

HAYWARD SUCCESSOR AGENCY OVERSIGHT BOARD

RESOLUTION 2013- 03

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD APPROVING SPECIFIED AMENDMENTS TO THE APPROVED RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD JULY THROUGH DECEMBER 2013

WHEREAS, the California state legislature enacted Assembly Bill x1 26 (the “Dissolution Act”) to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.); and

WHEREAS, on January 24, 2012 and pursuant to Health and Safety Code Section 34173, the City Council of the City of Hayward (the “City Council”) declared that the City of Hayward, a charter city (the “City”), would act as successor agency (the “Successor Agency”) for the dissolved Redevelopment Agency of the City of Hayward (the “Dissolved RDA”) effective February 1, 2012; and

WHEREAS, on February 1, 2012, the RDA was dissolved pursuant to Health and Safety Code Section 34172; and

WHEREAS, the Dissolution Act provides for the appointment of an oversight board (the “Oversight Board”) with specific duties to approve certain Successor Agency actions pursuant to Health and Safety Code Section 34180 and to direct the Successor Agency in certain other actions pursuant to Health and Safety Code Section 34181; and

WHEREAS, pursuant to AB 1484 (“AB 1484”), enacted June 27, 2012 to amend various provisions of the Dissolution Act, the Successor Agency is now declared to be a separate legal entity from the City; and

WHEREAS, under the Dissolution Act, the Successor Agency must prepare a “Recognized Obligation Payment Schedule” (“ROPS”) that enumerates the enforceable obligations and expenses of the Successor Agency for specified six-month periods; and

WHEREAS on March 1, 2013, the Oversight Board approved the ROPS for the period July 1, 2013 through December 31, 2013 (the “Approved ROPS 13-14A”), all in accordance with the requirements of the Dissolution Act and AB 1484; and

WHEREAS, staff posted the Approved ROPS 13-14A on the Successor Agency's website, and transmitted the Approved ROPS 13-14A to the Auditor-Controller of the County of Alameda (the “Auditor-Controller”), to the Alameda County Administrator (the “County Administrator”) to the California State Controller (the “State Controller”), and to the California Department of Finance (the “DOF”); and

WHEREAS, Health and Safety Code Section 34177.3, added by AB 1484, authorizes the Successor Agency to create enforceable obligations to conduct the work of winding down the affairs of the Former Agency including hiring staff, professional administrative services and legal counsel; and

WHEREAS, Health and Safety Code Section 34177(a), authorizes the Successor Agency to create continue to make payments due for enforceable obligations; and

WHEREAS, the Successor Agency staff proposes to amend the Approved ROPS 13-14A in the manner described below (collectively the “Modifications to the Approved ROPS 13-14A”):

1. Add Line Item 55 requesting payment of \$170,000 under the Consultant Services Agreement for project administrative costs associated with the South Hayward BART Project;
2. Add Line Item 56 requesting payment of \$427,795 under a Legal Services Agreement for project related legal costs associated with the South Hayward BART Project;
3. Add Line Item 57 requesting payment of \$126,482 plus interest under the Tennyson Preservation Partner Agreement; and
4. Add Line Item 58 requesting payment of \$1,108.13 for property maintenance costs associated with the pressure washing of the Cinema Place Garage Property.

WHEREAS, the Modifications to the Approved ROPS 13-14A are reflected in the “Modified ROPS 13-14A” Attachment III of the accompanying staff report; and

WHEREAS, other than the amendments specified in this Resolution, and reflected on the Modified ROPS 13-14A, the remainder of the enforceable obligations and recognized obligations listed on the Approved ROPS 13-14A each constitute the “Unmodified Enforceable Obligations” and each and every of the Unmodified Enforceable Obligations remain in full force and effect and unchanged by the adoption of this Resolution; and

WHEREAS, the Modified ROPS 13-14A must be submitted to the Oversight Board for the Oversight Board's approval in accordance with the Dissolution Act; and

WHEREAS, the Modified ROPS 13-14A was submitted by the Successor Agency to the Alameda County Administrative Officer, the Auditor-Controller, and the DOF in accordance with Health and Safety Section 34179.6; and

WHEREAS, the accompanying staff report provides supporting information upon which the actions set forth in this Resolution are based.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board hereby finds, resolves, and determines that the foregoing recitals are true and correct, and, together with

information provided by the Successor Agency staff and the public, form the basis for the approvals, findings, resolutions, and determinations set forth below.

