10-year plan beyond FY 2016 are not projections by PERS, but by a third-party actuary, it would be unwise to assume they are too high, given the most recent experience where the actuary's rate predictions were low.

⁵ Employees share in the cost of the benefits. The miscellaneous employees pay 8% of their wages, and the City will contribute 22.1% of pay toward the pensions in FY 2015. Firefighters will pay 15% of salary towards their pensions, including 6% of the employer's 37% obligation. Police are paying 8.62% of the employer's 39.8% obligation in FY 2015. (CX 26, 67)

Report of Factfinding Panel

The other spike in expenditures which the City shows in its 10-year plan is transfers out to the retiree medical benefit fund. (CX 24, p.2) Although the ARC is \$6.6 million, the City has not made any substantial contributions to the fund beyond current year benefit payments. Each year that the full ARC is not made, the unfunded liability increases. Beginning in FY2015, it plans to gradually increase payments to the fund to \$4 million (the portion due to the unfunded accrued liability) by FY 2019.

The Union points out that, while GASB rules require that the City report its liabilities, it does not require the City to prefund them. The Panel finds that prefunding the benefits is a prudent move. Nevertheless, the Panel notes that beyond the \$108 Monthly Employer Contribution required by CalPERS, the supplemental retirement benefit is negotiable. In fact, the Union proposed in these negotiations an increase to a \$500 benefit. While the actuarial report assumes a 3.5% increase in benefit annually, the City has some say in whether the increases occur. If not, the liabilities would be somewhat lower than currently projected. (CX 36, p. 33)

c. Cost of Proposals

Looking at the proposals on these three compensation items — wages, health and welfare benefits, and retiree medical payments — the Union's proposal is problematic. The three-year proposal with 4%, 0% and 3% raises and a \$1,000 ratification bonus would cost the City \$3,500,000 over 3 years, of which \$2,099,970 would come from the general fund. (UX 22) The Union's costing adds back in the expense of increased pension rates and benefit concessions not realized.

The Union's evidence does not show where the additional money would come from, particularly for FY 2014. Assuming that Beacon's revenue estimates are accurate, the extra FY 2014 revenue of \$3,163,823 is only \$584,823 more than the City's projected general fund deficit of \$2,579,000. That deficit number assumes that the City is able to wrest an additional 5% in concessions from every bargaining unit. If the City is able to achieve only half of those labor cost savings (\$557,000), there would be less than \$30,000 for additional employee compensation. As discussed below, there is deficit spending in the enterprise funds that pay some of the employee costs. The proposed

Report of Factfinding Panel

bonus and 4% wage increase alone would cost the City \$1,266,782, approximately \$760,000 of which would come from the general fund. The city would be dipping into reserves, even without addressing its unfunded liabilities for retiree medical payments and workers compensation.

In FY 2015, the Beacon revenue projection would leave the City with a general fund surplus of \$2,933,447, before adding back in the cost of unrealized employee concessions. The City knows, however, that it will be spending approximately \$1,215,000 more in pension costs than projected. If unrealized labor cost savings of \$1,114,000 are added, the general fund will have a surplus of only \$604,447. This is sufficient for a small pay raise. A 1% raise would cost the City's general fund approximately \$140,000 for this unit and about \$630,000 for all its employees (CX 24). As the firefighters unit has already agreed to concessions along with their 2% increase, there would be sufficient funds to pay a 1% raise to the remainder of the workforce.

In FY 2016, the difference between Beacon's estimate and the City's projected deficit is \$3,501,466. Additional unanticipated pension contributions of \$789,000 leave the general fund with \$2,712,466. Adding back in the unrealized labor cost savings leaves a surplus of \$1.6 million. The Union has estimated a 3% raise would cost the City approximately \$1 million for these two units alone, at least \$600,000 coming from the general fund. (UX 22) Nearly \$1 million more would be necessary to fund a 3% raise for the entire workforce, assuming a 1% raise in FY 2015.

The Union argues that despite 40% of the employees being funded out of enterprise funds, the City focused its attention only on the deficits in the general fund. There are 294.45 full time equivalents (FTE) in the Clerical and Maintenance units, of which 123.40 FTEs are funded out of the City's enterprise funds and 171.05 FTEs are funded out of the City's general fund.

The City runs its own water and wastewater systems and an airport. It also has funds for its stormwater and recycling enterprises. Its water and wastewater funds have large reserves of over 20%. The City asserts that a 50% reserve is needed in each fund due to the substantial need for capital improvement and repair of the infrastructure,

Report of Factfinding Panel

particularly in the event of an emergency like an earthquake. At the time of the biennial budget in June 2012, the water and wastewater funds were expected to run deficits through FY 2014, due to the increasing cost of water and decreased water usage. Ratepayer increases that went into effect in October 2013 are expected to eliminate the deficit spending in FY 2014 and increase reserves to approximately \$8.6 million in each fund in FY 2015. Projected reserves in FY 2017 are expected to be 22% for the water fund and 44% for wastewater funds. (CX 20, pp. 42, 44)

The Panel finds that deficit spending in the enterprise funds does not support a pay increase in FY2014, but the projection of increasing fund balances allows for small raises in future years.

In sum, the Panel finds that the City's total compensation for these two units is higher than the average of its comparators, primarily due to higher health and welfare benefit contributions. This factor warrants holding wage schedules steady during FY 2014 and reducing the City's contribution to dental and vision benefits for the clerical unit. However, inflation as measured by the CPI, together with renewed PERS contributions, is outpacing the growth of employees' paychecks, particularly for maintenance employees. Therefore, the Chair recommends a one-time \$750 payment for FY 2014. The payment is equivalent to a 1.8% raise for the lowest-paid full-time maintenance employees, which will nearly offset their loss of purchasing power. The payment will assist clerical employees with dental and vision contributions and ensure their pay keeps up with the cost of living.

A one-time payment addresses the City's interest in a structural reduction of personnel costs. Unlike a percentage increase to the wage scale, the one-time payment will not add to the City's structural deficit, but will alleviate the burden of rising costs for employees. It would be unwise to add an ongoing increase to the City's expenditures, particularly as it adds to PERS liabilities, but with the labor cost savings recommended by the Panel there would be sufficient money in the general fund to make the one-time payment. The payment would cost approximately \$211,000, only \$127,000 of which would come from the general fund. The City would achieve planned savings to the general fund from the clerical contributions to dental and vision insurance for half of FY

Report of Factfinding Panel

2014 of approximately \$33,069 (CX 58), and ongoing annual reduction of \$58,000 in the workers' compensation benefit, discussed below in section D. Moreover, the City would also achieve the structural savings from forbearance of any ongoing raise. A payment of \$750 per full-time employee out of the general fund would require only \$127,000 of the surplus of \$584,823 expected if revenue comes in as projected by Beacon, an amount that would not require dipping into reserves and would not affect expenditures for FY 2015. Even if FY 2014 property tax revenues increase only \$2 million, as the Finance director tentatively estimates, there is sufficient money to fund the payment without reserves dropping below the level set by the City's 20% policy.

As discussed above, the evidence shows a likelihood of a sufficient increase in revenue to pay a 1% increase in FY 2015. By that time, both the cost of living and pay of comparators will favor a small raise.

In addition, the evidence supports a diminution in the City's maximum contribution to medical insurance premiums beginning January 1, 2015. It is unclear how the City calculated the labor costs saved by health care contributions in the 10-year plan, but it appears that the City predicted an increase of \$200 per employee per month in 2014 (CX 57). Paying the full family premium for the fourth-highest plan would result in a savings of \$350 each month for each employee with a family who enrolls in one of the highest two plans and smaller savings for those enrolled in the third-highest plan. The savings realized from the change will be sufficient to provide funds for an additional 1% raise on January 1 for a total of 2% in FY 2015.

The comparability evidence does not support an employee contribution for retiree medical insurance. In addition, if required of the Maintenance and Clerical units, the police and fire units would be contributing a smaller proportion of the normal cost of their retiree medical benefit than these units.

Because of the wide variability in revenue projections in FY 2016 and the inherent uncertainty in projecting further into the future, the Panel cannot recommend an unconditional raise over 2%. In addition to a 2% increase, an amount sufficient when added to 2% to total the increase in the CPI-W in calendar year 2015, should be made as

Report of Factfinding Panel

a one-time payment in February 2016, provided there is an 8% increase in revenue from FY 2013 to FY 2015, and provided there are no further changes to CalPERS pension actuarial assumptions relating to the discount rate and mortality rate as discussed in City Exhibit 26.

Recommendation:

FY 2014: The Panel recommends a \$0% raise. The Chair recommends a \$750 payment on ratification, pro-rated for part-time employees, as a condition of the Panel's recommendation that Clerical unit employees shall begin making 20% contributions to dental insurance premiums and 50% contributions to vision premiums effective 1/1/2014.

FY 2015: The Panel recommends a 1% raise on July 1, 2014 and 1% raise on January 1, 2015. The Panel also recommends the City should reduce its maximum contribution to health insurance premiums to the family rate of the fourth-highest plan available through PERS, effective January 1, 2015.

FY 2016: The Panel recommends a 2% raise. In addition to a 2% increase, the Chair recommends that an amount that is sufficient when added to 2% to total the increase in the CPI-W in calendar year 2015, should be made as a one-time payment in February 2016, provided there is an 8% increase in revenue from FY 2013 to FY 2015, and provided there are no further changes to CalPERS pension actuarial assumptions relating to the discount rate and mortality rate as discussed in City Exhibit 26.

The Panel does not recommend that the clerical and maintenance units contribute to retiree health benefits.

C. FLSA –Sec. 4.03 of Maintenance MOU; Sec. 4.02 of Clerical MOU

Current Language (Clerical):

Work actually performed by full time employees in excess of eight (8) hours in a day for employees scheduled to work five eight-hour days, (or in excess often (10) hours for employees scheduled to work four ten-hour

Report of Factfinding Panel

days) shall be classed as overtime work. For the purpose of this section, time paid for but not worked shall not be counted in determining the amount of overtime, if any, worked in a single day. Work performed by an employee on a regularly scheduled day(s) off in excess of forty (40) compensated hours in that work week shall be classed as overtime work.

The City may require employees to work more than the normal eight or ten hours per day or forty hours per week and also to work outside the employees' scheduled work day or work week. Any work required of part-time employees in excess of forty (40) compensated hours in the employee's scheduled work week shall be classed as overtime work.

City Proposal as it would amend the Maintenance MOU:

~~Any work required in excess of the normal work day or work week shall be classed as overtime work.~~ Employees eligible to receive overtime compensation, as determined under the provisions of the Fair Labor Standards Act, shall receive overtime for work performed in excess of 40 hours per week. Only actual hours worked shall be counted toward the 40-hour threshold for purposes of determining if an employee is entitled to receive overtime compensation. ... [The remainder of the language in the City's proposal was not addressed in the factfinding and will not be addressed.]

Union proposal: No change.

The City currently pays more for overtime work than required by the Fair Labor Standards Act. Pursuant to California law, employees are entitled to overtime after eight (8) hours of work in a day or forty (40) hours of work in a week, but public sector employers are not subject to all California wage and hour laws. Changing to minimum FLSA overtime pay requirements eliminates daily overtime and only provides for overtime once an employee works forty (40) hours in a week. Based on a sample of 10 employees from each unit who earned overtime in 2012, the City estimates that approximately 26% of its overtime costs for clerical workers and 21% of its overtime costs for maintenance would not be required if paying only the FLSA minimum. It estimates it would save \$87,816 annually if its proposal were adopted. (CX 54) The proposal affects approximately half of the employees in the Clerical unit and about 90% of those in the Maintenance unit.

Neither party supplied comparator information relating to the practice of other public agencies.

Report of Factfinding Panel

In light of the compensation recommendations above and no information showing that the City's overtime practice is more generous than the comparators' obligations, the Panel does not support a change.

Recommendation: No change.

D. WORKERS COMPENSATION- Sec. 14.04 of both MOUs

City Proposal:

For employee injury or disability falling within the provisions of the State Workers' Compensation Disability Act, disability compensation at the rate allowed under said Act shall be the basic remuneration during the employees' period of disability. Compensation under this act will be provided through payroll or the City's third party administrator. Employees may elect to use their own personal paid leave to supplement any worker's compensation benefits received. If any paid leave is used, the employee must contact Human Resources Department and integrate the leave with the temporary disability benefits paid under this Act, so that compensation does not exceed 100% of an employee's regular pay.

The City reserves the right to withhold payment of any disability benefits until such time it is determined whether or not the illness or injury is covered by Workers' Compensation.

Union Proposal: No change.

The City currently provides a higher payment to those on workers compensation benefits than required by law. It pays 100% of the employees' salary, whereas the law requires only a 66% payment. Currently, the City will supplement the difference between an employee's salary and workers compensation for up to one year. The City's proposed language eliminates this supplement and only allows an employee to use personal paid leave to make up the difference. Based on an average of actual costs in the two units from 2010-2012, the City would save \$98,918 annually. (CX 55)

A decrease in the benefit paid to injured workers will affect not only the annual outlay for workers compensation benefits, but also the amount needed to fund the City's self-insured workers compensation system. One of the choices the City made when putting together the 10-year plan was an increased contribution to the system. The City hired the Bickmore consulting firm to report its liability as required by GASB 10.

Report of Factfinding Panel

Bickmore found that the City's liability as of June 30, 2012 was \$10,407,000, which climbed to \$10,876,000 by June 30, 2013. The City's workers compensation fund in April 2013 contained \$2,967,000. (CX 35) The current contribution of \$310,000 annually is insufficient to fund the system at even the 70% confidence level considered minimum by Bickmore. The City has decided to fund its liability at this level over the next 10 years.

The Panel also notes that a 100% payment gives an injured employee little incentive to return to work if the injury heals within the year the City provides the extra benefit.

The Union claims that this proposal was first made in the LBFO, and the parties therefore did not have the chance to vet it during the negotiations process. Normally, this fact would weigh heavily against any changes, as a party should not be able to gain through impasse something it has not even proposed during bargaining. In this case, however, the accrual of liabilities and the lack of incentive to return to work weigh strongly in favor of a change. In light of all these factors, a small change is recommended.

Recommendation: The Panel recommends that the language in the current contract be amended as follows: "additional compensation equal to the difference between 80 percent of said employees' regular pay and the disability compensation allowance shall be granted for up to one year during any three year period regardless of the number of injuries during that three year period."

E. OTHER ISSUES in the Last, Best and Final Offer and Union Proposals

Before the hearing, the Panel asked the parties to prioritize their issues so that the hearing could focus on those most important to the parties. At the beginning of the hearing, there were over 200 proposed contract changes, some of which were addressed above. The parties continued to negotiate non-economic and small economic items during the factfinding process to reduce the number of issues submitted to the Panel. No oral presentations were made concerning these issues, but the parties presented support for

Report of Factfinding Panel

their positions on these issues in their briefs to the Panel. If the party proposing a change did not address the issue in its brief, the issue will not be considered.

1. Management Rights

City Proposal:

The City's exclusive rights which are not subject to meet and confer include but are not limited to:

- 1) Determine the City's mission and that of its constituent departments.
- 2) Set standards and levels of service.
- 3) Determine the procedures and standards for hiring of employees.
- 4) Determine the procedures and standards for promotion of employees.
- 5) Direct employees and assign work on a day-to-day basis.
- 6) Establish and enforce uniform, dress and grooming standards.
- 7) Determine the methods and means to relieve employees from duty when work is not available or for other lawful reasons.
- 8) Create efficiency in City operations.
- 9) Determine the means and methods to be used to achieve standards and levels of service.
- 10) Determine the numbers, skill-types and organization of the City's workforce.
- 11) Determine job classifications and descriptions.
- 12) Determine means and methods to finance City operations.
- 13) Determine facilities, technology and equipment used by the City.
- 14) Contract for any service or work needed by the City to the extent allowed by law.
- 15) Schedule employees and work.
- 16) Establish performance standards, evaluations and improvement plans.
- 17) Discharge and discipline employees.
- 18) Take all lawful necessary actions to fulfill its mission during an emergency

Union Proposal: No change.

The City notes that both the Clerical and Maintenance MOUs include language setting forth SEIU Local 1021 rights, but they fail to address management rights. The City therefore believes it is appropriate to adopt its proposed new language. The Union contends the City's has proposed numerous provisions reducing employee security. It does not want to provide the City with enumerating rights that go beyond what is already provided in the broad language of the existing preamble, which states, "This Memorandum of Understanding is subject to all applicable federal laws, state laws and the Charter of the City of Hayward; and all ordinances, resolutions, Administrative Rules

Report of Factfinding Panel

and Personnel Rules of the City except as expressly provided to the contrary by this Memorandum of Understanding.”

While it is true that most MOUs have a management rights clause, they vary in the specific rights enumerated. Moreover, they usually make clear that the rights are limited by the terms of the MOU. Many of the rights enumerated in the City’s proposal are working conditions often negotiated with unions and are not typical. The Management Rights clause proposed by the City is not supported by specific comparability data. Therefore, although some of the enumerated rights are well recognized management rights and would be a reasonable addition to the contract, the Panel will not attempt to pick and choose among them.

Recommendation: No change.

2. Severance Pay

City Proposal:

The parties recognize that the City may sub-contract work performed by employees in the representation unit for reason of economy and/or efficiency. The City will notify the Union in writing at least ~~sixty (60)~~ thirty (30) days before subcontracting work if such subcontracting will result in the layoff or bumping of employees. In the event employees are placed on layoff as a direct result of the City's subcontracting such work, said employees shall be entitled to severance pay in accordance with the following conditions...

Union Proposal: No change.

The City proposes reduction in the notice period because it believes it can complete the meet and confer related to contracting-out in one month and does not want to incur unnecessary delays. The Union points out that, in June of 2000, the Maintenance Chapter and Clerical Chapter and the City of Hayward agreed to a side letter (see side letter 14 to the Maintenance MOU) forbidding subcontracting work within the bargaining units with narrow exceptions. The Union asserts the City’s proposal seeks to abrogate this side letter by permitting the City to subcontract work in the unit for vaguely worded “reasons of economy and efficiency.” The Panel notes that the current MOU still maintains the “economy and efficiency” language.

The City has offered no evidence to show how the 60-day notification provision has worked to its detriment.

Recommendation: No change.

3. Layoffs

Current Language:

Whenever there is a lack of work or a lack of funds requiring reduction in personnel in a department or division of the City government, the required layoffs shall be made in such job classification(s) set forth in the Classification Plan of the City of Hayward as the Department Head may designate in accordance with the following procedures. Vacant positions which are affected by proposed staff reductions will not be filled prior to the implementation of layoff activity.

City Proposal:

Whenever in the sole discretion of the City, one or more positions are to be eliminated for reasons of lack of work or a lack of funds, reorganization, or other reasons of economy, efficiency or lack of need an employee filling such a position may be laid off or demoted. The departments and classifications subject to layoff shall be determined by the City Manager or designee.

Union Proposal: No change.

The City offers no support for adding to the description of circumstances which will warrant a layoff or for deleting language ensuring that vacant positions will not be filled prior to the implementation of layoff.

