



CITY OF HAYWARD

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Cover Memo

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DATE: September 22, 2015

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT

Approval of Recognized Obligation Payment Schedule for the Period January 1, 2016 through June 30, 2016 and the Successor Agency Administrative Budget for the period July 1, 2015 through June 30, 2016 (Report will be available on Monday, September 21, 2015).

RECOMMENDATION

That the City Council, in its capacity as governing board to the Hayward Successor Agency, adopts the attached resolution (Attachment I) that approves the Recognized Obligation Payment Schedule (ROPS 15-16B) for the period January 1, 2016 through June 30, 2016 and the Successor Agency Administrative Budget for the period July 1, 2015 through June 30, 2016 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

The California State Legislature enacted Assembly Bill x1 26 (the "Dissolution Act") to dissolve redevelopment agencies formed under the Community Redevelopment Law in June of 2011. The California Supreme Court in its decision in *California Redevelopment Association v. Matosantos*, issued December 29, 2011, declared the Dissolution Act to be constitutional. Under the Dissolution Act, 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.

On June 27, 2012, as part of the state budget package, the California legislature passed and Governor Brown signed AB 1484. The main objective of AB 1484 was to amend the 2011 Redevelopment Dissolution Act (AB1x 26) based on experience in implementing the Act at the state and local level during the first year of dissolution actions. AB 1484 imposed new obligations on the successor agencies and oversight boards of dissolving redevelopment agencies, which staff has been implementing.

Update on Compliance with Provisions of AB 1484

In addition to the obligations from AB 1484, the legislation made provisions for additional benefits to Successor Agencies. As part of the AB 1484 requirements, the Successor Agency was required to complete due diligence reviews of both the housing and non-housing funds and submit these reviews (audits) to the Department of Finance for approval. The intent of the Due Diligence Reviews (DDR) was

to review any unauthorized transfers or transactions made by the former Redevelopment Agency between January and June 2011 and claw back these funds for the taxing entities. The Hayward Successor Agency completed and submitted the Housing DDR on February 5, 2013 and received a final determination from DOF (after a meet and confer session) on April 6, 2013. The Agency remitted \$483,154 that was distributed among the taxing entities. The Agency then completed the non-housing funds DDR and submitted it on May 24, 2013. The DOF sent the Agency a final determination (after a meet and confer session) on September 9, 2013 and the Agency remitted \$5,856,617 for distribution to the taxing entities.

Following completion of the DDRs, the Agency was eligible to receive a Finding of Completion, which the DOF issued on November 8, 2013. With the Finding of Completion the Agency was able to list loan agreements between the former redevelopment agency and the City on the ROPS as enforceable obligations eligible for repayment. The first loan to be repaid was the SERAF loan to the Housing Authority. The Agency has been making repayments on this loan since June 2014 and made the final repayment in August 2015.

Review of ROPS 15-16A

With the submittal of the ROPS 15-16A, the Agency listed the first repayment of the General Fund Loan between the City of Hayward and the Former Redevelopment Agency. During DOF Review of the ROPS 15-16A, this loan repayment was denied as an enforceable obligation because the Successor Agency could not produce nearly 40 years of accounting records to identify the amount of cash transfers versus in-kind services that comprised the loan.

Additionally, the DOF rejected the Public Employee Retirement System Liability and Other Post-Employment Benefits Liabilities (PERS and OPEB) because the Agency had listed these items on a previous ROPS but did not take the appropriate administrative steps to make the transfer to the respective trust funds for these benefits. During the ROPS 14-15A period (for the period beginning July 1, 2014), these previously disbursed funds held in reserve for the PERS and OPEB liabilities were mistakenly re-categorized by the DOF as available cash balance and the Agency had to use these funds to pay other obligations. As such, there are currently no funds on hand to cover these liabilities.

The DOF also denied the Project Delivery Costs associated with the Burbank Residual Site because the Purchase and Sale Agreement, which was approved by the Oversight Board as well as the DOF in 2013, was in the opinion of the DOF “not approved by Finance.”

Following the denial of these items, the Successor Agency began to organize to take legal action against the DOF. This, in addition to the efforts of City of Hayward’s legislative advocates, Townsend Public Affairs along with Assembly Member Quirk’s office, yielded a July 8th meeting with Justyn Howard, Program Budget Manager and Chris Hill, Principal Program Budget Analyst from the DOF. At this meeting, the DOF conceded that the denied items all were enforceable obligations and were to be approved on the ROPS15-16B.

