



CITY OF HAYWARD

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Cover Memo

File #: CONS 15-189, **Version:** 1

DATE: September 22, 2015

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT

Approval of Resolution Ratifying Re-Entry Agreement Approval

RECOMMENDATION

That the City Council, in its capacity as governing board to the Hayward Successor Agency, adopts the attached resolution (Attachment I) that ratifies the Oversight Board's approval of the Re-Entry Agreement pursuant to Health and Safety Code Section 34178(a) and 34180(h) and authorizes staff to take other administrative actions and execute contracts and such other documents as are appropriate to effectuate the intent of the resolution and all actions necessary to effectuate associated requirements of Assembly Bill x1 26 and AB 1484 (collectively, the "Dissolution Statutes").

BACKGROUND

On September 23, 1975, the City of Hayward (the "City") and the Redevelopment Agency of the City of Hayward (the "Dissolved RDA"), entered into an agreement in which the City loaned funds to the Dissolved RDA (the "City Loan") to facilitate implementation of the legitimate redevelopment program for the Downtown Hayward Redevelopment Project Area. Over the following four decades, the loan and subsequent repayment agreement (the "Repayment Agreement") was amended from time to time, as the City made additional loans to the Dissolved RDA.

Under the Dissolution Statutes, all California redevelopment agencies were dissolved effective February 1, 2012, and various actions are now required by successor agencies to unwind the affairs of all former redevelopment agencies.

The Dissolution Act generally provides that (with exceptions) agreements between the Dissolved RDA and the City, like the Repayment Agreement, are not Enforceable Obligations. Between February 1, 2012 and June 28, 2012 however, Health and Safety Code Codes 34178(a) and 34180(h) authorized the Successor Agency and the City, with Oversight Board approval, to reenter into such agreements.

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

(excluding the Repayment Amount which had been credited toward the initial outstanding obligation).

The Dissolution Statutes require that the Successor Agency prepare and the Oversight Board approve a recognized obligation payment schedule (individually a "ROPS" and collectively, "ROPSs") setting forth for each six-month period all Enforceable Obligations (as defined in the Dissolution Act) of the Dissolved RDA. On separate occasions, the Oversight Board approved previous ROPSs that included the repayment of the Re-Entry Agreement, but the Department denied the request to release any proceeds of real property tax trust fund proceeds to fund the repayment of the Re-Entry Agreement.

Two separate recently published appellate decisions, *City of Emeryville v. Cohen* (2015) 233 Cal.App.4th 293, and *County of Sonoma v. Cohen* (2015) 235 Cal.App.4th 42, have upheld the validity and enforceability of re-entered agreements that were approved by a successor agency's oversight board and authorized between February 1, 2012 and June 27, 2012.

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

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

DISCUSSION

The intent of this report is to secure approval of a resolution that ratifies the Oversight Board's approval of the Re-Entry Agreement pursuant to Health and Safety Code Section 34178(a) and 34180(h) and to clarify the outstanding balance under the Re-Entry Agreement.

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

In early 2011, the Dissolved RDA made various payments to the City in the amount of \$2,220,000 (the "Repayment Amount"), in accordance with the terms of the Repayment Agreement. As a result of the Department's review of the Successor Agency's Other Funds and Accounts ("Non-Housing Fund") Due Diligence Review, which was prepared and approved pursuant to the requirements of Health and Safety Code Section 34179.5 and 34179.6 (the "Non-Housing Fund DDR"), the City was required to return the Repayment Amount to the Successor Agency for distribution to other taxing entities.

As a result of the Department's adjustment of the required distribution payments under the Non-Housing Fund DDR and the City's return of the entire \$2,220,000 of the Repayment Amount to the Successor Agency, the outstanding obligation under the Re-Entry Agreement is required to be increased by the Repayment Amount. The current outstanding principal balance is \$9,236,442.

In light of the Department's final determination denying the requested payment of the Re-Entry Agreement on ROPS 15-16A, ROPS for the six-month fiscal period commencing on July 1, 2015 and continuing through December 31, 2015, Successor Agency staff met with representatives of the Department to discuss the Department's determination. As a result of the meeting, the Department subsequently notified the Successor Agency and the City that the Department would remove its opposition to fund the repayment of the Re-Entry Agreement. The Department further advised the Successor Agency to include the Re-Entry Agreement in the ROPS for the six-month fiscal period commencing on January 1, 2016 and continuing through June 30, 2016 ("ROPS 15-16B").

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

Implementation Actions: The accompanying resolution reaffirms Oversight Board Resolution 2012-05 and its previous determination that the Re-Entry Agreement constitutes an "enforceable obligation" and "recognized obligation" for all purposes of the Dissolution Statutes and as such should be included as an obligation of the Successor Agency under the Successor Agency's ROPSs until such time as the entire Outstanding Obligation has been repaid.

Environmental Review: The actions set forth in the recommended accompanying resolution, as summarized above, are exempt under Guideline 15378(b)(4) of the California Environmental Quality Act (CEQA) in that the actions do not constitute a "project," but instead are required to continue a governmental funding mechanism for enforceable obligations of the former Redevelopment Agency and to perform the statutorily mandated unwinding of the assets, liabilities, and functions of the former Redevelopment Agency pursuant to the Dissolution Act.

ECONOMIC AND FISCAL IMPACT

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

The City's General Fund will receive approximately \$800,000 annually in repayments of this loan until the balance (\$9,236,442) is retired. These funds are considered one-time in nature and will be placed in the City's reserve funds unless the Council directs these funds be used in a different manner consistent with the Council's policy on the use of one-time funds.

NEXT STEPS

The Re-Entry Agreement is listed as Item 48 on ROPS 15-16B. Following approval of the ROPS 15-16B by

both the Oversight Board and the Successor Agency's Governing Board, staff will submit this to the Department of Finance by the October deadline for approval. The Department of Finance then has an opportunity to review and object to any items on the ROPS and/or request additional documentation. If any items on the ROPS 15-16B are challenged, the Successor Agency will have an opportunity to request a meet and confer session if staff disagrees with any of the Department of Finance's determinations. All Department of Finance meet and confer determinations must be made fifteen days prior to January 1, 2016, which is when the tax increment funds approved pursuant to the ROPS 15-16B period will be disbursed to the Successor Agency. The Re-Entry Agreement will be included as an obligation of the Successor Agency under the Successor Agency's ROPSs until such time as the entire Outstanding Obligation has been repaid.

Prepared by: John Stefanski, Management Analyst

Recommended by: Kelly McAdoo, Assistant City Manager
Approved by:



Fran David, City Manager

Attachments:

- Attachment I Successor Agency Resolution Ratifying Approval of Re-Entry Agreement
- Attachment II Re-Entry Agreement Correspondence
- Attachment III Executed Re-Entry Agreement
- Attachment IV Oversight Board Resolution No. 2012-05