The Union asserts the City is attempting to expand its management rights to eliminate jobs for reasons as vaguely worded as “reasons of economy and efficiency” without Union input, which runs in direct violation to the subcontracting side-letter.

Recommendation: No change.

4. Order of Layoffs

Current Language:

- A. Employees shall be laid off in inverse order of their length of service within the affected job classification.
 - 1. Length of service for the purpose of this Section 3.01 shall mean an employee's continuous uninterrupted service within a classification from the effective date of appointment as a probationary or part-time employee in that classification.
 - 2. An interruption in length of service within a classification shall occur as a result of anyone of the following:
 - a. Discharge for cause

Report of Factfinding Panel

- b. Voluntary resignation
- c. Retirement for service or disability
- d. Absence from work for thirty-six (36) consecutive months because of layoff
- e. Failure to return from layoff as provided in Section 3.02
- f. Failure to return from an approved leave of absence upon the date specified for return at the time said approval was granted.

Provisional and acting appointments to a classification shall not be construed as service in such classification unless such provisional or acting appointment was contiguous with appointment to such classification in a probationary or part-time status.

3. Whenever the effective date of appointment to a classification is the same for two or more employees, the original date of hire as a probationary or part-time employee with the City shall be used to determine which employee has greater length of service within the classification. The employee with the earlier original date of hire with the City shall be considered to have the greater length of service within the classification in this situation.

B. Within each affected job classification all provisional employees shall be laid off before probationary employees and all probationary employees shall be laid off before any regular employees provided, however, that part-time employees whose length of service is less than any probationary or regular employee shall be laid off before such probationary or regular employee. Thereafter, if additional reductions in personnel are required, those employees with the least length of service within the affected classification shall be laid off. Any temporary hire, assigned to a budgeted position in a class where layoffs are required, will be laid off prior to the layoff of a regular or probationary employee in that class.

City Proposal:

Employees shall be laid off in inverse order of their length of seniority. Seniority is determined based upon date of hire in the classification and higher classifications in the department affected by the layoff. A layoff out of the inverse order of seniority may be made if, in the City's judgment, retention of special job skills are required. Within each classification in the department affected by the layoff, employees will be laid off in the following order, unless special skills are required: temporary, provisional, probationary, and regular.

In cases where there are two (2) or more employees in the classification from which the layoff is to be made who have the same seniority date, such employees will be laid off on the basis of the last evaluation rating in the class, providing such rating has been on file at least sixty (60) days and no more than twelve (12) months prior to layoff as follows: first, all employees who have ratings Needs Improvement: second, all employees

Report of Factfinding Panel

who have ratings of Meets Standards, third, all employees having ratings of Exceeds Standards.

Union Proposal: No change.

The City asserts its proposal is general clean-up to reflect past practice related to order of layoff. In addition, the City is adding two elements for consideration of layoff order. First, the City adds language providing that employees with special certifications or skills may receive special consideration over more senior colleagues. Second, the City includes language providing that performance in the current classification be a consideration in addition to seniority. The City believes use of only seniority as a factor in layoff considerations is a problem because higher-quality employees could be laid-off, which is not in the public interest.

The Union understands the City's interest in avoiding laying off individuals with special jobs skills. However, it asserts the City's language goes too far by permitting the City to exempt less senior employees for layoff based on non-grievable performance ratings. Even if an employee had standing to grieve his or her own rating, he or she would not have standing to grieve a false positive review of another employee. The Union asserts the language would effectively allow the City to reclassify positions by placing all employees in the classification with the same seniority date and then hand-picking the employees for layoff.

Recommendation: The Panel recommends that the following sentence be added to section A: "A layoff out of the inverse order of seniority may be made if, in the City's judgment, retention of special job skills are required." All other language should remain unchanged.

5. Seniority

City Proposal:

In a reduction of force, the employee with the shortest length of service in the classification in the department affected by the layoff shall be the first employee laid off and in rehiring, the last employee laid off shall be the first employee rehired, provided, however, that the employee retained or rehired is capable, in the estimation of the City Manager or designee, of performing the work required.

Report of Factfinding Panel

The following will be included in computing an employee's length of service for purposes of determining seniority:

1. Time worked in a permanent or probationary status;
2. Time spent on an authorized paid leave; and

The following days will not be included in computing an employee's length of service for purposes of determining seniority:

1. Time worked in an extra-help, provisional, temporary, or seasonal status;
2. Time spent on an unpaid leave of absence;
3. Time spent on a suspension; and
4. Time spent on a layoff.

The Union states it did not oppose the City's proposed language for this section. However, the City refused to agree to this section without the Union agreeing to all the other sections of the broader layoff section.

Recommendation: The Panel recommends the Parties agree to the proposed language.

6. Notice of Layoff

City Proposal:

Fourteen (14) calendar days prior to the effective date of the layoff of an employee, the City Manager or designee shall notify the employee of the layoff. Notice can be 'provided either by certified or registered mail, return receipt requested, or by personal service. If the notice is provided by mail, the fourteen (14) day notice period runs from the date of post-mark, not when the employee signs the return receipt. A copy of any layoff notice shall be placed in the employee's personnel file.

Prior to employees receiving notice under this Section 3.04, the Human Resources Department shall furnish to affected employees and the Union, upon request, the status registers for all affected classifications within the representation unit. Said lists shall include the names of all present employees who have held these classifications and their appointment dates thereto.

The Union does not oppose this section of the proposed language.

Recommendation: The Panel recommends the Parties agree to the proposed language on Notice of Layoff.

7. Employee Options

City Proposal:

A regular employee who has been notified that he/she will be laid off from his or her current position shall have the following options:

1. Displacing a City employee with less service in a parallel or lower classification in the department affected by the layoff in which the employee held prior permanent or probationary status (“bumping”) For purposes of this section, “parallel” shall mean a classification in which the current wage range is equal to or no more than two and a half percent (2.5%) higher than the wage range of the classification from which the employee is laid off. If an employee has not held status in a parallel or lower classification in the department, then no displacement rights accrue to that individual. All employees must exercise displacement rights within five (5) working days after notice of the layoff is provided by written notice to the Human Resources Director. If this choice is not exercised within the specified time, it is automatically forfeited. The employee exercising the displacement privilege will displace employees in lower classifications in the inverse order of seniority. Employees who displace other employees will be paid at the rate for the lower classification.

2. If an employee has not held status in a lower classification in the department or if such lower classification is occupied by a more senior employee the employee shall be entitled to fill a vacant position in the classification held at the time of layoff in another City department. If there is no vacancy in the classification in another City department then the employee may be eligible to fill a vacant position in another City classification provided he or she possesses the necessary skills and fitness for that position as determined by the City Manager or designee. An employee who is transferred to a vacant position will be paid at the rate of pay for that position. Any employee who does not accept a transfer within five (5) working days after a Notice of Transfer is given will have automatically forfeited the ability to transfer.

3. Accepting layoff.

The Union states it substantially agreed to the City’s language, provided the City agrees to provide employees 10 working days to exercise displacement rights, instead of 5 working days. The existing MOU provides for 5 working days.

Recommendation: The Panel recommends the Parties agree to the City's proposed language regarding Employee Options.

8. Right of Return following Layoff (M only)

Current Language:

As position vacancies occur, employees on layoff and those occupying positions to which they have bumped shall be afforded return rights in the order of their length of service in the classification(s) in which such vacancies occur.

A. An employee shall have ten (10) calendar days from the mailing by certified mail of a notice of return to the address of record on file in the Human Resources Department to indicate acceptance of such return and his/her agreement to report for work as specified in the notice.

B. Employees in layoff status shall retain all credited sick leave earned but unused at the time of layoff. An employee on layoff shall not earn vacation leave credit while in layoff status. Upon an employee's return from layoff he/she shall be credited with proportionate vacation leave for the balance of the calendar year. The amount of such credit shall be based upon the continuous uninterrupted service with the City including time spent in layoff status. Use of vacation leave so credited shall be subject to the provisions of Section 12.02 of this Memorandum of Understanding.

C. Employees who are displaced from their classification by virtue of layoff shall be placed on a reemployment register for the classification they held at the time the layoff occurred, hereinafter referred to as the "primary" register. They shall also be placed on reemployment registers for classifications previously served in, hereinafter referred to as "secondary" registers. If an employee fails to respond to such notice of return within the prescribed time period or declines to return from layoff to a secondary register classification his or her name shall be removed from said secondary register and employee shall no longer be eligible for recall to that classification. If an employee fails to respond to notice of return within the prescribed time period or declines return to the primary register classification employee will be considered to have voluntarily resigned employment with the City.

D. Primary and secondary reemployment registers shall be valid for a period of two years.

[The Clerical MOU's section D is entirely different and is followed by two more sections, E and F.]

Report of Factfinding Panel

City Proposal:

Employees who are displaced from their classification by virtue of layoff shall be placed on a reemployment list as specified:

1. The reemployment eligible list for the position in the department from which the employee was laid off (“primary register”).
2. The reemployment eligible list for any parallel or lower classification in the department from which the employee was laid off (“secondary register”). Each re-employment eligible list shall consist of the names of employees and former employees having probationary or permanent status in the position for which the list was created and who were laid off. The rank order on such list shall be determined by relative seniority calculated pursuant to Section 3.03. Such list shall take precedent over all other eligible lists in making appointment to the position for which the list applies.

As position vacancies occur, employees on layoff and those occupying positions to which they have bumped shall be afforded return rights based on the order in which their names appear on the reemployment eligible list for the position. An employee's name shall remain on the list for a period of one (1) year, unless such person is sooner re-employed or removed from the list as provided in this section.

Union Proposal: No change.

The City gave no rationale for changes to this section.

The Union objects that this language effectively incorporates the City’s new seniority language (City’s proposal paragraph listed as number 2) whereby it limits seniority to the classification. Because the City’s new seniority language effectively eliminates meaningful seniority protections, it cannot agree to this section. The Panel notes the Union did not object to the Seniority section of the City’s proposal, but assumes the Union’s objection is based on the seniority tie-breaking proposal.

Recommendation: No change.

9. Meal and Rest Periods (M only)**City Proposal:**

Full-time employees shall be assigned to receive a one-half (1/2) hour unpaid meal period each day within a two (2) hour period at the midpoint

Report of Factfinding Panel

of each shift and a 15 minute paid rest period during the first half of the work shift and another 15 minute paid rest period during the second half of the work shift. In the event an employee does not receive a meal period or rest period he or she shall be compensated at the overtime rate for said meal or rest period or shall be permitted equivalent time off the same day. The City shall make reasonable effort to insure that employees' meal periods are uninterrupted.

Union Proposal: No change.

The City's proposal limits the application of the section to full-time employees. The City contends the parties have no history of providing these benefits to part time employees, and that the Union refuses to agree to the proposed language because it seeks to add meal and rest period language for part-time employees. The Union contends the City's language does not take into account that there are part time employees who work eight hour shifts who would be stripped of meal and rest break protections.

Neither party provided evidence of its position as to past practice, and there was no evidence of the conditions in comparator cities.

Recommendation: No change.

10. Attendance at Evening Meetings (C only)

City's Proposal:

An employee, who, in the performance of his or her duties, is required to be in attendance at an evening meeting shall be ~~guaranteed a minimum of three (3.0) hours compensation~~ compensated at the applicable straight time or overtime rate for such assignment.

Union Proposal: No change.

The City's proposed language eliminates the minimum amount of compensation (at least three hours of work) for employees who are required to attend evening meetings. This proposal is part of the City's overall goal to move to minimum FLSA compliance. Instead of paying employees fixed minimums, the City seeks to pay for actual time worked.

The Union contends the existing provision permits adequate compensation for major disruptions to limited sleep time for the jail workers, who work in a 24 hour

Report of Factfinding Panel

operation. The meetings are regular and occur at the most inconvenient times for employees on swing or night shifts.

The City's survey of comparators shows that none provide a minimum guarantee for meetings outside of shift hours. (CX 44, p. 3)

Recommendation: The Panel recommends the Parties agree to the City's proposal.

11. Overtime Regulations (M only)

City proposal: Delete the following language from the MOUs:

~~"The present ordinances, resolutions, Administrative Rules and Personnel Rules pertaining to overtime compensation and compensatory time off shall be continued without change during the fiscal year except as provided in this Memorandum of Understanding."~~

Union Proposal: No change.

The City proposes to delete the provision because it prevents the City from amending a variety of City employer-employee documents irrespective of any impact on the MOU and/or whether the employees are even subject to the labor agreement. The City contends the language effectively handcuffs the City on all overtime issues regulated by policies other than the MOU and is therefore inappropriate.

The Union points out the elimination of this section paves the way to eliminating daily overtime and moving to the federal weekly overtime standard, which is less protective than law applicable to California private sector employees.

Recommendation: No change.

12. Night Shift Differential (M only)

Union proposal:

Employees assigned to scheduled shifts in which the employee works five (5) or more hours between the hours of 3:00 P.M. and 11:00 P.M. shall be paid an additional five percent (5%) per hour for all hours worked on such shift. Employees assigned to scheduled shifts in which the employee works five (5) or more hours between 11:00 P.M. and 7:00 A.M. shall receive an additional eight percent (8%) per hour for all hours worked on such shift. The City will make every effort to provide employees at least twenty-four (24) hours advance notice of a change in shift assignment.

Report of Factfinding Panel

City Proposal: No change.

The Union proposes to increase the night shift differential from the fixed dollar amounts included in the current MOU (\$1.15 per hour and \$1.40 per hour) to 5% for employees working between 3 p.m. and 11 p.m. and 8% for employees working between 11 p.m. and 7 a.m. In light of the City's request for structural concessions and its desire to focus all compensation enhancements on base wages starting in FY 2016, the City declined this proposal.

The Union proposed moving from a flat amount to a percentage of the employee's wage so that higher paid and generally more senior employees receive a larger differential.

The City's survey shows that agencies have a variety of practices for night shift differential pay. Three comparators have no night shift. Two pay a higher fixed differential than the City. One pays a monthly differential. Four pay it as a percentage of salary after a minimum number of hours worked; the percentages are at least 5%. Most differentiate between evening and graveyard shift hours. (CX 43, p. 2)

The Panel finds that the City's night shift differentials are lower than the average paid by the comparators. In light of the City's financial situation, however, the Panel recommends only a small increase in the fixed rate begin in FY 2015.

Recommendation: The Panel recommends the night shift differential for the evening shift be raised to \$1.30 for employees who work after 4:00 p.m. and the differential for the graveyard shift be increased to \$1.60 for those who work between 11 p.m. and 7 a.m.

13. Certification Fees (M only)**City Proposal:**

When the City or State requires that employees possess a certificate as prerequisite to the performance of their job duties, the City shall reimburse said employee for any fee involved in the issuance or renewal of said certificate. Employees shall suffer no loss in pay for time spent taking qualifying examinations during regularly scheduled work hours for said certificates. However, the City will not pay overtime for time spent taking

Report of Factfinding Panel

qualifying examinations outside of regularly scheduled work hours. Fees for Drivers licenses and time spent acquiring them are not covered by this provision.

Union Proposal: No change.

The City argues it should not have to pay employees who take these tests during non-working hours. They would do so on their own time, just as they would when taking a driving test, purchasing work clothes or doing other tasks necessary to make themselves ready to work.

The Union contends work certifications are a requirement of the job and the certification processes often occur on the weekend, when employees are not generally scheduled to work. The Union also contends that not paying employees to attend required certification processes is unlawful under both the California Labor Code and the Fair Labor Standards Act.

Recommendation: No change.

14. Police Department Training Pay (C only)

Union Proposal:

Police Department employees assigned to train new Police Department employees as required by the Commission of Police Officer Standards and Training (POST) and/or Standards and Training for Corrections (STC) shall receive 5% differential pay to no more than four (4) assigned JTO's (Jail Training Officers) and 5% differential pay to no more than four (4) assigned CTO's (Communications Training Officers) on an on-going basis on the condition that employees receiving the differential pay have obtained training certificates and will provide training as needed for the duration of the assignment. 2.5% training pay, under the terms of the current agreement, will be paid to any additional employees for assigned training responsibilities for the duration of the assignment, including, but not limited to records clerks, animal care attendants, crime scene technicians, property and evidence technicians, and secretaries. Selection of employees for a training assignment and removal of employees from training assignment shall be at the sole discretion of the Chief of Police. Any other employee whose job description includes training provisions shall receive 2.5% training pay.

City Proposal: No change.

Report of Factfinding Panel

The Union proposes delineating the training duties that should receive a training pay differential. The Union also wants to expand this pay unit-wide to any employee doing any training in any City department.

The City contends the Union's proposed expansion would require the City to pay a training differential for literally any kind of training of another employee of any kind, including showing a new employee how to log onto a City computer. The City does not believe that any changes to this section are warranted and is not aware of any labor market justification for doing so. Furthermore, the City has been seeking modest concessions from the employees and offering across-the-board wage increases in exchange. The City therefore is not interested in making numerous additional compensation enhancements to various classifications.

Recommendation: No change.

15. Sewer Maintenance Differential (M only)

Current Language:

An employee in the classification of Utility Worker, Laborer or Utility Leader who is assigned to operate either the Hydro cleaner, the large sewer rodding machine, the bucket machine, or TV van shall receive a salary differential of five percent (5%) above the salary step currently held for all hours during which the employee actually operates the aforesaid equipment. This salary differential shall not apply during period of paid leave nor during the use of accrued compensatory time.

City Proposal:

3.174% shall be rolled into the base salary of eligible employees.

Union Proposal: No change.

The City seeks to roll this differential pay into eligible employee's base salary. The amount is calculated at 3.174% of salary instead of the 5% in the current MOU because the current provision allows for the receipt of this pay only during the hours in which employees operate certain equipment, not for all hours worked. On average, employees receive 3.174% differential pay for the tasks outlined in this section. The City believes this change is cost-neutral to the employee and will be easier to administer. The Union expressed no reason for its desire to maintain the current language.

Report of Factfinding Panel

The Panel, however, is concerned that a change could be inequitable if some employees seldom earn this differential while others perform this work frequently. Without information that the eligible employees generally perform about the same amount of sewer maintenance work, the Panel cannot recommend rolling the differential into base pay.

Recommendation: No change.

16. Standby Provisions (M only)

Union Proposal :

a. Standby Pay

Employees who are required to be available on a standby basis for possible service calls during their off shift hours shall receive a standby allowance as follows:

1. Employees on standby on weekdays (i.e., a sixteen (16) consecutive hour period commencing with the end of the regular scheduled work shift Monday through Friday) shall receive a standby allowance of ~~one (1)~~two (2) hour's pay at the employee's regular hourly rate for each weekday night of standby required.

2. Employees on standby on regularly scheduled days off and on holidays (i.e. a twenty-four (24) consecutive hour period commencing at 8:00 A.M.) shall receive a standby allowance of the ~~two (2)~~four (4) hours pay at the employee's regular hourly rate for each of the aforementioned days of standby required.