The Agency was also able to submit the Long Range Property Management Plan (LRPMP) to facilitate the disposition of former Agency properties. Staff submitted this plan to DOF on May 5, 2014. The DOF required the Successor Agency to make several changes to the LRPMP to include compensation agreements for each non-governmental use property. The Oversight Board re-approved the amended LRPMP on May 18, 2015. Staff submitted the amended LRPMP to the DOF on May 21, 2015. The plan

was approved in early September.

DISCUSSION

The intent of this report is to recommend approval of the next Recognized Obligation Payment Schedule (ROPS 15-16B) and Administrative Budget for the period January 1, 2016 through June 30, 2016 (Attachments II and III). Every six months, the Successor Agency is required to prepare and submit a ROPS that outlines the required payments the Successor Agency must make to meet required obligations and to wind down the affairs of the former Redevelopment Agency. Once the Oversight Board approves these items, staff will submit them to the Department of Finance by the October 1, 2015 deadline.

General Fund Loan Repayment

One of the few positive aspects of the passage of AB 1484 is the opportunity to seek repayment of interagency loans, such as the one Hayward's General Fund provided to the former RDA in 1975 to cover a variety of start-up expenses. The current balance on this loan is approximately \$9.2 million (see *Item #48 on ROPS Detail*, ROPS 15-16B).

As mentioned earlier, the Agency is listing the Re-Entered Repayment Agreement with the City as an enforceable obligation on this ROPS, per the results of the July 2015 meeting with the DOF. Per DOF instructions, the repayment schedule must match with the repayment schedule of the re-entered agreement. Under the re-entered agreement, the Agency "shall pay the outstanding principal balance and any other funds advanced by the City to the Agency...in even installments of eight hundred thousand (\$800,000) paid July 1 of each year." (see Attachment IV: Agreement Reentering into Repayment Agreement, 2012)

Pending Department of Finance approval of ROPS 15-16B, the Successor Agency anticipates making the first annual payment toward the General Fund loan of \$800,000 pursuant to the repayment schedule in the re-entered loan agreement. Additionally, the Successor Agency has approximately \$2.8 million in outstanding loans due to the City's Sewer and Water Enterprise Funds. The Agency anticipates beginning repayment of these loans during the 2026-2027 Annual ROPS period.

PERS and OPEB Liabilities

ROPS 15-16B, again, includes payment of the outstanding PERS and OPEB liabilities for former Redevelopment Agency employees. As this report mentions earlier, the Agency is requesting a new distribution of RPTTF to replace the funds available for these liability costs. These will be immediately transferred out of the Successor Agency fund balance and into a separate trust fund maintained for such liabilities. Per the July 8th meeting with the DOF, staff anticipates DOF approval for these items.

Housing Authority Administrative Cost Allowance

New to the ROPS 15-16B is the inclusion of \$150,000 in Housing Authority Administrative Cost Allowance (Per AB 471). In *Montclair v. Cohen* (2015), the Superior Court of California in the County of Sacramento held that the DOF abused its discretion in determining that a City controlled housing authority is not eligible for the housing entity administrative cost allowance. This is a positive ruling for the Agency, signaling the ability of the Successor Agency to claim Hayward Housing Authority administrative costs as an enforceable obligation.

Implementation Actions: The accompanying resolution authorizes and directs staff to take all

administrative steps on behalf of the Successor Agency to implement upcoming requirements under the Dissolution Act and AB 1484, including providing necessary notices, transmittals, and postings regarding the ROPS and Successor Agency administrative budget.

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

Approval of the ROPS 15-16B will facilitate the ability of the City as Successor Agency to continue payment of the enforceable obligations of the former Redevelopment Agency and is among the measures required to be taken to avoid triggering an event of default under any enforceable obligations. Approval of the Successor Agency administrative budget will facilitate the Successor Agency's receipt of the funds to which it is entitled under the Dissolution Act and AB 1484 to implement its administrative responsibilities.

NEXT STEPS

Following City Council approval of the ROPS 15-16B and the Fiscal Year 15-16 Administrative Budget, the Oversight Board will consider approval of the ROPS 15-16B and the Fiscal Year 15-16 Administrative Budget on September 23, 2015. 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.

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Recommended by: Kelly McAdoo, Assistant City Manager

Approved by:



Fran David, City Manager

Attachments:

- Attachment I Successor Agency Resolution Regarding ROPS 15-16B and Administrative Budget
- Attachment II Recognized Obligation Payment Schedule (ROPS 15-16B) January 1, 2016 through
June 30, 2016
- Attachment III Successor Agency Administrative Budget July 1, 2015 -
June 30, 2016
- Attachment IV Agreement Reentering into Repayment Agreement