BE IT FURTHER RESOLVED that no further action of the Oversight Board is required in connection with the Unmodified Enforceable Obligations contained on the Approved ROPS 13-14A.

BE IT FURTHER RESOLVED that under Health and Safety Code Section 34180(g), the Oversight Board must approve the establishment of the recognized obligation payment schedules of the Successor Agency.

BE IT FURTHER RESOLVED that the Oversight Board, in accordance with the Dissolution Act, hereby approves the Modified ROPS 13-14A.

BE IT FURTHER RESOLVED that the Oversight Board hereby approves the Modifications to the Approved ROPS 13-14A as reflected in the Modified ROPS 13-14A in the form on file with the City Clerk (the "Approved Modified ROPS 13-14A") including the agreements and obligations described in the Approved Modified ROPS 13-14A, and hereby determines that such agreements and obligations constitute "enforceable obligations" and "recognized obligations" for all purposes of the Dissolution Act. In connection with such approval, the Oversight Board makes the specific findings set forth below. The Oversight Board hereby declares its intent that the Approved Modified ROPS 13-14A shall amend, replace, and supersede the Approved ROPS 13-14A only with respect only to the Modifications to the Approved ROPS 13-14A.

BE IT FURTHER RESOLVED that the Oversight Board has examined the items on the Approved Modified ROPS 13-14A and finds that each of them is necessary for the continued maintenance and preservation of property owned by the Successor Agency until disposition in accordance with the Dissolution Act, the continued administration of the ongoing agreements herein approved by the Oversight Board, or the expeditious wind-down of the affairs of the Dissolved RDA by the Successor Agency.

BE IT FURTHER RESOLVED that the Oversight Board hereby authorizes the Successor Agency to, pursuant to Health and Safety Code Section 34177.3(b), enter into any agreements and amendments to agreements necessary to conduct the work of winding down the Dissolved RDA as contemplated in this Resolution.

BE IT FURTHER RESOLVED that the Oversight Board hereby authorizes and directs the Successor Agency staff to take all administrative actions necessary under the Dissolution Act to file, post, mail or otherwise deliver via electronic mail, internet posting, and/or hardcopy, all notices and transmittals necessary or convenient in connection with the approval of the Approved Modified ROPS 13-14A, and to take any other administrative actions necessary to ensure the validity of the Approved Modified ROPS 13-14A and the validity of any enforceable obligation approved by the Oversight Board in this Resolution.

BE IT FURTHER RESOLVED that nothing in this Resolution shall abrogate, waive, impair or in any other manner affect the right or ability of the City, as a charter city, to initiate and prosecute any litigation with respect to any agreement or other arrangement of the Dissolved RDA, including, without limitation, any litigation contesting the purported invalidity of such agreement or arrangement pursuant to the Dissolution Act.

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

HAYWARD, CALIFORNIA: April 15, 2013

ADOPTED BY THE FOLLOWING VOTE:

AYES: 6	BOARD MEMBERS:	Sweeney, Chair Valle Bristow Henson Salinas Hodges
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NOES: 1	BOARD MEMBERS:	Armas
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ABSTAIN: 0	BOARD MEMBERS:	
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ABSENT: 0	BOARD MEMBERS:	
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Chair of the Oversight Board to
the Hayward Successor Agency

DATE: April 15, 2013

TO: Chair and Members of Successor Agency Oversight Board

FROM: Assistant City Manager

SUBJECT: Approval of Modifications to Recognized Obligation Payment Schedule for the Period July Through December 2013

RECOMMENDATION

That the Oversight Board adopts the attached resolution (Attachment I) that approves modifications to the Recognized Obligation Payment Schedule (ROPS 13_4A) for the period July 1 – December 31, 2013 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 the Dissolution Act and AB 1484.

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 AB 1484. As a budget trailer bill, AB 1484 became effective immediately upon signature by the Governor, which occurred that same day. 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 past year. AB 1484 imposes significant new obligations on the successor agencies and oversight boards of dissolving redevelopment agencies, which staff has been implementing over the past nine months.