An employee on standby who is called out on a service call shall receive, in addition to the standby allowance provided above, compensation at the overtime rate for work actually performed during such standby. In the event an employee on standby is called out on a service call(s), the employee shall be guaranteed a minimum of two (2) hours work or two (2) hours pay at the overtime rate for the entire standby period as defined above.

City Proposal:

c) Standby ~~Beepers~~ Communication

The City will provide cell phones or other communication devices ~~electronic beepers~~ to employees assigned to standby pursuant to this Memorandum of Understanding.

Employees are not eligible for standby pay if they are unable to work due to illness on the day standby pay would have otherwise occurred.

Report of Factfinding Panel

The City proposes to change the language to: (1) replace outdated reference to pagers with an up-to-date cell phone reference and (2) ensure that employees do not receive standby pay when they are out on sick leave, workers compensation leave or any other status in which they were medically unable to work.

The City has objected to any increase in standby pay on two grounds. First, the Union has been unwilling to bargain an increase in this compensation in conjunction with City requested concessions. Second, the City believes that to the extent it can increase compensation both parties are best served by making adjustments to base wage.

The City's survey of comparators shows that there is some variation in the method of compensating standby assignments. Two contracts have no provision for standby assignments. Vallejo's provisions are worded differently, but would seem to pay practically the same as the City. In Alameda, standby on weeknights earns 1.5 hours pay and on scheduled days off earns 3 hours pay. San Leandro pays similarly to the City, except that standby on a holiday earns 3 hours pay. Two other cities schedule standby in 1-week assignments. Assuming standby on five weeknights and two scheduled days off, they each pay at least 10 hours overtime for the assignment. The City's pay would be 9 hours of overtime. Two other cities pay flat rates either by the week (\$350/wk) or by the time of standby assignments (\$50 for weeknights, \$73 for weekends and holidays). The City assumed a \$35 per hour average rate of pay, and asserted that seven other cities would compensate a weeklong standby assignment more highly. (CX 43, p.4)

The Panel finds an insufficient difference in pay to justify an increase at this time.

Recommendation: The Panel recommends updating the MOU's reference to communication devices.

17. Pesticide Differential (M only)

Union Proposal: Add employees who operate a mobile sprayer as eligible to receive the differential described in the current contract language:

An employee who is assigned to operate and/or drive a motorized sprayer of fifty (50) gallons capacity or larger shall receive a salary differential of five percent (5%) above the salary step currently held for all hours during which the employee actually operates the aforesaid equipment. Only those

Report of Factfinding Panel

employees who possess a valid Agricultural Pest Control Applicator's License, and who possess the requisite knowledge and experience to safely and effectively operate the equipment shall be eligible to receive this salary differential. This salary differential shall not apply during periods of paid leave nor during the use of accrued compensatory time.

City Proposal: No change.

Currently, the City pays employees a 5% differential for all hours in which an employee operates a motorized pesticide sprayer of fifty (50) gallons or more only to those employees who possess a valid Agricultural Pest Control Applicator's License. However, many City employees disseminate pesticides via a mobile sprayer, rather than a motorized sprayer of fifty (50) gallons or more. The purpose of this pesticide differential pay is to compensate employees for the increased health and safety risks associated with pesticides. The Union contends that employees who are using a mobile sprayer assumes an equal if not greater risk to their health and safety as an employee operating a motorized pesticide sprayer.

The City's survey shows that only Vallejo pays a pesticide license differential. (CX 43, p. 9)

Recommendation: No change.

18. Water Treatment Certification Differential (M only)

City Proposal:

The City's last, best, and final offer eliminated water treatment certification differential.

Union Proposal: No change.

The City proposes deleting this provision because the city no longer operates a water treatment facility. The Union states the City still requires some employees to hold a Water Treatment certifications and objects to the attempt to eliminate this differential.

The Chair is perplexed why the City would require a certificate for performance of duties it no longer needs its employees to perform. As the Chair suspects there is some missing evidence, the Chair will not recommend any change to the section.

Recommendation: No change.

19. Heavy Equipment Repair Differential (M only)**City Proposal:**

0.915% shall be rolled into the base salary of eEmployees in the classification of Equipment Mechanic I and Equipment Mechanic II, ~~shall receive premium pay of five percent (5%) for hours worked performing maintenance and repair of City-owned vehicles that are 26,000 lbs. or more GVWR (gross vehicle weight); street sweepers; heavy construction equipment, and fire service apparatus.”~~

Union Proposal: No change.

The City explains the amount is calculated at 0.915% of salary instead of the 5% mentioned in the current MOU language because the current provision allows for the receipt of this pay only during the hours in which employees operate certain equipment, not for all hours worked. On average, employees receive .915% differential pay for the operation of heavy equipment. The City believes this change is cost-neutral and will be easier to administer. The Union expressed no reason to decline the proposal.

Again, the Panel is concerned that a change could be inequitable if some employees seldom earn this differential while others perform this work frequently. Without information that the eligible employees generally perform about the same amount of sewer maintenance work, the Panel does not recommend rolling the differential into base pay.

Recommendation: No change.**20. Distribution Certification Differential (M only)****City Proposal:**

Employees who attain a State approved D-4 Certification shall be entitled to receive a five percent (5%) differential. The position descriptions for each affected classification shall be amended to reflect the State minimum certification requirements.

Union Proposal:

The following classifications shall receive five percent (5%) Differential for maintaining a State approved D-3 level of certification:

- Senior Utility Leader Field Services

Report of Factfinding Panel

- Senior Utility Leader Customer Services

Other Employees who attain a State approved D-3 Certification shall also be entitled to receive a five percent (5%) differential. The position descriptions for each affected classification shall be amended to reflect the State minimum certification requirements. This five percent (5%) differential shall be rolled into the employee's base salary.

Currently, employees who hold a D-3 level certification receive a 5% differential. The Union proposes keeping the current contract language and rolling this differential into the employee's base salary for ease of implementation.

The City proposes increasing the requirements for obtaining this differential because D-4 is the new standard and therefore the level that should receive incentive pay. Under the City's proposed language, employees who hold a D-3 certification would no longer receive the differential pay. The City explains elimination of job classification labels opens the certification pay up to additional classes, if and when justified.

Most City comparators do not provide water service. Of those that do, only one offers a differential of 1 percent. (CX 43)

Recommendation: If it is true that the D-4 level certification is needed for work performed by the City, the language should be changed to reflect the change in the law. The Panel does not recommend a change rolling the differential into base pay.

21. Bilingual Pay

City Proposal:

Department heads shall identify those Employees who are required in the performance of their duties to converse with the public in a language other than English, and Employees so designated, who have demonstrated their competency in a second language through a fluency test administered by the Human Resources Department, shall receive bilingual pay in the amount of ~~Thirty thirty Dollars~~ dollars (\$30) per pay period. Within thirty (30) days of MOU ratification all incumbents who receive bilingual pay shall re-certify through the Human Resources Department. until such time as the designation is revoked.

No more than once every twenty-four months, the Department Director or designee may require an employee receiving bilingual pay to demonstrate continued competency in a second language as a condition of continuing to

receive pay under this section. Employees who do not demonstrate continued competency will cease receiving bilingual pay until such time competency is again demonstrated.

Union Proposal: No change.

The City seeks to ensure that bilingual employees actually have usable bilingual skills. The Union agrees in principle. The Union, however, wanted the City to guarantee that any employee who failed the bilingual test would be replaced by another bilingual employee. The Union did not want the City's overall investment in bilingual compensation reduced. The City cannot guarantee that there will always be another newly-certified bilingual employee and therefore declined the Union's demand. The Union believes that the City's outright rejection of this concept reveals an intention to eliminate the cost of paying employees bilingual pay.

The Panel agrees that the City should not pay for competencies an employee does not possess. If there is a documented reason to question competency, the City should have the contractual leeway to test an employee's bilingual competence.

Recommendation: The Panel recommends that the Parties agree that the language in the second paragraph of the City's proposal should be added to this section together with language that permits the City to test when there is a documented reason to question bilingual competency.

22. Thermoplastic Hazard Differential, Homeless Encampment Cleanup Differential, Arborist Differential

Union Proposal: The Union proposes a salary differential of five percent (5%) above the salary step currently held for all hours during which the employee actually performs the work.

City Position: No change.

The Union states that numerous City employees work with thermoplastic when maintaining City streets. Thermoplastic is a hot-applied road marking compound for the creation of highly reflective striping on roads. Thermoplastic contains lead chromate which is known to cause cancer, cause damage to unborn children, and cause harm to aquatic life. Furthermore, thermoplastic must be heated to high temperatures for proper application, potentially exposing employees to severe burns. The Union contends

Report of Factfinding Panel

employees should be compensated for the health and safety risks they encounter when exposed to thermoplastic.

The City regularly sends maintenance workers to clean up homeless encampments wherein they come into contact with drug paraphernalia, including needles. The Union contends employees should be compensated for the increased health and safety risks employees encounter when cleaning homeless encampments.

The City currently requires some employees to obtain an arborist license, yet does not provide differential pay for obtaining arborist licenses. The Union contends that any license the City requires an employee to obtain, including the arborist license, should be compensated with differential pay. The City currently provides differential pay for other licenses it requires, but does not provide differential pay for obtaining an arborist license.

The City's comparability data show that no comparator pays any of these three differentials. (CX 46)

Recommendation: No change.

23. Longevity Pay

Union Proposal:

Employees who complete 25 years of satisfactory service with the City of Hayward and who are 55 years old or older, shall receive a one-time 2.5% increase to base salary. The increase shall be effective the first pay period following the 25th employment anniversary for employees 55 years old or older, or on the first pay period following the 55th birthday for employees who have completed at least 25 years of satisfactory service to the District by that date.

City Proposal: No change.

The Union contends the City should adopt some mechanism to recognize long-term service within the City. According to the City's salary survey, only Berkeley and Fremont provide some sort of longevity pay for their employees.

Recommendation: No change.

24. Federal or State Health Plan

Each party asserted the other was proposing a change to this language, but neither advocated for a change.

Recommendation: No change.

25. Alternate Benefit

The City has proposed a comprehensive revision of the existing section in Article 7. The City claims it is not seeking to increase or reduce the alternative medical benefit. However, the City is seeking to prohibit employees from receiving an alternative benefit while the City is also contributing to the employee's medical premiums as a dependent of another City of Hayward employee.

The Union asserts the City's proposal eliminates current coverage for permanent, part-time employees. The language of the City's proposal does not mention part-time employees, unlike the existing contract language.

The comprehensive revision also eliminates language describing the alternatives to which the City contribution may be applied, such as deferred compensation. As the rewritten provision raises several issues not addressed by both parties, the Panel declines to recommend adoption of the City proposal.

Recommendation: No change.

26. Change in Pay Upon Reclassification

City Proposal:

When a position is reclassified to a classification with a higher pay range, and the incumbent employee retains the position, ~~the~~ at employee shall normally be placed at ~~receive~~ the first step in the new salary range. However, if such step is equal to or less than their present salary, they may receive the next step in the salary range of the new position which is close to five percent (5%) above their present salary, but not less than four and a half percent (4.5%). ~~or be placed on a step that represents a salary increase of a minimum of five percent (5%) added to base salary whichever is greater. However in no case shall the increase be greater than the fifth step of the range of the new classification to which the employee is reclassified.~~ When recommended by the department head

Report of Factfinding Panel

Department Director or designee and approved by the City Manager or designee, additional advancement may be granted. If no change in salary is granted, the employee may be allowed to carry forward time-in-step accumulation.

In the event the City reclassifies a position from a lower level classification to a higher level classification, the City Manager may in ~~his/her~~ his or her sole discretion appoint the incumbent occupying such reclassified position without competitive examination providing said incumbent meets the minimum qualifications (employment standards) for the higher classification. The Union shall be notified of appointments made pursuant to this provision.

When a position is reallocated to a classification with a lower salary range, the incumbent employee shall not be reduced in pay while he or she continues to occupy the position. If the current rate is below the maximum step of the new range the employee shall continue at the present salary and carry forward time-in-step accumulation. If the current rate exceeds the maximum step of the new range, the salary shall be frozen at its current level. When the incumbent leaves the position, a replacement shall normally be hired at the beginning rate.

Union Proposal: No Change.

The City wants to set the pay range for moving to a new classification between 4.5% and 5% of the prior salary. It cites situations where the most logical salary step is 4.8% or so above the person's prior wage; but because it is less than 5%, the person gets moved up to the next step and suddenly receives a nearly 10% raise. The City asserts this is excessive and therefore justifies the change.

The Union offered no argument in opposition to this change.

Recommendation: No change.

27. Working out of Class (C only)

Current Language:

Employees may be assigned to perform the duties of a higher paid classification when the incumbent is not available for the work shift. An Out of Class assignment shall only be made by the supervisor or department head or his/her designee at the beginning of the work shift.

An employee assigned Out of Class work shall receive 5% differential pay for all hours worked in the higher classification.

Report of Factfinding Panel

City Proposal:

The City's last, best, and final, offer eliminates this section.

Union Proposal: No change.

The City seeks to strike this provision from the Clerical unit MOU because it believes that clerical employees do not generally work in jobs that require hour-by-hour out-of-class functions. For example, a basic secretary might perform administrative secretarial duties for a few hours. The City regards this type of work as "other duties as assigned" and not such a burden on the employee that it justifies tracking and paying out-of-class compensation. Furthermore, the City asserts out-of-class work performed in this unit rarely requires special skills. In contrast, the Maintenance unit has employees who work in a higher level classification with meaningful differences in training, certification and/or skill which justifies this type of pay.

The Union asserts that during negotiations, the City did not propose the elimination of this section, and therefore, the City's last, best and final is a regression from its position at the table.

Recommendation: No change.**28. Retirement Program****City Proposal:**

The City will continue to contract with the Public Employees' Retirement System (PERS) to provide a retirement program for employees.

Bargaining unit members deemed classic employees shall have the following retirement benefit package:

1. 2.5% at age 55 benefit formula
2. Fourth Level of 1959 Survivor's Benefits
3. Post-Retirement Survivor Allowance
4. One (1) Year Final Compensation,
5. Military Service Credit as Public Service
6. Continuation of Pre-Retirement Death Benefit after Remarriage of Survivor

Report of Factfinding Panel

These benefit plans require an employee contribution of eight percent (8%). Employees shall pay the full employee contribution of eight percent (8%), which shall be paid by the employee on a pre-tax basis in accordance with IRS Section 414(h)(2) method of reporting retirement payments.

New members as defined by the PEPPA pension reform statute shall have a retirement formula dictated by law and shall be required to pay at least 50% of the normal cost of their pension as identified, and periodically revised, by CalPERS or eight percent (8%) whichever is greater up to the lawful maximum.

~~Benefits shall include 2.5% @ 55 Full Retirement Formula, Fourth Level Survivor's Benefits Program, Repurchase of Military Service Credit, and Continuation of Death Benefit after Remarriage of Survivor.~~

~~In addition, the City will continue the IRS Section 414h2 method of reporting retirement payments wherein the amount of income reported to the IRS for the employee is reduced by the amount of the employee contribution to the retirement plan. The 414h2 option will apply only to the additional 1% employee PERS contribution.~~

~~The City will continue to pay the 7% employee PERS contribution, and continue to report such to PERS as "special compensation".~~

Union Proposal: No change.

The City's proposed language rearranges the text to make it more user friendly and increase reading comprehension. It also adds new language to comply with the California Public Employees' Pension Reform Act ("PEPPA") reflecting the requirement for "new" employees to public service after January 1, 2013 to pay 50% of the normal cost of their pensions.

The Union contends the provision the City proposed in its last, best, and final offer is a brand new provision unexamined through the negotiation process. This is not entirely true, however, as the Union agreed in April 2012 to sideletters in each MOU that made some of these changes. (CX 7, 8)

Recommendation: The MOUs should be amended to replace the language in Section 10.1 with the language in sideletters No. 7 to each MOU. In addition, the section should be amended with the following language: "New members as defined by the PEPPA pension reform statute shall have a retirement formula dictated by law."

Report of Factfinding Panel

29. Holidays Observed by the City, New Year's Eve

City Proposal: The City proposes importing existing language from Section 11.05 into Section 11.01 for ease of reference, as follows:

The following days shall be holidays for all full-time employees other than temporary and provisional employees.

<u>New Year's Day</u>	<u>January 1</u>
<u>Martin Luther King Day</u>	<u>3rd Monday in January</u>
<u>Lincoln's Birthday</u>	<u>February 12</u>
<u>Presidents' Day</u>	<u>3rd Monday in February</u>
<u>Memorial Day</u>	<u>Last Monday in May</u>
<u>Independence Day</u>	<u>July 4</u>
<u>Labor Day</u>	<u>1st Monday in September</u>
<u>Admissions Day</u>	<u>September 9</u>
<u>Columbus Day</u>	<u>2nd Monday in October</u>
<u>Veterans Day</u>	<u>November 11</u>
<u>Thanksgiving Day</u>	<u>4th Thursday in November</u>
<u>Friday after Thanksgiving Day</u>	<u>Friday following 4th Thursday in November</u>
<u>Christmas Eve</u>	<u>December 24</u>
<u>Christmas Day</u>	<u>December 25</u>

Employees shall be allowed the last half, up to four (4) hours, off on the work day immediately preceding the day on which New Year's Day is observed. An employee unable to be released for this time shall receive four (4) hours of compensatory time or vacation leave.

If any of the above said holidays fall on a Sunday, the following Monday shall be observed as a holiday provided, however However, ~~that~~ Christmas and New Year's Day shall be observed on the day the holiday actually falls for employees who work a 7-day operation. If Christmas Eve falls on a Sunday, the holiday shall be observed on the previous Friday.

If a holiday falls on a Saturday, the previous Friday shall be observed as a holiday. If a holiday falls on an employee's regular day off, or if an employee is scheduled or assigned to work on a holiday, an employee shall be entitled to credited with equivalent time off at a later date, and such time shall be credited to the employee's either compensatory time or vacation leave bank at straight time rate. Scheduling or assignment of holiday work must be approved in advance by the City Manager or designee.

Union Proposal: The Union proposed converting New Year's Eve from a half day to a full day off. Thus, New Year's Eve should also be included on the list of

Report of Factfinding Panel

holidays observed by the City.

The City surveyed comparable agencies and found that most do not provide a full day holiday on New Year's Eve. Seven cities offer no New Years' Eve or a choice between Christmas Eve and New Year's Eve. Furthermore, the City already provides 14.5 holidays, one full day of additional paid holiday over the average of the comparable agencies. Only Berkeley and Richmond offer more holidays. (CX 43, p. 12, CX 44, p. 3).

Recommendation: The Panel recommends consolidation of sections 11.01 and 11.05 as proposed by the City, except for the changes to the final paragraph. The Panel does not recommend increasing the New Year's Eve holiday.

30. Holidays for Part-Time Employees

The Union asserts that on December 6, 2013, the parties reached a tentative agreement on the City's proposed language for the Clerical unit, but did not have sufficient time to adequately discuss the language's application to the Maintenance unit. The City did not include this section in its brief on the issues. Therefore, the Panel makes no recommendation.

31. Qualifying for Holiday Pay

City Proposal:

All employees who qualify for pay on holidays observed by the City shall receive holiday pay provided that an employee who fails to report for a scheduled work shift on any of such holidays shall receive no pay; and provided also that in order to qualify for such paid holidays the employee must report for work on both his~~/~~ or her last regular work day immediately preceding the holiday and on his~~/~~ or her first regular work day following a holiday, and unless the employee so reports he~~/~~ or she shall receive no pay for such holiday. As an exception to the foregoing an employee who does not report for work as herein provided shall receive holiday pay if the reason for such absence is a bona fide illness supported by a statement from the attending physician or for another legitimate reason. Department Head Directors or their designated representatives may waive the requirement for a physician's statement in support of an absence because of illness. ~~Employees otherwise entitled to holiday pay but who are absent due to lay-off for a period not to exceed fifteen (15) days immediately preceding the holiday shall nevertheless receive holiday pay.~~

Union Proposal: No change.

Report of Factfinding Panel

The City's proposes deleting language providing holiday pay during a period of layoff. Since the goal of layoff is to save money, the City asserts it makes no sense to pay holiday pay to a laid-off employee.

The Union seeks to protect employees in a situation where there is a temporary layoff (a.k.a. shut downs) over the holidays as a cost saving measure.

Recommendation: No change.

32. Compensation for Holidays Worked

City Proposal:

Prior approval for holiday work must be secured from the City Manager or designee except in emergency situations where said approval cannot be obtained beforehand.

An employee who is required to work on a holiday shall receive, in addition to pay for the holiday, pay at the employee's regular hourly rate for all such hours worked.

~~Any work performed on the above holidays shall be paid for at the rate of time and one half the straight time rate or time off with pay at time and one half (1.5) the straight time rate; provided that employees who are entitled to pay or an equivalent credit to vacation leave as provided in Section 11.01 above for any such holidays if not worked shall receive such holiday pay or equivalent time off in addition to the time and one half (1.5) they are paid for working. There shall be no pyramiding of overtime.~~

Union Proposal: No change.

The City explains that the bottom-line effect of the proposed revision is to pay employees at the rate of double their base wage rate if employees work on holidays instead of paying double time plus one-half. The City believes that double time is sufficient compensation for work on these days. The City offered no comparability evidence to support its proposal.

Recommendation: No change.

33. Holiday Pay for 24-Hour Employees

Union Proposal:

When holidays fall on Saturday or Sunday, seven day, twenty-four hour employees who work on the actual holiday shall be paid compensatory time or

Report of Factfinding Panel

~~overtime for all hours worked~~ for the day worked NOT the day observed by the City.

City Proposal: No change.

The Union seeks to ensure that employees are paid for each hour worked on a holiday rather than capping the holiday at an eight hour day. The City contends the proposed language would be confusing. There is no evidence that the current language has caused any confusion.

Recommendation: No change.

34. Vacation Leave Policy

City Proposal:

Vacation leave is a benefit and right; ~~however~~, the use of same shall be approved by the ~~department head~~ Department Director or ~~his/her~~ designee, taking into account the desires and seniority of employees and, more particularly, the workload requirements of the department. Employees shall take vacation leave regularly each year and shall be encouraged to take vacation at least a full week at a time. In order to give effect to this policy and to realize the greatest benefit from vacation leave for both employees and the City, limitations shall be placed upon the amount of unused vacation leave an employee is allowed to accumulate.

If an employee exhausts his ~~or~~ her vacation leave, the employee may apply for another eligible paid or unpaid leave (excluding sick leave) as provided for in this Memorandum of Understanding. If vacation no other leave is approved, and then it is determined that the employee does not have enough vacation leave available to cover the request and no other leave is requested, payroll will deduct the excess time from another eligible paid leave balance. the leave will be documented as Unauthorized Leave Without Pay. No vacation leave accruals will be credited in advance. No vacation leave will be earned while on an unpaid leave.

If vacation leave is used to remain in a paid status while on approved leave under the for purposes that qualify under a state or federal leave law, such as Family Medical Leave Act/California Family Rights or Pregnancy Disability Leave, the vacation hours will run concurrently with leave taken will count toward the state and/or federal leave entitlement.

Union Proposal: No change.

The City's asserts its changes to the first paragraph reflect that vacation is a negotiated benefit, not a legal right. In the second paragraph the City seeks to ensure that if an employee needs to use vacation leave, but does not have enough accrual, the City will debit other accrued paid leave of the employees. The City wants to keep employees

Report of Factfinding Panel

in paid status and be able to reduce their accruals (and the unfunded liability to pay off the leave later) by preventing employees from going on unpaid leave.

The City's explains its changes to the last paragraph are clean-up edits designed to better explain that vacation runs concurrently with FMLA/CFRA for a qualifying event.

The City asserts the Union has indicated that it does not agree with these changes because they might restrict an employee from going into a voluntary unpaid status. The City contends it has a compelling interest to prevent that from occurring.

The Union states the provision the City proposed in its last, best, and final offer is a brand new provision unexamined through the negotiation process.

Recommendation: No change.

35. Vacation Accrual for Full-Time Employees

City Proposal:

All full-time employees other than temporary and provisional shall accrue vacation leave benefits each payroll period based upon the number of regularly scheduled hours ~~the employee is entitled.~~

Vacation accrual schedule for employees who are budgeted and work full time are as follows:

	Per 80 Hr.	Hourly	
Years of Service	Period	Equivalent	Annual
0 to end of 4 yrs.	3.08 hrs.	.0385 hrs.	80 hrs.
5 to end of 9 yrs.	4.62 hrs.	.0578 hrs.	120 hrs.
10 to end of 19 yrs.	6.16 hrs.	.077 hrs.	160 hrs.
20 yrs. & more	7.70 hrs.	.0963 hrs.	200 hrs.

An employee will accrue at the next highest benefit level on his or her corresponding anniversary date. For purposes of crediting service time for vacation accruals, a former employee who is reinstated within ~~after an absence of more than one (1) year from the date of his or her separation shall not in a probationary and regular appointment. No receive credit for his/her prior service time in a nor will an employee who was serving in a temporary, provisional or~~

Report of Factfinding Panel

contracted appointment shall be credited. ~~and appointed to a regular appointment be credited with his/her temporary, provisional or contract service time.~~

Vacation leave can be accrued but shall not be granted during the first six (6) months of service. The increases in vacation leave allowance shall be granted on the basis of full time, continuous service. An approved leave of absence shall not constitute a break in service for the purpose of this section, but vacation leave shall not be earned during any period of unpaid absence.

Vacation is accrued for all regular hours worked and shall continue to be earned during other authorized leaves with pay. When a holiday falls during an employee's absence on vacation leave, it shall not be deducted from employee's accrued leave.

The maximum vacation accrual cap shall be twice the employee's annual rate. The vacation accrual cap shall be maintained on a per pay period basis. ~~Employees shall be permitted to accrue above the cap during the year but must be at or below the cap by the pay period which includes December 31st each calendar year.~~ Exceptions may be permitted on approval of the ~~Department Head~~ Department Director and the City Manager. In granting such exceptions the City Manager may specify a time within which such excess vacation leave must be used. Failure to use such excess vacation leave within the time specified by the City Manager shall cause no additional vacation leave to accrue. It shall be the responsibility of each employee to insure the full use of vacation leave credits received by scheduling the necessary time off each year.

Union Proposal: No change.

The City seeks to remove reference to the word "entitled" in the first paragraph because employees are not entitled to work and then accrue vacation. Work is for the taxpayers' benefit, not the employee's benefit. The City's changes to the second paragraph are clean-up edits to remove the passive voice and double negatives.

Edits to paragraph three are designed to memorialize employee accrual protection in the event of an absence.

The City's changes to the fourth and final paragraph would end the practice of allowing employees to accrue more vacation than the accrual cap, so long as they are at or below the cap by the end of the year. The City explains that tracking the leave balance caps in this manner is a manual process. The payroll system is unable to automate the capping of accrual other than doing so each pay period a full payroll transaction is

Report of Factfinding Panel

processed. To track manually creates an administrative burden. The City feels the current accrual provision is not an efficient use of the already scarce staffing resources.

The Union asserts the provision the City proposed in its last, best, and final offer is a brand new provision unexamined through the negotiation process. Additionally, it points out that the phrase, “For purposes of crediting service time for vacation accruals, a former employee who is reinstated within one year from the date of his or her separation in a probationary and regular appointment” is an incomplete sentence. Under the current language, employees can keep all vacation days accrued throughout the year, until December 31. The existing language permits employees who take vacations near the end of the year to maintain accrued vacation days. Under the proposed language, the City wants to cap the amount of accrued vacation to twice the available vacation throughout the year, which punishes employees who take vacations late in the year. For example, under the current language, an employee who is eligible for two weeks of vacation can accumulate limitless amounts of vacation until December 31, at which point only four weeks is permitted to carry over into the new year. So, beginning on January 1, the employee with four weeks cannot accrue any further vacation. Under the proposed language, that same employee would simply stop accruing any vacation time after four weeks at any point throughout the year. The Union asserts the City currently cashes out excess vacation accrual, but is proposing to end pay outs for excess vacation accrual.

Recommendation: No change.

36. Vacation Accruals for Permanent Part-Time Employees

City Proposal: The City proposes to delete a portion of the fourth paragraph as follows:

~~The use of vacation shall be subject to the provisions of Section 12.01, 12.03, 12.04 and 12.05 of this Memorandum of Understanding. As of the end of the pay period which includes December 31 of each calendar year, no employee shall be allowed to maintain a balance of unused vacation leave in excess of twice the allowance earned by the employee in the preceding twelve (12) month period. Exceptions to the foregoing may be permitted pursuant to the provisions of Section 12.02 of this Memorandum of Understanding. The maximum vacation accrual cap shall be twice the employee's annual rate.~~

Report of Factfinding Panel

~~Employees shall be permitted to accrue above the cap during the year but must be at or below the cap by the pay period which includes December 31st.~~

Union Proposal: No change.

The City seeks to delete the language for the same administrative reason as discussed above in the section relating to full-time employees.

Recommendation: No change.

37. Sick Leave Policy

City Proposal:

Sick leave is a paid leave. Sick leave shall be allowed in case of an employee's bona fide illness or injury, or for an employee's doctor/health appointments. Use of sick leave shall be approved by the employee's supervisor. ~~Department Head Department Director or a designated representative.~~

Employees shall whenever possible make appointments for medical, dental, and other health and wellness similar purposes on Saturdays or other non-work time. ~~If this is not possible, sick leave may be used for these purposes and should not exceed four hours except in unusual circumstances.~~

In addition to the foregoing, sick leave may be used as family sick leave to care for an ill or injured family member or to take a family member to a doctor appointment. A family member is defined as a child, parent, spouse, registered domestic partner, or the child of a registered domestic partner in accordance with as defined by California Labor Code 233. Up to half (1/2) of an employee's annual sick leave accruals per calendar year may be used as family sick leave. A certificate from an attending physician stating the expected duration nature and extent of the family member's illness may be required. Authorization to use additional sick leave for family illness beyond the maximums identified above may be granted by the City Manager or designee when in his or her judgment circumstances warrant the same. Employees may use not more than four (4) hours of sick leave for the purpose of consulting with a physician concerning a serious illness or injury of a member of the employee's immediate family.

~~For family members who reside in the employee's home, there is no limit on the amount of sick leave that can be used as family sick leave by full time or part time employees. For family members who reside outside of the employee's home, up to half of his/her annual sick leave accruals per calendar year may be used as family sick leave by full-time employees. Part-time employees are allowed to use up to half of his/her annual sick leave accruals (based on his/her budgeted work schedule) per calendar~~

Report of Factfinding Panel

~~year as family sick for family members who reside outside of the employee's residence.~~

~~If an employee exhausts his/her sick leave, the employee may apply for another eligible paid or unpaid leave as provided for in this Memorandum of Understanding. If no other leave is approved, the leave will be documented as Unauthorized Leave Without Pay. No sick leave accruals will be credited in advance. Sick leave will not be earned while on an unpaid leave.~~

If sick leave is used for purposes that qualify under a state or federal leave law, such as Family Medical Leave Act/California Family Rights Act or Pregnancy Disability Leave, then any leave taken will count toward the state or federal leave entitlement. If an employee is unable to return to work and has exhausted all of ~~his/her~~ his or her leave entitlements, the employee may be retired for disability or separated.

Union Proposal: No change.

The City explains that edits to the first paragraph change the person approving the use of sick leave from the Department Head to the supervisor. The City believes this change will ease the workload for Department Heads and make for a quicker approval process. The Panel agrees with this proposal.

The City asserts its changes to the second paragraph remove a restriction for use of sick leave for medical appointments during the workweek. The Union asserts that elimination of language that states employees can use sick leave for purposes of medical, dental and other health and wellness purposes up to four hours implies employees can no longer use sick leave for this purpose. The Panel finds that addition of the language, “medical, dental, and other health and wellness” before the word “appointments” in the first paragraph should allay the Union’s concerns.

The City asserts the additions to the third paragraph memorialize Labor Code section 233 in plain English so that employees may better understand the benefit. Labor Code section 233 allows employees to use up to half of their annual sick leave accrual to be absent from work due to a family member’s illness. Although the intent of the revision is just to explain what the existing Labor Code benefit means, the Union appears to want to expand the language to allow employees to use all sick leave for family member illnesses. The City asserts it is neither the law nor the Parties’ current practice and therefore believes that its change is appropriate.

Report of Factfinding Panel

The Panel finds, however, that the language, “For family members who reside in the employee's home, there is no limit on the amount of sick leave that can be used as family sick leave by full time or part-time employees” undermines the City’s position that there is no practice of allowing more than half an employee’s leave to be used for family members who live with an employee.

The City asserts that the remaining changes propose to delete language that restricts leave use that could be inconsistent with FMLA/CFRA and/or Labor Code section 233. The Panel recommends the Parties agree to this amendment in the final paragraph.

Recommendation: The Panel recommends the changes in the first and final paragraphs of the City’s proposal.

38. Sick Leave Accruals for Part-Time Employees

City Proposal:

~~Only those P~~part-time employees who are regularly scheduled to work ~~employed in positions budgeted for twenty (20) or more hours per week and who consistently work twenty (20) or more hours per week shall be entitled to accrue eligible for sick leave benefits each payroll period based upon the total number of hours for which the employee was compensated in the payroll period.~~ The amount of sick leave ~~so~~ accrued ~~by part-time employees shall be proportionate to that earned by full-time employees based on the number of hours worked by the part-time employee.~~ The full time sick leave accrual rate is 3.7 hours per payroll period.

The use of sick leave so earned by part-time employees shall be subject to the provisions of ~~Sections 13.01, 13.03, 13.04, 13.05 and 13.06~~ of this Memorandum of Understanding. Eligible part-time employees who are scheduled to work, but who are unable to do so because of illness, shall be charged sick leave in an amount equal to the number of hours of work for which they were scheduled on the day(s) they were unable to work due to illness.

~~The use of sick leave shall not be permitted for part-time employees during the first three (3) months of service.~~ Sick leave can be accrued but shall not be granted during the first three (3) months of service. Sick leave is accrued for all regular hours worked and shall continue to be earned during other authorized leaves with pay.

There shall be no limit upon the number of hours of unused sick leave that may be accumulated by an employee. Upon separation of employees, sick

Report of Factfinding Panel

leave balance for which payment has not been made shall be canceled, and shall not be restored if a former employee is reinstated.

Union Proposal: No change.

The City's goal is to explain the proportionate accruals earned and to qualify employees to use sick leave if their positions are at least budgeted at 20 or more hours per week irrespective of how many hours they actually worked in the most recent pay period. The City's proposed changes also eliminate redundancy in the part-time employee provision.

The City states it added language at the end of the provision to make clear that there is no accrual cap, and that part-time employees can cash out sick leave at the end of public service. The only concession is that employees who later return to the City cannot recapture sick leave that they did not cash out when they previously ended their City employment.

The Union's objection is that the language was not proposed until the LBFO and has not been subjected to the negotiations process.

Recommendation: No change.

39. Sick Leave Notice and Certification

City Proposal: The City proposes changes to the first two paragraphs of the MOUs for both units and addition of section B regarding concerted job actions to the Clerical MOU, as follows:

A. Procedure for Compensation

In order to receive compensation while absent on sick leave, the following procedures shall apply:

1. Employees assigned to continuous shifts in the Wastewater Treatment Plant, or someone on their behalf, shall notify their supervisor at least two (2) hours prior to the commencement of their scheduled shift whenever they will be unable to report for said shift due to illness, injury or unforeseen emergency.
2. All other employees shall notify their supervisor or designated representative prior to the commencement of their scheduled shift whenever they will be unable to report for work due to illness, injury or unforeseen emergency.

Report of Factfinding Panel

~~Department head~~ Department Directors may waive these requirements upon presentation of a reasonable excuse by the employee.

Employees shall file a ~~personal affidavit or~~ physician's certificate with their supervisor if required by their ~~Department Head~~ Department Director or ~~his/her~~ his or her designee, ~~stating cause of absence for any use of sick leave.~~ After ~~three (3)~~ five (5) working days' absence, the employee's supervisor ~~shall~~ may require a physician's certificate ~~at this point a personal affidavit will not be acceptable.~~ If employees become ill while on vacation, periods of illness may be charged to sick leave upon presentation of a physician's certificate. In case of frequent use of sick leave employees may be requested to file physician's certificates for each illness, regardless of duration, after having been counseled about their use of sick leave. A physician's certificate needs to include the name and signature of the attending physician, the date and time the employee was seen by the physician. Employees may also be required to take an examination by a physician designated by the City and to authorize consultation with their own physician concerning their illness. Sick leave shall not be granted for absences caused by substance abuse or excessive use of alcoholic beverages. As an exception to the foregoing, sick leave may be authorized for the treatment of alcoholism or substance addiction when such condition has been diagnosed by competent medical authority.

These same requirements may also be applied for family sick leave requests.

B. Certification as a Result of Concerted Job Action

1. In the event the City Manager finds that employee absences from duty are the result of a concerted job action, any employee claiming sick leave with pay shall be required to provide certification on a form prescribed by the City. Such form shall include but not be limited to the name and signature of the attending physician, the date and time the employee was seen by the physician, and the physician's certification that the illness or injury was of such nature as to prevent the employee from performing ~~his/her~~ his or her job, but disclosure of a specific medical diagnosis shall not be required. A determination by the City Manager that a job action exists, necessitating the sick leave certification procedures required herein, shall be final and not subject to any grievance procedure in effect between the Union and the City. Nothing herein shall prevent a ~~department head~~ Department Director from approving the payment of sick leave in situations where the employee submits alternative proof of disability satisfactory to the ~~department head~~ Department Director showing that the employee was unable to work on the date(s) for which sick leave is requested.

Union Proposal: No change.

Report of Factfinding Panel

The City's changes reduce the length of sick leave that triggers the requirement for a confirming note from five days to three days. The employees complain about co-payments required to obtain a doctor's note. The City believes, however, three days is a reasonable amount of time off to require a note, particularly for employees with low sick leave balances.