DISCUSSION

On March 1, 2013, the Oversight Board approved the initial ROPS 13_14A, which staff submitted to the Department of Finance (DOF) for approval. Staff did receive approval of this ROPS in its current form from DOF on April 14 (Attachment II). However, there have been some recent events that necessitate modifications to this ROPS. Traditionally, staff would take approval of the ROPS and any amendments to the City Council acting as the Successor Agency Board prior to bringing it

to the Oversight Board. However, this is not required under the Dissolution Act provisions and, due to timing issues, staff is bringing this request directly to the Oversight Board. The majority of these changes are the result of the completion of the DOF's review of the Housing Due Diligence Review, which was finalized last week.

The Oversight Board approved the Housing Due Diligence Review for submittal to DOF on January 25, 2013. Staff will discuss the results of the DOF review and the outcome of the Meet and Confer process in more detail as a later item on this meeting's agenda.

South Hayward BART project management expenses: The DOF disallowed two contracts for legal expenses and project management expenses related to the South Hayward BART transit oriented development project. DOF asserted that these agreements were entered into after the June 28, 2011 Dissolution Act date and therefore, did not justify the transfer of Housing funds to cover the expenses. However, the DOF has upheld the Eden loan for the South Hayward BART project as an enforceable obligation. The Dissolution Act allows for payment of project management expenses related to enforceable obligations if those expenses are included on a ROPS approved by the Oversight Board. As such, staff is requesting funds to cover the legal and project management expenses related to this loan agreement as well as authorization from the Oversight Board to re-enter into agreements with Goldfarb Lipman and John DeClercq to provide these services. The total not to exceed amount of John DeClercq's contract is \$170,000. This amount will cover all costs for the life of the contract and covers approximately two years of service provision. Staff is also requesting funding for legal services provided by Goldfarb Lipman over the past two years, totaling \$357,795, as well as funding to cover the next year of expenses, approximately \$70,000.

Tennyson Preservation Agreement: The City Council and Redevelopment Agency Board approved a loan to Eden Housing in 2009 to renovate the Tennyson Gardens apartments. As part of that approval, \$300,000 was set aside in a maintenance reserve to fund future capital maintenance items at the property. DOF upheld this loan and the funds spent to date for maintenance. However, the balance of the capital maintenance reserve must be requested when needed per the attached letter (Attachment II). In October 2012¹, the Housing Authority Board approved expenditure of the total \$300,000 balance and Eden Housing has been using this funding to cover legitimate repair expenses. The balance of these funds (\$126,482 plus interest) is needed immediately to reimburse Eden Housing for these expenses.

Cinema Place Maintenance Expenses: Pursuant to the Maintenance and Easement Agreement with the developer for the Cinema Place parking garage, the former Redevelopment Agency is responsible for certain maintenance expenses. The Successor Agency secured pressure washing services for the parking garage to abate odors emanating from the trash enclosure area several times per year and is requesting reimbursement through the ROPS process for this expense. The vendor is Webco Sweeping and the total expense is \$2,216.25, of which the Successor Agency is responsible for \$1,108.13. Staff requests Oversight Board approval to include this expense on the ROPS.

¹ Housing Authority Approval on pages 189-193: <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2012/CCA12PDF/cca102312full.pdf>

All of these modifications to the ROPS 13_14A are indicated on Attachment III. The County Auditor Controller has estimated that the amount of property tax funds available to the Successor Agency to pay enforceable obligations and to cover the Agency's administrative allowance for this period is \$5,032,795. There are sufficient funds available to cover the expenses identified in this report as well as the existing obligations listed on the ROPS.

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. This includes re-entering agreements for the South Hayward BART project management expenses.

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 13_14A 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 approval of the amended ROPS 13_14A, staff will submit this to the Department of Finance for approval.

Prepared and Recommended by: Kelly McAdoo, Assistant City Manager

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Oversight Board Resolution Regarding Amended ROPS 13_14A
Attachment II: Department of Finance (DOF) ROPS approval letter
Attachment III: Amended ROPS 13_14A