The Union contends it makes no sense to make a physician's certificate a requirement, rather than making discretionary. Management already has the option to insist on a medical note.

Recommendation: No change.

40. Payment for Unused Sick Leave

City Proposal:

Any ~~full-time~~ employee leaving the employment of the City in good standing after having completed twenty (20) years of continuous service, or upon retirement from the City for service or disability, with at least ten (10) years of service, or upon termination of employment by reason of death shall receive payment for a portion of that sick leave earned but unused at the time of separation. The amount of this payment shall be equivalent to one percent (1%) of sick leave earned but unused at the time of separation times the number of whole years of continuous employment times an employee's hourly rate of pay at the time of separation.

~~For the purpose of this computation, the hourly rate of pay for an employee who works a 40 hour week shall be his or her annual salary including any City paid employee PERS contribution divided by 2080 hours. Payment of unused sick leave for part-time employees shall be based upon the hourly rate of pay in effect at the time of separation including any City paid employee PERS contribution.~~

That portion of an employee's sick leave balance for which payment is not provided shall be canceled, and shall not be restored if said employee is reinstated.

Union Proposal: No change.

The City states its changes to the first paragraph ensure no cash-out for sick leave unless the employee has worked for the City for at least 10 years at the point of retirement. This proposal limits the City's liability for cash-out payments, while rewarding longevity.

Report of Factfinding Panel

The City wishes to delete the computation language in the second paragraph because it may not always be accurate in the future. It asserts that because the City strikes the reference in the first paragraph limiting cash-out to full time employees, there would be an issue of interpretation for part-time employees. If accepted, part-time employees (who do not work 2080 hours per year) would be able to cash out sick leave.

In addition to its assertion that the proposal appeared for the first time in the LBFO, the Union is concerned that the City's proposal fails to include language stating how the payment will be computed and thus proposes that current contract language be rolled over. The Panel shares the Union's concern.

The City's survey of comparators shows that payment for unused sick leave varies. Eight cities cash out leave for employees with fewer than 20 years of service. Three do not require a minimum service amount, and one requires only 2 years of service. Four require at least 15 years of service. Alameda does not cash out sick leave for employees hired after 1978. (CX 43, p. 13)

The Panel finds that the current provision already rewards longevity by increasing the percentage payout with each year of service. In addition, while a new 10-year requirement would minimize liability to future employees, there could be a concern about impairment of vested rights of existing employees.

Recommendation: The Panel recommends the parties agree to delete the word "full-time" in the first paragraph, but does not recommend other proposed changes.

41. Leaves of Absence

City Proposal:

The City Manager, upon written request of a full time employee other than temporary and provisional employees, may grant for the good of the service a leave of absence without pay for a maximum period of one (1) year. ~~The City Manager may grant an extension of an approved leave of absence without pay for an additional period, said extension not to exceed one (1) year.~~ Consideration for granting leave will take into account the employee's previous time off, reason for request, business needs, etc. Leaves hereby authorized shall include medical leaves, educational leaves, parental leaves, and leave for any other purpose promoting the good of the service. Part-time employees are eligible for leaves of absence on a pro-

Report of Factfinding Panel

rata basis (e. g. half-time employees are eligible for one-half the leave of absence duration of a full-time employee).

~~Requests for parental leave of six (6) months or less shall be approved unless the granting of such leave is deemed to work hardship upon the City. Upon request of the employee and approval of the City Manager, up to six (6) additional months of unpaid parental leave of absence may be granted for a total not to exceed twelve (12) months.~~

Whenever granted, leaves of absence shall be in writing and signed by the City Manager. Upon expiration of such a leave, the employee shall be reinstated to the position held at the time leave was granted. Failure of the employee to report promptly at its expiration or within a reasonable time after notice to return to duty, shall terminate his or her right to be reinstated.

All eligible paid leaves must be ~~depleted~~ exhausted during any before this leave is taken granted under this provision. Should the employee exhaust their leave balances while on the leave, all remaining leave will be without pay. If Leave of Absence is used for purposes that qualify under a state or federal leave law, such as Family Medical Leave Act/California Family Rights or Pregnancy Disability Leave, the leave taken will count toward the state or federal leave entitlement. If an employee is unable to return to work and has exhausted all of ~~his/her~~ his or her leave entitlements, the employee may be retired for disability or separated.

No benefits will be provided during this period except in those instances when it is required by law. Health coverage may be continued, but at the employee's own cost. ~~as provided below. Health coverage may be continued but at the employee's own cost in concurrence with COBRA laws. Employees who are out on a bona fide work related injury or illness or who are waiting for a determination on his/her his or her CalPERS disability retirement application, will be placed on a Leave of Absence. However, employees on workers' compensation or waiting for a CalPERS disability retirement determination will continue to receive health benefits but are still responsible for any out of pocket expenses.~~

~~Employees on SDI or Workers' Compensation should contact the Human Resources department to determine if a medical leave is necessary to insure their job rights."~~

Union Proposal: No change.

The City proposes in the first paragraph to limit leave without pay to one year. This limitation prevents employees from being out even longer, while remaining on the health plan. It argues that at some point, the City should be able to either get the employee back to work or find a permanent replacement.

The City's deletion of the 6-month default parental leave in paragraph 3 treats parental leaves the same as all other unpaid leaves. The City asserts this would prevent

Report of Factfinding Panel

any allegation that the City treats employees with the protected status of pregnancy related health conditions differently than other employees.

The City's edits to the fifth paragraph contemplate the approval of a leave that is part paid and part unpaid. The City asserts the provision clarifies that the employee exhaust paid leave first, but need not obtain a second approval to go on unpaid leave because the unpaid portion may be approved at the beginning of the paid leave.

Proposed changes to the final paragraph of the provision prevent employees from being out on unpaid leave while receiving City health insurance, unless required by law. The City argues it should not have to carry an employee on the books and pay their health benefits without the employee actually coming to work, unless there is a legal entitlement to such a situation.

The Union contends there are substantial changes in this proposal that were never discussed with the Union. As such, the union cannot fully evaluate the proposed changes and proposes current contract language be rolled over.

Recommendation: No change.

42. Parental Leave

Union Proposal:

Employees shall be granted ~~forty (40)~~ one hundred and twenty (120) hours leave with pay at their current straight time hourly rate upon the birth of a child, or when a child begins residence with an employee who has commenced adoption proceedings with full intent to adopt. Part-time employees hired into positions budgeted for twenty (20) or more hours per week and who consistently work twenty (20) or more hours per week shall be granted proportionate leave based upon their work schedules. Leave must be taken within one year from the date of birth or placement of the child.

City Proposal: No change.

Currently, employees are given only one week to bond with their child. The Union contends employees should be given at least three weeks.

Report of Factfinding Panel

The City believes that any enhancements to this benefit are not justified by the labor market. Hayward is the only comparable agency to offer a paid parental leave benefit. (CX 43, p. 14 and CX 44, p. 4)

Recommendation: No change.

43. Safety Shoes (M only)

Union Proposal:

Upon recommendation of the department head and approval of the City Manager or a designated representative, an employee other than a temporary or provisional employee, may be reimbursed for the purchase of safety shoes in an amount not to exceed ~~One Hundred Seventy Five Dollars (\$175.00) per year~~ Two Hundred Dollars (\$200.00) for 2013 and not to exceed Two Hundred Twenty Five Dollars (\$225.00) for 2014.

City Proposal: No change.

The Union contends the City should increase their contribution in line with the increased cost of safety shoes.

The City surveyed comparable agencies and asserts that it already pays the market average for this benefit and therefore does not believe that an increase is justified. (City Exhibit 43, p. 15) However, five pay more than the City. It is only the City of Vallejo's payment of \$100 that skews the average. No comparator pays more than \$225.

Recommendation: The Panel recommends that the safety shoe reimbursement be raised to \$200.00 effective July 1, 2014.

44. Participation in Promotional Exams (C only)

City Proposal:

~~Consistent with operating requirements, the City will attempt to schedule promotional examinations during the operating hours normally observed in City Center Offices.~~ Employees who participate in promotional examinations which are scheduled by the City during the employee's scheduled working hours shall do so without loss of compensation. Employees who participate in promotional examinations outside of their normal work schedule shall receive no compensation for such participation.

Report of Factfinding Panel

Union Proposal: No change.

The City seeks to delete the sentence concerning operating hours of City offices because there may be occasions when tests would be more convenient or appropriate for employees and managers alike that are not regular City office hours.

The Union contends the City is legally required to pay employees for all required examinations regardless of whether the exam is held during or outside of normal business hours. These examinations are part of working for the City. The Union contends that requiring work exams without pay is a violation of the FLSA and the California Labor Code, but cited no authority.

The Panel notes that a promotional examination generally is not required of any employee. There also has been no showing, however, that the language has posed a problem in any particular instance.

Recommendation: No change.**45. Introduction of New Equipment (C only)****City Proposal:**

In the event of the introduction of new machinery or new processes the City will provide suitable training for those employees whose job assignments require operation or maintenance of the new machinery or processes.

~~The Union shall be given reasonable advance notice of the introduction of new equipment or new processes which may result in the layoff of employees in the bargaining unit. Thereafter, the City and the Union shall meet for the purpose of discussing possible means of mitigating the impact of the introduction of said equipment upon affected employees. The City shall provide counseling to any displaced employee and shall assist the employee in securing training opportunities which may qualify him or her to be employed in another position with the City. The City shall train employees required to operate such new equipment and shall also review the classifications of those employees so assigned."~~

Union Proposal: No change.

The City seeks to revise this section because the existing language is unnecessarily onerous. It asserts there may be occasions when the parties need to discuss new equipment and others where that is not necessary.

Report of Factfinding Panel

The Union objects to removal of the notice and meet and confer requirements and the employee counseling requirement.

Recommendation: No change.

46. Pre-Retirement Counseling (C only)

City Proposal:

The Human Resources Department will continue to make CalPERS brochures and forms, Great West distribution forms, and other information related to retirement options available to employees. Upon request staff will meet with employees to provide an explanation of City administered benefits.

Union Proposal: No response.

Recommendation: No change.

47. Restrictions on Outside Work

City Proposal:

Gainful employment outside of an employee's regular City position shall be subject to approval by the City Manager or the City Manager's designee. Approval of outside employment may be granted for a period up to one (1) year. The City may deny an employee's application for outside employment which is incompatible with the employee's City employment or which is of such a nature as to interfere with satisfactory discharge of his or her regular duties. The City may revoke an employee's approved right to engage in outside employment which proves to violate the conditions of this provision. Violation of this section shall be cause for disciplinary action."

Union Proposal: No change.

The City asserts that outside work restrictions are important to prevent conflicts of interest, negative associations with the City, and other employment endeavors contrary to the City's wellbeing. It contends the City's proposal identifies the broad categories recognized by California law for restricting employees' moonlighting without being so specific that unanticipated inappropriate outside employment cannot be banned.

The Union argues the City's proposed language significantly restricts an employee's ability to obtain outside work in violation of California law delineating when a public employer can restrict outside work.

Recommendation: The Panel recommends no change to Sec. 16.19 in the Maintenance contract. It recommends the Parties agree to add a similar provision in the Clerical MOU.

48. Temporary Positions / Employment Agencies

Union Proposal:

Temporary employment is employment in a position created for a special or temporary purpose for a period of not longer than six (6) months, or temporary employment in a regular existing position for a period not to exceed six (6) months. Such appointment may be made from appropriate eligible registers if available. Service in a temporary appointment may be recognized in determining whether an applicant meets minimum employment standards for a class. Temporary employees shall not receive vacation, holiday pay, sick leave, or other fringe benefits. [Only the Clerical contract contains this paragraph.]

Persons retained from employment agencies to fill vacant positions normally occupied by members of this bargaining unit will be subject to the same six (6) month limitation as temporary employees hired by the City to fill such positions. If the Union has reason to believe that the six (6) month limitation on temporary employment is not being observed, the City will furnish to the Union upon request a list of persons serving in temporary positions and the dates upon which they commenced employment.

No position can be filled for more than six months on a temporary basis through the life of the contract. In the event a position requires a temporary employee for over six months, the City will notify the union and engage in a good faith meet and confer process.

City Proposal: No change.

The Union states it seeks to limit the City's ability to fill positions more than six months on a temporary basis. This language would not seem necessary in the Clerical contract, particularly. The Union's proposal would also require the City to meet and confer if the City finds it will need to fill a position on a temporary basis for longer than six months.

The City did not explain its opposition.

Recommendation: The Panel recommends the parties agree to the Union's proposal.

Report of Factfinding Panel

49. No Strike

Currently, the Clerical unit's MOU contains a section which states the union will not engage in any strike, slowdown, stoppage of work, etc. during the term of the MOU. The Union is seeking to have this section removed.

The City is attempting to impose this provision on the Maintenance unit according to its last, best, and final offer.

The Union contends that its members should be able to engage in a strike in the event the City imposes its last, best, and final offer. As such, the Union proposes this language not be contained in any MOU.

The City believes that no-strike clauses are almost universal in MOUs. Its survey of comparators found that seven MOUs covering maintenance workers have no strike clauses. (CX 43, p.10) Six covering clerical workers have no-strike clauses. (CX 44, p. 8)

Recommendation: No change.

IV. SUMMARY OF RECOMMENDATIONS

The Panel recommends against the City's one-year proposals, which would impose a \$44 per pay period OPEB Contribution (CX 53), and have a \$197.47 per pay period impact on clerical employees; it would impose a \$33.50 per pay period OPEB contribution on maintenance employees (See CX 51) with a \$163.88 per pay period impact. Instead the Panel, or the Chair if no Panel member agrees, makes the following recommendations regarding compensation:

FY 2014: The Panel recommends a \$0% raise. The Chair recommends a \$750 payment on ratification, pro-rated for part-time employees, as a condition of the Panel's recommendation that Clerical unit employees shall begin making 20% contributions to dental insurance premiums and 50% contributions to vision premiums effective 1/1/2014.

FY 2015: The Panel recommends a 1% raise on July 1, 2014 and 1% raise on January 1, 2015. The Panel also recommends the City should reduce its maximum

Report of Factfinding Panel

contribution to health insurance premiums to the family rate of the fourth-highest plan available through PERS, effective January 1, 2015.

FY 2016: The Panel recommends a 2% raise. In addition to a 2% increase, the Chair recommends that an amount that is sufficient when added to 2% to total the increase in the CPI-W in calendar year 2015, should be made as a one-time payment in February 2016, provided there is an 8% increase in revenue from FY 2013 to FY 2015, and provided there are no further changes to CalPERS pension actuarial assumptions relating to the discount rate and mortality rate as discussed in City Exhibit 26.

The Panel does not recommend that the Clerical and Maintenance units contribute to retiree health benefits.

The Panel recommends that the language in the current contract Section 14.04 Industrial Disability Leave, be amended as follows: “additional compensation equal to the difference between 80 percent of said employees’ regular pay and the disability compensation allowance shall be granted for up to one year during any three year period regardless of the number of injuries during that three year period.”

The Panel makes the following recommendations for changes to contract language:

Layoffs, Order of Layoffs

The Panel recommends that the following sentence be added to section A: “A layoff out of the inverse order of seniority may be made if, in the City's judgment, retention of special job skills are required.” All other language should remain unchanged.

Seniority

The Panel recommends the Parties agree to the proposed language.

Notice of Layoff

The Panel recommends the Parties agree to the proposed language on Notice of Layoff .

Report of Factfinding Panel

Employee Options

The Panel recommends the Parties agree to the City's proposed language regarding Employee Options.

Night Shift Differential (M only)

The Panel recommends the night shift differential for the evening shift be raised to \$1.30 for employees who work after 4:00 p.m. and the differential for the graveyard shift be increased to \$1.60 for those who work between 11 p.m. and 7 a.m.

Standby Provisions (M only)

The Panel recommends updating the MOU's reference to communication devices.

Distribution Certification Differential (M only)

If it is true that the D-4 level certification is needed for work performed by the City, the language should be changed to reflect the change in the law. The Panel does not recommend a change rolling the differential into base pay.

Bilingual Pay

The Panel recommends that the Parties agree that the language in the second paragraph of the City's proposal should be added to this section together with language that permits the City to test when there is a documented reason to question competency.

Retirement Program

The MOUs should be amended to replace the language in Section 10.1 with the language in side letter No. 7 to each MOU. In addition, the section should be amended with the following language: "New members as defined by the PEPRA pension reform statute shall have a retirement formula dictated by law."

Holidays Observed by the City, New Year's Eve

The Panel recommends consolidation of sections 11.01 and 11.05 as proposed by the City, except for the changes to the final paragraph. The Panel does not recommend increasing the New Year's Eve holiday.

Report of Factfinding Panel

Sick Leave Policy

The Panel recommends the changes in the first and final paragraphs of the City's proposal.

Payment for Unused Sick Leave

The Panel recommends the parties agree to delete the word "full-time" in the first paragraph, but does not recommend other proposed changes.

Safety Shoes (M only)

The Panel recommends that the safety shoe reimbursement be raised to \$200.00 effective July 1, 2014.

Restrictions on Outside Work

The Panel recommends no change to Sec. 16.19 in the Maintenance contract. It recommends the Parties agree to add a similar provision in the Clerical MOU.

Temporary Positions / Employment Agencies

The Panel recommends the parties agree to the Union's proposal.

Dissenting opinions of the Panel members are attached.

DATED: February 3, 2014.

Katherine J. Thomson
Panel Chair

Kelly McAdoo
City of Hayward
Dissenting and Concurring

John Stead-Mendez
SEIU Local 1021
Dissenting and Concurring

**DISSENT BY CITY APPOINTED PANEL MEMBER TO FINDINGS, CONCLUSIONS
AND RECOMMENDATIONS OF THE PANEL – CITY OF HAYWARD**

As the City's representative to the Fact Finding Panel, I want to thank Ms. Thompson for her time and efforts to understand the City's financial position and negotiations situation with Service Employees International Union Local 1021 (SEIU) during these fact finding proceedings. I am providing this dissent in two parts. The first part outlines overall concerns and objections to the characterization of facts presented during the hearing and written briefs that have led the Chair to the recommendations outlined in the report. The second part identifies those specific recommendations in the report with which the City supports and/or dissents.

Summary Rebuttal

The City of Hayward, like many other California cities, has been dramatically impacted by the Great Recession of the past few years. The City Council, Executive staff, and City negotiating team have worked diligently since 2010 to structurally reset the City's General Fund and Enterprise Fund operating budgets in order to provide a sustainable future for City operations, protect benefits for employees, and to ensure the continuation of valued services to the Hayward community. This has been accomplished through a combination of flattening the organization to eliminate managerial and other positions and reducing other costs, with the primary vehicle being the voluntary concessions negotiated with the City's various labor groups. As evidenced in the fact finding report, the details of the City's financial picture and the nuances of each labor group's Memorandum of Understanding (MOU) are complicated. Any attempt by an outside party to fully understand these complexities through four days of presentations and discussions will likely provide a limited understanding of all the elements affecting the City's long-term financial situation. There are bound to be both specifics and critical nuances in the finances and specific MOU proposals that any outside party will fail to fully digest in a limited period of exposure.

The challenge with the fact finding process is that the neutral third party can make recommendations to try and help the City achieve short-term labor peace at the expense of the City's long-term fiscal health. The process fails to acknowledge longer-term policy direction set

by the local City Council and simply looks at the situation in a very narrow and short-term lens. Government Code Section 3505.4.d sets forth the criteria that the fact finder shall consider in arriving at findings and recommendations. One of these is the “interests and welfare of the public and the financial ability of the public agency.” In this context, the fact finding report should not simply evaluate the City’s short term ability to pay, but also the longer-term financial implications of any recommendations stemming from this report.

The Hayward City Council has been incredibly conscientious in setting long-term fiscal policies to address the City’s unfunded benefit liabilities (which will ultimately protect City employees), to provide mechanisms for addressing the City’s capital facility needs, and to continue providing valued services to the Hayward community. As the Chair points out in the report (page 25), “prefunding [post-employment medical] benefits is a prudent move.” The report also highlights that the City’s most recently updated ten-year financial forecast for the General Fund projects deficit spending in all years of the plan, even with the assumed additional labor concessions in dispute as part of this process. The report highlights that “the projected deficits do not assume full funding of the retiree medical program’s Annual Required Contribution...[and] also do not assume any additional funding to bring the City’s Workers Compensation program to recommended funding levels or additional funding toward identified critical capital needs.” (page 20)

The City of Hayward does not want to be the next Stockton or Vallejo. This is why the Hayward City Council has made very prudent policy decisions and provided labor negotiations guidance to structurally reset the City’s benefit and compensation structure to enable the City to begin funding some of these key unfunded liabilities. The report fails to acknowledge (in accordance with one of the key criteria set forth in State law that governs the fact finding process) these longer-term structural financial challenges and tradeoffs the Council must consider. Ultimately, the City of Hayward is a public service agency and not a public employment agency.

Of course, our employees deserve to be well compensated and provided solid benefits when compared with surrounding local agencies. The report bears out that, in fact, our SEIU employees receive richer benefit packages when compared to surrounding jurisdictions. The

City currently pays 100% of the Family premiums for the second highest cost medical plan. Page 16 of the report highlights that the premiums for other lower cost plans offered by the City (Anthem Traditional HMO and PERS Care) are closer to the median of comparator agencies. Lowering the City's medical premium contribution would allow the City to reduce costs while providing employees with a choice to retain 100% funded health care premiums. The City acknowledges that this recommendation has some merit and has discussed this proposal with SEIU leadership but has had limited success in getting the Union to make any changes.

None of the health insurance plans offered by the City through the CalPERS system are "bad" health insurance plans. In fact, the average consumer would consider the benefits of even the lowest cost plan to be far more robust than most plans available in the private sector. However, providing 100% funding for health care premiums, even for lower cost plans, does nothing to help contain costs in the long-term for the City, one of the Council's stated goals for negotiations with all of its bargaining groups. It also discourages employees from contemplating the impacts of personal healthy lifestyle choices or identifying any individual cost containment mechanisms around health care.

The report, as written, focuses primarily on the City's General Fund operating budget and spends limited time addressing concerns related to the City's various Enterprise Fund operating budgets. This is somewhat problematic as many of the City's SEIU members are funded within the Enterprise Funds. The report, on pages 26-27, makes conclusions and recommendations about the ability of the Enterprise Funds to support raises to SEIU employees without presenting real evidence or facts to support these conclusions: "The Panel finds that deficit spending in the enterprise funds does not support a pay increase in FY2014, but the projection of increasing fund balances allows for small raises in future years." It is important to note that rate payers who pay fees to the Enterprise Fund are also generally tax payers in the City and that revenue to either the General Fund or the Enterprise Funds is all coming from the same group of people. It is irresponsible to consider the Enterprise Funds as separate from and not having the same cost containment concerns as the General Fund.

In addition to these broader points, I want to highlight some key factual concerns with the report. The first deals with the issue of comparability. State law governing the fact finding process requires fact finders to consider “the comparison of the wages, hours, and conditions of employment of the employees involved in the fact finding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.” (Gov Code Sec 3505.4.d) On page 9 of the report, the City acknowledges the reasonableness of the statement that “without a wage increase in FY 2014, clerical or maintenance employees’ compensation may remain at or above the average of those who works for comparators, but will likely fall below the average after two years of flat wages.” The City’s five-year proposal to SEIU asked for a two-year holding pattern on wages, which would then be followed by salary adjustments in the form of cost of living increases. The average actual impact on an employee’s paycheck of the City’s five-year proposal is 2% (not the 5% often cited by SEIU) , which if measured against the City’s comparability data, still keeps Hayward SEIU employees at least 2% above market for the vast majority of maintenance and clerical classifications.

The Chair also finds on page 27 of the report that “the City’s total compensation for these two units is higher than the average of its comparators, primarily due to higher health and welfare benefit contributions.” However, the City disagrees with the characterization on page 27 that “inflation as measured by the CPI, together with renewed PERS contributions, has outpaced the growth of employees’ paychecks.” This statement does not account for the fact that, in negotiations, the value of a MOU is calculated based on total compensation. This unit has generally decided to keep a richer benefit package as part of their negotiations in exchange for foregoing raises, which has still kept them ahead of their comparators in other agencies. The opinion of the Chair that these conclusions warrant a ratification bonus does not appear to be based in fact and ignores the issue of total employee compensation.

The second area of the report that causes concern and appears to present opinion-based judgments as opposed to ones based in fact occurs on page 19 as part of the discussion regarding employee contributions to other post-employment benefits (OPEB or retiree medical). The report states that “asking clerical and maintenance employees to pay 1% of salary (nearly 75% of

the normal cost of their benefit) toward the liability is hugely disproportionate, since 1% of police pay is less than 1/6th of the normal cost of their benefit and 1% of fire pay is 36% of the normal cost of a fire fighter's benefit." While it is accurate that the police and fire benefits are more expensive, these groups are in fact paying more towards the costs of these benefits. Simply because an employee's benefit is more or less expensive shouldn't dictate whether those employees pay some reasonable amount towards the cost of that benefit as part of a negotiated agreement. The City put the OPEB cost sharing proposal forward during negotiations with SEIU as one method for reaching the desired savings target. The SEIU negotiating team had many opportunities to put forward other alternate proposals, which they failed to do.

The final area of the report that presents factual concerns occurs on page 26. The Chair makes recommendations and assumptions in this section of the report that are illogical and inconsistent with sound fiscal management practices. She makes rough calculations about the City's estimated General Fund budget in FY2015, based on higher revenue projections that would leave the City with a surplus of \$604,447 and concludes that this is "sufficient for a small pay raise." The report then goes on to indicate that a 1% raise would cost the City about \$630,000 for all of its employees, assuming that if the City gave SEIU a 1% increase, then other employees would ask for one as well. The final sentence of this paragraph concludes "as the firefighters unit has already agreed to concessions along with their 2% increase, there would be sufficient funds to pay 1% to the remainder of the workforce."

First, the statement made in the last sentence of this paragraph is factually incorrect. The firefighters are not guaranteed a 2% increase. The amount of this increase, if any is warranted at all, would be based on a market survey of comparable fire positions in other agencies. Secondly, these conclusions in the fact finding report would put the City in a deficit spending position. To make recommendations for raises based on such a slim margin of surplus/deficit spending is illogical and fiscally irresponsible. As the report demonstrates on page 24, one letter (in this instance from the State retirement system, CalPERS) can increase the City's expenses in a fiscal year by \$1.2 million. The report also assumes that the City Council should simply put all excess revenues received straight into employee compensation instead of investing in services to the

community, paying towards unfunded liabilities, or protecting the long-term benefit obligations for existing employees.

City Positions on Panel Recommendations Identified in Report

Throughout the report, there are statements and recommendations that appear to be made by the Panel. The Chair asserts that it is her intent to represent a statement or recommendation as coming from the Panel as long as at least one of the other two panel members agreed with her on the statement or recommendation. This, of course, isn't logical, as each of the other two members is there to represent the viewpoint of their respective agencies. In addition, there are many references in the fact finding report where the Chair has quoted Union assertions that the first time they had seen any of these proposals was when the City presented its Last, Best and Final Offer. This is untrue and the City presented these proposals throughout the negotiating process with SEIU that began in the fall of 2012.

This section provides a list of these statements and recommendations and whether the City agrees with or dissents from the opinion presented in the report. Given the technical nature of many of these issues, this rebuttal does not attempt to explain in detail the City's arguments for or against a certain proposal. It is simply an effort to identify the City's simple position on the various issues presented.

Page 6 “the Panel recognizes that viewing salary alone does not give a complete picture of an employee’s compensation” **City Position: Agree**

Page 7 “The Panel agrees with the City that inclusion of special utility districts, such as EBMUD, among the comparators would be inappropriate because they have different revenue sources and enjoy economies of scale unavailable to the City.” **City Position: Agree**

Page 7 “As the Union has not objected that any of the data is incorrect, the Panel assumes that the results are accurate.” **City Position: Agree**

Page 7 “The Panel finds that, while this data tends to support the City’s claim that its clerical and maintenance workers are compensated above the comparator mean, it is not as conclusive or as clear as the City asserts” **City Position: Disagree**

Page 9 “The Panel concludes that, without a wage increase in FY 2014, clerical or maintenance employees’ total compensation may remain at or above the average of those who work for comparators, but will likely fall below the average after two years of flat wages. Below average compensation is more likely to occur sooner if the employees here begin contributing to health and welfare benefits, as recommended below.”

City Position: Agree with first sentence. Disagree with second sentence.

Page 10 “The Panel finds that the CPI does not support the City’s position, particularly with regard to maintenance workers, since FY 2013 concessions have actually decreased the employees’ purchasing power despite the appearance on paper that their wages have surpassed

inflation. In addition, some employees received small or no equity increases, not the average equity increases discussed here.” **City Position: Disagree; with respect to the equity increases for SEIU classifications, only 4 Maintenance classifications (out of 21) received 3% or less in equity increases and no Clerical classifications received less than 3% in equity increases.**

Pages 15-16 “The Panel finds that the best way to compare medical benefits is to compare the contractually obligated maximum, whether or not employees take advantage of that maximum contribution.” **City Position: Agree**

Page 17 Recommendation “The Panel recommends that the Clerical unit pay the same contributions to dental and vision coverage as the Maintenance employees do, effective January 1, 2014, provided that a \$750 ratification bonus is paid.” **City Position: Disagree**

Page 17 Recommendation “The Panel also recommends the City reduce its maximum contribution effective January 2015 to an amount sufficient to pay the premiums for the fourth highest family plan.” **City Position: Agree**

Page 18 “It is not clear to the Panel whether the downward changes in actual retiree medical costs experienced in FY 2013 and FY 2014 to date have yet been considered in new actuarial projections.” **City Position: Disagree with characterization of Panel’s understanding; any changes in actual retiree medical costs will not be considered until the new actuarial report is released in February 2014.**

Page 19 “The Panel recognizes that the labor market rewards hard work, career advancement, and working in dangerous public safety classifications.” **City Position: Agree**

Page 20 “The Panel notes that furloughs dramatically affect an employee’s paycheck, but are essentially one-time savings to the employer and do not assist in correcting a structural deficit.” **City Position: Agree**

Page 20 “The Panel has concentrated its focus on the first five years of the City’s 10-year plan, due to the inherent unreliability of projections further than five years into the future.” **City Position: Agree with the first part of the sentence. However, while the City agrees the out-year projections are less stable, it is incorrect to represent the data provided as “inherently unreliable.”**

Pages 22-23 “The Panel recognizes the need to be wary of any projection, but it finds no more reason to disregard the Beacon property tax predictions than to disregard the City’s projections, which underestimated property tax in FY 2013 and property transfer tax in both FY 2012 (by more than 35%) and FY 2013 (by 17%).” **City Position: Disagree**

Page 25 “The Panel finds that prefunding the benefits is a prudent move. Nevertheless, the Panel notes that beyond the \$108 Monthly Employer Contribution required by CalPERS, the supplemental retirement benefit is negotiable.” **City Position: Agree**

Page 27 “The Panel finds that deficit spending in the enterprise funds does not support a pay increase in FY2014, but the projection of increasing fund balances allows for small raises in future years.”
City Position: Disagree

Page 27 “It would be unwise to add an ongoing increase to the City’s expenditures, particularly as it adds to PERS liabilities, but with the labor cost savings recommended by the Panel there would be sufficient money in the general fund to make the one-time payment.”
City Position: Disagree

Page 28 “Because of the wide variability in revenue projections in FY 2016 and the inherent uncertainty in projecting further into the future, the Panel cannot recommend an unconditional raise over 2%.”
City Position: Agree

Page 29 Recommendations:

FY 2014: \$0% raise (City Position: Agree) and a \$750 payment on ratification, pro-rated for part-time employee (City Position: Disagree). Clerical unit employees shall begin making 20% contributions to dental insurance premiums and 50% contributions to vision premiums effective 1/1/2014 (City Position: Agree).

FY 2015: 1% raise on July 1, 2014 and 1% raise on January 1, 2015 (City Position: Disagree). The City should reduce its maximum contribution to health insurance premiums to the family rate of the fourth-highest plan available through PERS, effective January 1, 2015 (City Position: Agree).

FY 2016: 2% raise. In addition to a 2% increase, an amount sufficient when added to 2% to total the increase in the CPI-W in calendar year 2015, should be made as a one-time payment in February 2016, provided there is an 8% increase in revenue from FY 2013 to FY 2015, and provided there are no further changes to CalPERS pension actuarial assumptions relating to the discount rate and mortality rate as discussed in City Exhibit 26 (City Position: Partially Agree; if the unit agreed to changes in the maximum contribution to, and caps on, health insurance premiums, there may be savings sufficient to warrant either a raise or one-time funds. However, these recommendations have not been fully costed or vetted).

The Panel does not recommend that the clerical and maintenance units contribute to retiree health benefits (City Position: Disagree).

Page 30 “In light of the wage recommendation above and no information showing that the City’s overtime practice is more generous than the comparators’ obligations, the Panel does not support a change.”
City Position: Disagree

Page 32 “The Panel also notes that a 100% payment gives an injured employee little incentive to return to work if the injury heals within the year the City provides the extra benefit.”
City Position: Agree

Page 32 Recommendation “The Panel recommends that the language in the current contract be amended as follows: “additional compensation equal to the difference between 80 percent of said employees’ regular pay and the disability compensation allowance shall be granted for up to one year during any three year period regardless of the number of injuries during that three year period.”

City Position: The City agrees with the recommended shift in philosophy away from 100% wage replacement when an employee is off work due to a work-related injury. However, there is not clear justification in the report as to why 80% was selected as the replacement compensation figure as opposed to the legally mandated minimum of 66 2/3%.

1. Management Rights

Page 34 “Therefore, although some of the enumerated rights are well recognized management rights and would be a reasonable addition to the contract, the Panel will not attempt to pick and choose among them.”

City Position: Disagree

Recommendation: No change

City Position: Disagree

2. Severance Pay

Recommendation: No change

City Position: Disagree

3. Layoffs

Recommendation: No change

City Position: Disagree

4. Order of Layoffs

Recommendation: The Panel recommends that the following sentence be added to section A: “A layoff out of the inverse order of seniority may be made if, in the City's judgment, retention of special job skills are required.” All other language should remain unchanged.

City Position: Agree

5. Seniority

Recommendation: The Panel recommends the Parties agree to the proposed language.

City Position: Agree

6. Notice of Layoff

Recommendation: The Panel recommends the Parties agree to the proposed language on Notice of Layoff.

City Position: Agree

7. Employee Options

Recommendation: The Panel recommends the Parties agree to the proposed language regarding Employee Options.

City Position: Agree

8. Right of Return following Layoff (M only)

Recommendation: No Change.

City Position: Disagree

9. Meal and Rest Periods (M only)

Recommendation: No Change.

City Position: Disagree

10. Attendance at Evening Meetings (C only)

Recommendation: The Panel recommends the Parties agree to the City's proposal.

City Position: Agree

11. Overtime Regulations (M only)

Recommendation: No change.

City Position: Disagree

12. Night Shift Differential (M only)

Page 44 "The Panel finds that the City's night shift differentials are lower than the average paid by the comparators. In light of the City's financial situation, however, the Panel recommends an increase in the fixed rate begin in FY 2015."

Recommendation: The Panel recommends the night shift differential for the evening shift be raised to \$1.30 for employees who work after 4:00 p.m. and the differential for the graveyard shift be increased to \$1.60 for those who work between 11 p.m. and 7 a.m.

City Position: While the City might agree in concept with the recommendation, we cannot fully support the recommendation. This recommendation has financial implications that must be weighed in the context of the total cost of all the negotiated provisions of a MOU.

13. Certification Fees (M only)

Recommendation: No change.

City Position: Disagree

14. Police Department Training Pay (C only)

Recommendation: No change.

City Position: Disagree

15. Sewer Maintenance Differential (M only)

Page 46 "The Panel, however, is concerned that a change could be inequitable if some employees seldom earn this differential while others perform this work frequently. Without information that the eligible employees generally perform about the same amount of sewer maintenance work, the Panel cannot recommend rolling the differential into base pay."

Recommendation: No change.

City Position: Disagree

16. Standby Provisions (M only)

Page 48 "The Panel finds an insufficient difference in pay to justify an increase at this time."

Recommendation: The Panel recommends updating its reference to communication devices.

City Position: Agree on both points.

17. Pesticide Differential (M only)

Recommendation: No change.

City Position: Agree

18. Water Treatment Certification Differential (M only)

Recommendation: No change.

City Position: Disagree

19. Heavy Equipment Repair Differential (M only)

Page 50 “Again, the Panel is concerned that a change could be inequitable if some employees seldom earn this differential while others perform this work frequently. Without information that the eligible employees generally perform about the same amount of sewer maintenance work, the Panel cannot recommend rolling the differential into base pay.”

Recommendation: No change.

City Position: Disagree on both points.

20. Distribution Certification Differential (M only)

Recommendation: If it is true that the D-4 level certification is needed for work performed by the City, the language should be changed to reflect the change in the law (**City Position: Agree**). The Panel does not recommend a change rolling the differential into base pay (**City Position: Disagree**).

21. Bilingual Pay

Page 52 “The Panel agrees that the City should not pay for competencies an employee does not possess. If there is a documented reason to question competency, the City should have the contractual leeway to test an employee’s bilingual competence”

Recommendation: The Panel recommends that the Parties agree that the language in the second paragraph of the City’s proposal should be added to this section together with language that permits the City to test when there is a documented reason to question competency.

City Position: Agree on both points.

22. Thermoplastic Hazard Differential, Homeless Encampment Cleanup Differential, Arborist Differential

Recommendation: No change.

City Position: Agree.

23. Longevity Pay

Recommendation: No change.

City Position: Agree.

24. Federal or State Health Plan

Recommendation: No change.

City Position: Agree.

25. Alternate Benefit

Page 54 “As the rewritten provision raises several issues not addressed by both parties, the Panel declines to recommend adoption of the City proposal.”

Recommendation: No change.

City Position: Disagree on both points.

26. Change in Pay Upon Reclassification

Recommendation: No change.

City Position: Disagree.

27. Working out of Class (C only)

Recommendation: No change.

City Position: Disagree.

28. Retirement Program

Recommendation: The MOUs should be amended to replace the language in Section 10.1 with the language in sideletters No. 7 to each MOU. In addition, the section should be amended with the following language: “New members as defined by the PEPRA pension reform statute shall have a retirement formula dictated by law.”

City Position: The City partially agrees with the recommendation but believes language regarding employee cost sharing for new members as defined by PEPRA should be incorporated into the MOU and that terms should be negotiated locally.

29. Holidays Observed by the City, New Year’s Eve

Recommendation: The Panel recommends consolidation of sections 11.01 and 11.05 as proposed by the City, except for the changes to the final paragraph (**City Position: Agree except for the exclusion of the sentence “Scheduling or assignment of holiday work must be approved in advance by the City Manager or designee.”**). The Panel does not recommend increasing the New Year’s Eve holiday (**City Position: Agree**).

30. Holidays for Part-Time Employees

Recommendation: The Panel makes no recommendation.

City Position: Agree.

31. Qualifying for Holiday Pay

Recommendation: No change.

City Position: Disagree.

32. Compensation for Holidays Worked

Recommendation: No change.

City Position: Disagree.

33. Holiday Pay for 24-Hour Employees

Recommendation: No change.

City Position: Agree.

34. Vacation Leave Policy

Recommendation: No change.

City Position: Disagree.

35. Vacation Accrual for Full-Time Employees

Recommendation: No change.

City Position: Disagree.

36. Vacation Accrual for Permanent Part-Time Employees

Recommendation: No change.

City Position: Disagree.

37. Sick Leave Policy

Page 66 “The City explains that edits to the first paragraph change the person approving the use of sick leave from the Department Head to the supervisor. The City believes this change will ease the workload for Department Heads and make for a quicker approval process. The Panel agrees with this proposal.” **(City Position: Agree)**

Page 66 “The Panel finds that addition of the language, “medical, dental, and other health and wellness” before the word “appointments” in the first paragraph should allay the Union’s concerns.” **(City Position: Agree)**

Page 66 “The Panel finds, however, that the language, “For family members who reside in the employee’s home, there is no limit on the amount of sick leave that can be used as family sick leave by full time or part-time employees” does not support the City’s position that there is no practice of allowing more than half an employee’s leave to be used for family members who live with an employee.” **(City Position: Agree)**

Page 66 “The Panel recommends the Parties agree to this amendment in the final paragraph.” **(City Position: Agree)**

Recommendation: The Panel recommends the changes in the first and final paragraphs of the City’s proposal.

City Position: Agree.

38. Sick Leave Accruals for Part-Time Employees

Recommendation: No change.

City Position: Disagree.

39. Sick Leave Notice and Certification

Recommendation: No change.

City Position: Disagree.

40. Payment for Unused Sick Leave

Page 70 “The Panel shares the Union’s concern.” **(City Position: Agree)**

Page 71 “The Panel finds that the current provision already rewards longevity by increasing the percentage payout with each year of service.” **(City Position: Agree)**

Recommendation: *The Panel recommends the parties agree to delete the word “full-time” in the first paragraph, but does not recommend other proposed changes.*

City Position: Agree.

41. Leaves of Absence

Recommendation: *No change.*

City Position: Disagree.

42. Parental Leave

Recommendation: *No change.*

City Position: Agree.

43. Safety Shoes (M only)

Recommendation: *The Panel recommends that the safety shoe reimbursement be raised to \$200.00 effective July 1, 2014.*

City Position: While the City might agree in concept with the recommendation, we cannot fully support the recommendation. This recommendation has financial implications that must be weighed in the context of the total cost of all the negotiated provisions of a MOU.

44. Participation in Promotional Exams (C only)

Page 74 “The Panel notes that a promotional examination generally is not required of any employee.” **(City Position: Agree)**

Recommendation: *No change.*

City Position: Disagree.

45. Introduction of New Equipment (C only)

Recommendation: *No change.*

City Position: Disagree.

46. Pre-Retirement Counseling (C only)

Recommendation: *No change.*

City Position: Disagree.

47. Restrictions on Outside Work

Recommendation: *The Panel recommends no change to Sec. 16.19 in the Maintenance contract (City Position: Disagree). It recommends the Parties agree to add a similar provision in the Clerical MOU (City Position: Agree).*

48. Temporary Positions / Employment Agencies

Recommendation: *The Panel recommends the parties agree to the Union’s proposal.*

City Position: Disagree.

49. No Strike

Recommendation: *No change.*

City Position: Disagree.

Respectfully Submitted By:

A handwritten signature in black ink, appearing to read 'K. McAdoo', with a long horizontal flourish extending to the right.

Kelly McAdoo, City Representative to Fact Finding Panel

Date: February 3, 2014

HAYWARD CITY COUNCIL

RESOLUTION NO. 14 -

Introduced by Council Member _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
HAYWARD IMPOSING THE CITY'S ONE-YEAR LAST, BEST,
AND FINAL OFFER TO SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 1021 – CLERICAL AND
RELATED UNIT PURSUANT TO GOVERNMENT CODE
SECTION 3505.7

WHEREAS, the City of Hayward (“City”) and Service Employees International Unit (“SEIU”), Local 1021 – Clerical and Related Unit were signatories to a Memorandum of Understanding (“MOU”) that expired April 30, 2013, setting certain terms and conditions of employment for employees in that bargaining unit; and

WHEREAS, beginning February 2013, the City and SEIU Local 1021 negotiation teams have met and engaged in extensive negotiations over the terms of a successor to said MOU; and

WHEREAS, notwithstanding that the City and SEIU Local 1021 negotiation teams have met several times in an effort to agree upon terms of a successor MOU, the City and SEIU Local 1021 remain significantly apart on such terms; and

WHEREAS, notwithstanding the efforts described above, the parties have arrived at an impasse; and

WHEREAS, the City’s negotiation team submitted the City’s one-year last, best, and final offer and five-year last, best, and final offer to SEIU Local 1021 on July 26, 2013; and

WHEREAS, the last, best, and final offer did not lead to an agreement on the terms of a successor MOU; and

WHEREAS, on September 4, 2013, SEIU Local 1021 filed a request for factfinding with the Public Employment Relations Board (“PERB”) pursuant to Government Code section 3505.4(a); and

WHEREAS, on November 18, 19, and 22, and December 17, 2013, the City and SEIU Local 1021 negotiation teams participated in a factfinding hearing in Hayward by the three member factfinding panel; and

WHEREAS, the report of the findings, conclusions, and advisory recommendations of the factfinding panel were released on February 4, 2014 and were made publicly available on February 14, 2014; and

HAYWARD CITY COUNCIL

RESOLUTION NO. 14 -

Introduced by Council Member _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
HAYWARD IMPOSING THE CITY'S ONE-YEAR LAST, BEST,
AND FINAL OFFER TO SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 1021 – MAINTENANCE
AND OPERATIONS UNIT PURSUANT TO GOVERNMENT
CODE SECTION 3505.7

WHEREAS, the City of Hayward (“City”) and Service Employees International Unit (“SEIU”), Local 1021 – Maintenance and Operations Unit were signatories to a Memorandum of Understanding (“MOU”) that expired April 30, 2013, setting certain terms and conditions of employment for employees in that bargaining unit; and

WHEREAS, beginning February 2013, the City and SEIU Local 1021 negotiation teams have met and engaged in extensive negotiations over the terms of a successor to said MOU; and

WHEREAS, notwithstanding that the City and SEIU Local 1021 negotiation teams have met several times in an effort to agree upon terms of a successor MOU, the City and SEIU Local 1021 remain significantly apart on such terms; and

WHEREAS, notwithstanding the efforts described above, the parties have arrived at an impasse; and

WHEREAS, the City’s negotiation team submitted the City’s one-year last, best, and final offer and five-year last, best, and final offer to SEIU Local 1021 on July 26, 2013; and

WHEREAS, the last, best, and final offer did not lead to an agreement on the terms of a successor MOU; and

WHEREAS, on September 4, 2013, SEIU Local 1021 filed a request for factfinding with the Public Employment Relations Board (“PERB”) pursuant to Government Code section 3505.4(a); and

WHEREAS, on November 18, 19, and 22, and December 17, 2013, the City and SEIU Local 1021 negotiation teams participated in a factfinding hearing in Hayward by the three member factfinding panel; and

WHEREAS, the report of the findings, conclusions, and advisory recommendations of the factfinding panel were released on February 4, 2014 and were made publicly available on February 14, 2014; and

DATE: February 18, 2014

TO: Mayor and City Council

FROM: Director of Development Services
City Attorney

SUBJECT: Adoption of Interim Urgency Ordinance Extending a Temporary Moratorium on the Development, Establishment and Operation of new Small-Format and Large-Scale Tobacco Retailers and all new E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars within the City of Hayward. The Adoption of the Ordinance is Exempt from Environmental Review Under the California Environmental Quality Act (CEQA), Pursuant to Public Resources Code Section 21065 and State CEQA Guidelines Sections 15061(b)(3), 15306 and 15378.

RECOMMENDATION

That the City Council adopts the attached interim urgency ordinance (Attachment I) finding the action categorically exempt from CEQA review and extending a temporary moratorium on the development, establishment, and operation of new Small-Format and Large-Scale Tobacco Retailers and all new E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars within the City of Hayward, to become effective immediately.

SUMMARY

Staff recommends that the City Council extends the moratorium on the development, establishment, and operation of new small-format and large-scale tobacco retail establishments. Small-format tobacco retailers are stores that are less than 10,000 square feet in size. Large-scale tobacco retailers are stores that devote more than five (5) percent of their floor areas to the sale, display, sale and storage of tobacco products. Also, staff is recommending that the City Council extends the moratorium on all new hookah bars and e-cigarette retailers and related establishments, due to the recent proliferation of such establishments in Hayward and because of the unknown long-term health impacts of e-cigarettes on youth. The extension would allow staff additional time to conduct further research needed to complete work on the modifications to the Zoning Ordinance regarding the establishment of such uses. Staff anticipates presenting recommendations for new regulations to the Planning Commission and City Council in the spring of this year.

BACKGROUND

On January 14, 2014, the City Council adopted Ordinance No. 14-02, an urgency ordinance establishing a temporary 45-day moratorium on the development, establishment, and operation of

new Small-Format and Large-Scale Tobacco Retailers and all new E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars within the City of Hayward. The staff report associated with that action is available on the City's website¹ and the meeting minutes are included as Attachment II.

The temporary moratorium will expire on February 28, 2014, unless the City Council adopts an ordinance extending the moratorium at a noticed public hearing pursuant to Government Code Section 65858 et. seq. The City Council can extend the moratorium for a period up to ten months and fifteen days at a noticed public hearing. Prior to the expiration of that period, the City Council may approve a final extension of up to one additional year at a noticed public hearing.

Due partially to availability and the lack of specific local laws regulating tobacco sales in Hayward, and in response to concerns with the negative health consequences of tobacco use among youth, staff received direction from City Council in early 2012 to develop regulations pertaining to the sales of tobacco and tobacco-related products. Staff anticipates more permanent regulations will go forward to the Planning Commission and City Council for consideration in Spring 2014.

At the time of the January 14, 2014 Council meeting, staff was aware of eight E-Cigarette or "Vapor" retailers, one hundred and forty-six tobacco retailers and two hookah lounges in the City of Hayward. In 2013, City staff, including staff of the Hayward Police Department (HPD), had noticed an increase in the number of business license applications submitted for E-Cigarette or Vapor stores, with seven of the eight existing establishments opening in 2013 in less than a twelve month time period.

Given the large number of existing establishments in Hayward that sell tobacco and tobacco-related products, including electronic cigarettes, and since the long-term effects of electronic cigarettes are still unknown, an extension of the moratorium is needed in order to protect the public health, safety and welfare. Extending the moratorium will provide staff with additional time to conduct further research and develop proposed regulations to best address the prevention of sales of tobacco and tobacco-related products to youths and potential imminent threats to public safety, health, and welfare resulting from e-cigarette lounges, vapor bars and hookah bars.

DISCUSSION

Currently, the City's Zoning Ordinance does not list the sale of tobacco as a permitted use in any zoning district, nor does it define tobacco and tobacco-related products. As there was no specific restriction on tobacco sales, the Planning Director had previously made determinations that tobacco sales were a general retail item permitted in any commercial zoning district except in the downtown core area. With the prevalence of the establishment of "smoke shops" and other establishments selling tobacco, vapor, and tobacco-related products in recent years, and with the introduction of

¹ See report at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2014/CCA14PDF/cca011414full.pdf>, agenda item #7.

a variety of new tobacco-related products, such as flavored tobacco, electronic cigarettes, hookahs and candy flavored cigars, it became clear that the City needed to develop standards pertaining to the sale of such items in order to prevent sales to youth. At the direction of City Council, staff began research and development of draft regulations pertaining to the sales of tobacco and tobacco-related products, including electronic cigarettes, in early 2012.

Electronic cigarettes come in many shapes and prices, ranging from the disposable types that can be purchased at convenience stores for a few dollars and resemble real cigarettes to the more complex vaporizers sold at so-called "Vapor" stores or bars, which can sell for hundreds of dollars. In "Vapor" bars or e-cigarette lounges, patrons fill a tank with a solution that may contain nicotine and that comes in various flavors and potencies and press a button that heats the solution into a vapor that is inhaled by the user. The health effects of heated and inhaled vapor, with or without nicotine, and second-hand vapor are unknown.

A hookah lounge or hookah bar is a central location, typically with a layout similar to a restaurant or coffee shop, where customers share flavored tobacco from a communal hookah. Typically, a hookah with a long flexible tube is placed at various tables throughout the establishment. Customers sit at the table and smoke the flavored tobacco. Additionally, some hookah lounges sell food and other drinks. Hookah lounges do not typically serve alcohol. Hookah bars differ from E-cigarette or "Vapor" stores, because hookah typically involves smoking tobacco. Although not all hookah contains tobacco, a study by the National Institute of Health that compared smoke toxicant content for tobacco and non-tobacco products concluded that smoke from both categories of products contained substantial quantities of toxicants². While California law permits local agencies, such as the City, to pass and enforce laws regulating the distribution of electronic cigarettes that are stricter than state law, there are no state-wide rules governing "vapor bars," e-cigarette lounges, or hookah bars. While several of these businesses have already been permitted in Hayward as "retail" uses, the City does not have any zoning designations or regulations that specifically pertain to such establishments.

Operators of electronic cigarette or "vapor" stores and some anti-tobacco advocates argue that the product is a smoking cessation device that has helped thousands of people quit smoking traditional cigarettes³. Proponents go on to argue that electronic cigarettes are not tobacco and do not emit smoke and, therefore should not be regulated in the same manner as tobacco. However, the Food and Drug Administration (FDA) has not approved electronic cigarettes as a smoking cessation device and intends to issue a proposed rule extending FDA's tobacco product authority beyond the above products to include other products like e-cigarettes⁴. Furthermore, because electronic cigarettes have not been studied fully, the long-term health effects of electronic cigarettes are still unknown. Limited studies by the FDA found significant quality issues indicating that quality control processes used to manufacture these products are substandard or non-existent. During the FDA studies, cartridges labeled as containing no nicotine were found to

² <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3407543/#R3>

³ http://www.casaa.org/FAQS_ecig.html

⁴ <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm>

contain nicotine and three different electronic cigarette cartridges with the same label emitted a considerably different amount of nicotine with each inhalation.

Experts have also raised concerns that the marketing of products such as e-cigarettes can increase nicotine addiction among young people and may lead kids to try other tobacco products⁵. Furthermore, a recent study of indoor air pollution caused by electronic cigarettes found that pollutants from electronic cigarettes are not emission-free and their pollutants could be of health concern for users and secondhand smokers. In particular, ultrafine particles formed from supersaturated 1,2-propanediol vapor can be deposited in the lung, and aerosolized nicotine seems capable of increasing the release of the inflammatory signaling molecule NO upon inhalation. In view of consumer safety, e-cigarettes and nicotine liquids should be officially regulated and labeled with appropriate warnings of potential health effects, particularly of toxicity risk in children⁶.

On January 17, 2014, the 2014 Surgeon General's Report was released and confirmed that smoking is deadlier and more addictive than it was 50 years ago, causing 87 percent of all lung cancer deaths and 61 percent of all lung disease deaths and it remains the single largest cause of preventable disease and death in the United States⁷. It also concluded that most first use of cigarettes occurs by 18 years of age (87%), with nearly all first use by 26 years of age (98%). Furthermore, the report went on to say that there is sufficient evidence to conclude that mass media campaigns, comprehensive community programs, and comprehensive statewide tobacco control programs prevent initiation of tobacco use and reduce the prevalence of tobacco use among youth and adults.

In the absence of a ruling from the FDA, many jurisdictions in the United States have already adopted laws to regulate electronic cigarettes as a tobacco product, including New York and Chicago. To date, more than fifty-nine (59) California cities include electronic cigarettes in their tobacco regulations and require all retailers to obtain a license⁸. Most recently, in December 2013, the California cities of Richmond and Carlsbad passed ordinances to prohibit the use of electronic cigarettes from public places, such as parks and restaurants, and the City of Los Angeles approved laws to regulate electronic cigarettes as tobacco products, including the requirement to obtain a tobacco retailers license. The City of Union City adopted regulations to amend their tobacco regulations to include electronic cigarettes, cigars, and cigarillos, and to prohibit the establishment of "vapor" lounges and hookah lounges.

The provisions of the Hayward Municipal Code that may regulate the development, establishment, and operation of new Small-Format and Large Scale Tobacco Retailers and all new E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars in the City are inadequate and need further review, study and revision. Pursuant to Government Code Section 65858, the City may establish a moratorium prohibiting any uses that may be in conflict with a

⁵ <http://www.fda.gov/forconsumers/consumerupdates/ucm225210.htm>

⁶ Schober, W., et al., Use of electronic cigarettes (e-cigarettes) impairs indoor air quality and increases FeNO levels of e-cigarette consumers. *Int. J. Hyg. Environ. Health* (2013), <http://dx.doi.org/10.1016/j.ijheh.2013.11.003>

⁷ <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/index.html>

⁸ <http://center4tobaccopolicy.org/wp-content/uploads/2013/08/E-cigarettes-in-TRL-8.9.13.pdf>

contemplated general plan, specific plan or zoning proposal that the legislative body, planning commission or the planning department is considering in order to protect and preserve the public safety, health and welfare.

Since the adoption of the interim ordinance in January, staff has continued to review available scientific data and to analyze the potential impacts of such new uses in the City, along with drafting modifications to the Zoning Ordinance regulations and other sections of the City's Municipal Code as appropriate. The Food and Drug Administration (FDA), which currently does not regulate electronic cigarettes, is expected to make a ruling to extend its tobacco product authority beyond cigarettes, cigarette tobacco, roll-your-own-tobacco and smokeless tobacco to include other products like e-cigarettes⁹. However, the FDA will not say when the ruling will be released, so it could be anywhere from days to months before the ruling is made.

Additionally, Government Code Section 65858(d) requires a written report to be issued describing the measures taken to alleviate the condition that led to the adoption of the ordinance within ten days of the expiration of the ordinance. This staff report shall serve as the written report required by the Government Code. A notice of the Public Hearing was published in *The Daily Review* newspaper on February 8, 2014. A copy of this staff report describing the measures taken to alleviate the conditions that led to the adoption of the moratorium ordinance is available at the City of Hayward City Clerk's Office, 777 B Street, the Main City Library, 835 C Street, the Weekes Branch Library, 27300 Patrick Avenue, or on the City's website at <http://www.hayward-ca.gov/NEWS/2014/>

Pursuant to Government Code Section 65858(c), the legislative body shall not adopt or extend an interim ordinance unless the ordinance contains legislative findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare. The attached Ordinance contains such findings.

Environmental Review - Adoption of the interim urgency Ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065, based on the finding that this ordinance is not a "project" within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. Additionally, adoption of the ordinance is exempt from the California Environmental Quality Act (CEQA), pursuant to CEQA Sections 15061(b)(3) – Review for Exemption, because the activity is covered by the general rule that CEQA applies only to projects with the potential for causing a significant effect on the environment, and 15306 – Information Collection, because the ordinance consists of basic data collection and research, which do not result in a serious or major disturbance to an environmental resource.

⁹ <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm>

ECONOMIC AND FISCAL IMPACT

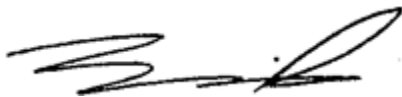
An interim moratorium of limited duration, although potentially negatively impacting some properties in the short-term where such uses are proposed or contemplated, would have potential benefits to the community in the long term. It would ensure that adequate analysis is conducted by staff and presented to the Planning Commission and City Council that would identify the potential negative impacts and positive benefits to the City regarding the establishment of such uses. Such analysis will assist in determining what amendments to the Zoning Ordinance or other Municipal Code sections are appropriate.

NEXT STEPS

Should the City Council adopt the Ordinance extending the moratorium by the required four-fifths vote (minimum six votes needed), the moratorium will be extended for up to ten months and fifteen days (until January 15, 2015). During that time, staff will continue its analysis of potential impacts related to the development, establishment and operation of new Small-Format and Large Scale Tobacco Retailers and all new E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars.

Prepared and Recommended by: David Rizk, AICP, Development Services Director
Michael Lawson, City Attorney

Approved by:



Fran David, City Manager

Attachments

Attachment I: Interim Urgency Ordinance
Attachment II: January 14, 2014 City Council Meeting Minutes

ORDINANCE NO. _____

AN URGENCY MEASURE ADOPTING AN INTERIM
ORDINANCE PURSUANT TO GOVERNMENT CODE SECTION
65858 EXTENDING A MORATORIUM ON THE
ESTABLISHMENT, OPERATION, PERMITTING AND/OR
LICENSING OF NEW SMALL-FORMAT AND LARGE-SCALE
TOBACCO RETAILERS AND ALL NEW ELECTRONIC
CIGARETTE RETAILERS, ELECTRONIC CIGARETTE
LOUNGES, VAPOR BARS/LOUNGES, AND HOOKAH
BARS/LOUNGES WITHIN THE CITY OF HAYWARD FOR TEN
MONTHS AND FIFTEEN DAYS, EXPIRING NOT LATER THAN
JANUARY 15, 2015

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

Section 1. This ordinance is adopted pursuant to the provisions set forth in Government Code Section 65858 and pursuant to other applicable law.

Section 2. Findings. The City Council hereby finds as follows:

- A. Pursuant to Article XI, Section 5 of the California Constitution and the City Charter, the City of Hayward may make and enforce all regulations and ordinances in respect to municipal affairs.
- B. The stated purpose of the Hayward Zoning Ordinance is to promote the public health, safety, general welfare, and preserve and enhance the aesthetic quality of the City by providing regulations to ensure an appropriate mix of land uses in an orderly manner. The Zoning Ordinance further states that the City desires to achieve a pattern and distribution of land uses that generally retain and enhance established residential neighborhoods, commercial and industrial districts, regional-serving uses, and recreational amenities; allow for the infill and reuse of areas at their prevailing scale and character; accommodate expansion of development into vacant and under-utilized lands within environmental and infrastructure constraints; maintain and enhance significant environmental resources; provide a diversity of areas characterized by differing land use activity, scale and intensity; and establish Hayward as a unique and distinctive place in the heart of the San Francisco Bay Area, with a high quality of life in an attractive, secure environment for the City's residents and businesses.
- C. Tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges within the City of Hayward present unique challenges for local government, in that the Hayward Municipal Code does not currently define or regulate said uses, and tobacco and electronic cigarette retailers have been permitted as "retail" uses. In the absence of specific standards and zoning regulations pertaining to tobacco retailers, electronic cigarettes retailers, vapor bars/lounges and hookah bars/lounges, it is difficult to regulate these establishments, and, as such, these uses require a commitment of police and code enforcement resources that is typically greater than other regulated retail establishments.
- D. Tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges are typically adults-only uses in a commercial setting and may not be appropriate in all zoning districts or near uses where minors and other sensitive receptors are present.
- E. The establishment and operation of new small-format tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges or hookah bars/lounges in the City before the City can adopt regulations presents a current and immediate threat to the public health, safety

and welfare. The negative health impacts related to tobacco use have been known for some time, and studies show an increase in the use of electronic cigarettes by youth. Although the long-term health effects of using electronic cigarettes are still unknown, initial studies have found carcinogens and toxic chemicals in the electronic cigarette vapors, including ingredients used to make anti-freeze. With respect to the moratorium on new small-format and large-scale tobacco retailers, studies have shown that sales of tobacco and tobacco-related products to youth are typically not occurring at the larger retailers with only ancillary tobacco sales.

- F. There are eight (8) electronic cigarette or vapor stores presently operating in the City; seven (7) of the business license applications for these electronic cigarette or vapor stores were received in 2013 alone. According to the Hayward Police Department, other applications are still pending completion of the background checks. City staff anticipates additional requests for similar businesses in the foreseeable future. Such establishments provide the potential for illegal sales of vapor and electronic cigarette products to youth.
- G. Because tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges can create undesirable effects on surrounding commercial establishments, residential areas, and on those who participate in such activities, additional time is needed to allow staff to analyze the potential impacts of such establishments in Hayward and determine what modifications to the Zoning Ordinance regulations would be appropriate.
- H. The City's Zoning Ordinance is silent about tobacco retailers, vapor bars/lounges, electronic cigarette lounges, electronic cigarette retailers and hookah bars/lounges and, as such, does not address the impacts related to the location and manner of development, establishment, and operation of these establishments in relation to public health, safety, and welfare concerns, including, but not limited to, the impacts these businesses may have on surrounding uses and sensitive receptors, such as children, the infirm and the elderly.
- I. Until such time as the City institutes specific land use controls over tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges, the community is at risk that said businesses could be established, operated, modified or expanded, prior to the adoption of measures necessary for the protection of public health, safety and welfare.
- J. Because the long-term effects of electronic cigarettes is still unknown, the issuance or approval of any building permit, planning permit, business license, or other permit or license, for tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges prior to the City's completion of its review of the need for modifications to the Zoning Ordinance would result in a current and immediate threat to the public health, safety and welfare.
- K. More than one hundred California cities have adopted tobacco retailer licensing ordinances and fifty-nine cities and counties require retailers to obtain a license to sell electronic cigarettes, including Contra Costa County, and the Bay Area cities of Dublin, Concord, Richmond, Albany and Oakland¹. Further, several California cities have placed moratoriums on electronic cigarettes to allow further study to determine if and how to regulate these products. In November 2013, Union City's city council passed an ordinance to prohibit electronic cigarette bars/lounges, vapor bars/lounges, and hookah bars/lounges within its city limits².
- L. The City needs additional time to (1) address the community concerns regarding the establishment and operation of tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges; (2) study the potential impacts that tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges may have

¹ <http://center4tobaccopolicy.org/wp-content/uploads/2013/10/Local-Tobacco-Policies-in-the-Retail-Environment-October-2013.pdf>

² <http://lf2.unioncity.org/WebLink8/DocView.aspx?id=28139&dbid=0>

on the public health, safety and welfare; (3) study and determine what local regulations may be appropriate or necessary for tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges; (4) study and determine the appropriate zoning and location for tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges; and (5) determine appropriate controls for protection of public health and welfare.

- M. Pursuant to Government Code Section 65858, the City has the authority to adopt an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan or zoning proposal.
- N. For the reasons set forth above, this Ordinance is necessary to preserve the public health, safety and welfare and to avoid a current and immediate threat to the health, safety and welfare of the community.
- O. Adoption of the interim urgency ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065, based on the finding that this ordinance is not a “project” within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. Additionally, adoption of the ordinance is exempt from the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Sections 15061(b)(3) and 15306.

Section 3. Scope. In accordance with the authority granted the City of Hayward under Article XI, Section 5 of the California Constitution, the City Charter and Government Code Section 65858, from and after the effective date of this Ordinance, no permit or any other applicable license or entitlement for use, including but not limited to, the issuance of a business license, business permit, building permit, use permit or zoning text amendment shall be approved or issued for the establishment or operation of new small-format and large-scale tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges in the City of Hayward. New small-format and large-scale tobacco retailers and all new electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges, whether as a stand-alone use or as an ancillary use, are hereby prohibited.

Section 4. Definitions.

For purposes of this Ordinance, “tobacco retailer” means any establishment that sells tobacco products, tobacco-related products, electronic smoking devices, tobacco paraphernalia, imitation tobacco products or any combination thereof.

For purposes of this Ordinance, “tobacco products” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

For purposes of this Ordinance, “tobacco paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco products.

For purposes of this Ordinance, “small-format tobacco retailer” means a tobacco retailer that is 10,000 square feet or less in size.

For purposes of this Ordinance, “large-scale tobacco retailer” means a tobacco retailer that devotes more than five (5%) percent its floor space to sales of tobacco products.

For purposes of this Ordinance, “imitation tobacco product” means any edible non-tobacco product designed to resemble a tobacco product or any non-edible, non-tobacco product designed to resemble a tobacco product that is intended to be used by children as a toy. Examples of imitation tobacco products include, but are not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling spit tobacco, and shredded beef jerky in containers resembling snuff tins. An electronic cigarette is not an imitation tobacco product.

For purposes of this Ordinance, “electronic cigarette lounges” and “vapor bars/lounges” mean any facility, building, structure or location, whether fixed or mobile, where customers smoke electronic cigarettes or other device utilizing a heating element that vaporizes a liquid solution that releases nicotine or flavored vapor.

For purposes of this Ordinance, “electronic cigarette” means an electronic and/or battery-operated device, the use of which may resemble smoking that can be used to deliver an inhaled dose of nicotine or other substances. “Electronic cigarette” includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vapor cigarette or any other product name or descriptor.

For purposes of this Ordinance, “electronic cigarette retailer” means any establishment that sells electronic cigarettes.

For purposes of this Ordinance, “hookah bar/lounge” means any facility, building, structure or location, whether fixed or mobile, where customers share flavored tobacco from a communal hookah placed at various tables throughout the establishment.

Section 5. In accordance with Government Code Section 65858, this Ordinance shall be in full force and effect for a period of ten (10) months and fifteen (15) days, expiring no later than January 15, 2015, immediately from the date of its adoption by the City Council by at least six (4/5) affirmative votes. This ten (10) month and fifteen (15) day period may be extended by the City Council in accordance with the provisions of Government Code Section 65858.

Section 6. The Planning Director is hereby authorized to administer and interpret the provisions of this Urgency Ordinance, including but not limited to, review of business license applications, specific use permits applications, variance requests, building permit applications, and other land use approvals, to determine whether the requested business license, use permit, variance, building permit or other land use approval is subject to the terms of this Ordinance.

Section 7. The Planning Director shall review and consider options for the regulation of tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges in the City and provide the City Council a written report at least ten (10) days prior to expiration of this Ordinance describing the measures that the City has taken to address the conditions which led to the adoption of this interim Ordinance.

Section 8. Constitutionality. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 9. Publication. This interim, urgency Ordinance or a comprehensive summary thereof shall be published in newspaper of general circulation of the City within one week after its adoption.

INTRODUCED and adopted at a regular meeting of the City Council of the City of Hayward, held the ____ day of _____ 2014, by Council Member _____, with the following votes of members of said City Council.

AYES:

NOES:

ABSTAIN:

ABSENT:

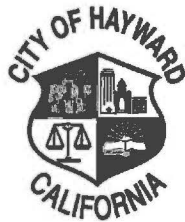
APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, January 14, 2014, 7:00 p.m.**

Attachment II

6. Adoption of Negative Declaration and Request for Text Amendment (PL-2013-0437 TA) to:
(1) Add a definition for Transitional and Supportive Housing to Section 10-1.3500 of the Zoning Ordinance; (2) Amend Table 9 of Section 10-24.300 of the South Hayward BART/Mission Boulevard Form-Based Code by removing reference to both Transitional and Supportive Housing as Allowed Functions; and (3) Replace Section 10-1.145 of the Zoning Ordinance with new Section 10-1.145 related to Reasonable Accommodation for Persons with Physical Disabilities. Applicant: City of Hayward

It was noted that the item was carried over to January 28, 2014.

LEGISLATIVE BUSINESS

7. Adoption of Interim Urgency Ordinance Imposing a Temporary Moratorium on the Development, Establishment and Operation of New Small-Format and Large-Scale Tobacco Retailers and all New E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars within the City of Hayward. The Adoption of the Ordinance is Exempt from Environmental Review under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065 and State CEQA Guidelines Sections 15061(b)(3), 15306 and 15378

Staff report submitted by Development Services Director Rizk and City Attorney Lawson, dated January 14, 2014, was filed.

Development Services Director Rizk announced the report and introduced Associate Planner Ajello who provided a synopsis of the report and noted that staff was in receipt of ten e-mail comments objecting to a ban on electronic cigarettes. Ms. Ajello clarified that the proposed ordinance did not ban electronic cigarettes, but it placed a temporary restriction on the issuance of business licenses, business permits, building permits for the establishment of tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges, to allow staff time to fully develop comprehensive regulations.

Discussion ensued among Council and City staff.

Mayor Sweeney opened the public hearing at 7:30 p.m.

The following speakers expressed concern about a moratorium that would prohibit the establishment of tobacco retail establishments and offered the following comments: electronic cigarettes contain Food and Drug Administration (FDA) approved ingredients and serve as tobacco cessation tools; vapor stores generate revenue for the City; and electronic cigarettes "vaping" do not have the smoke and harmful side effects of traditional cigarettes.

Ms. Jennifer Mish, Vapor 5 business owner
Mr. Steven Hernandez, Vapor 5 business owner
Mr. Ben Jewell, owner of a Castro Valley vapor store
Ms. Charlene Shores, Hayward resident
Mr. Jim Drake, Hayward resident
Mr. Nicholas Morales, Vapor 5 employee

The following speaker expressed support for the ordinance imposing a temporary moratorium on the establishment of tobacco retail establishments and offered the following comments: flavored electronic cigarettes and hookah pens were becoming a major problem among the youth; more scientific cases for or against the effects of vaping needed to be researched in order to draft coherent tobacco regulations; the moratorium would help understand good business practice demonstrated by existing businesses; and the moratorium would help develop strategies to prevent the marketing and sale of electronic cigarettes to the youth.

Ms. Karishma Khatri, Tobacco and Alcohol Decoy and Hayward Coalition for Healthy Youth representative
Ms. Jocelyn Bonilla, Undercover Decoy Program member
Ms. Janice Louie, Alameda County Public Health Department representative
Ms. Serena Chen, American Lung Association representative
Ms. Sara Lamnin, Hayward resident
Ms. Linda Pratt, COMMPRE representative
Mr. Jordan Leopold, Hayward resident

Mayor Sweeney closed the public hearing at 8:04 p.m.

Council Member Mendall said he would favor regulating electronic cigarettes, similarly to tobacco products, unless there was scientific evidence to prove that electronic cigarettes were healthier. Mr. Mendall offered a motion to adopt the interim urgency ordinance establishing a temporary moratorium on the establishment of new tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars, and hookah bars, in order to provide staff with the necessary time to conduct research and develop regulations.

Council Member Halliday seconded the motion and noted that while her focus was on preventing young people from getting into the smoking habit she was sensitive to the assertion that electronic cigarettes could help reduce nicotine intake. Ms. Halliday indicated that it was important to find an approach that balanced all interests. Ms. Halliday requested that staff provide Council with the information submitted by the owners of Vapor 5 or to include that information in the analysis for developing regulations.

Council Member Zermeño supported the motion and also asked for the information that was submitted by Vapor 5. Mr. Zermeño disclosed having met with Ms. Jennifer Mish and Mr. Ben Jewell. Mr. Zermeño stated that he needed to have arguments for and against electronic cigarettes in order to make an informed decision.



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, January 14, 2014, 7:00 p.m.**

Council Member Salinas supported the motion, shared health statistics and health risk factors in Alameda County, and noted that the Council needed to consider all the relevant information when making decisions.

Council Member Peixoto supported the motion and commented that absent reliable and scientific evidence, he was not ready to advocate either way on the use of electronic cigarettes and the moratorium was a common sense approach. Mr. Peixoto requested that staff provide the Council with the information provided by Vapor 5.

Council Member Jones supported the motion and noted that the moratorium would allow the Council to learn more about electronic cigarettes. Mr. Jones indicated it was the Council's responsibility to protect the health of the community and to regulate behavior. Mr. Jones added he was disturbed to learn about flavored vapor products because they directly targeted minors.

Mayor Sweeney supported the moratorium and he expressed he would review the results of scientific, credible and objective evidence on the use of electronic cigarettes and vapor products. Mayor Sweeney concurred with prior speakers that tobacco products were marketed to target young people and to get them started on smoking.

It was moved by Council Member Mendall, seconded by Council Member Halliday, and carried unanimously, to adopt the following:

Ordinance 14-02, "An Urgency Measure Adopting an Interim Ordinance Pursuant to Government Code Section 65858 Imposing a Moratorium on the Establishment, Operation, Permitting and/or Licensing of New Small-Format and Large-Scale Tobacco Retailers and All New Electronic Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars/Lounges, and Hookah Bars/Lounges Within the City of Hayward"

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Zermeno wished all students in attendance a prosperous 2014.

City Manager David reported on the successful City of Hayward Job Fair which was sponsored by the Human Resources Department on January 11, 2014. It was noted that over 1,100 people attended the fair.

Council Member Halliday spoke about a mailer from Alameda County Waste Management Authority regarding the consideration of a fee of \$9.55 per year per residential unit to support the countywide household hazardous waste program.