



CITY OF
HAYWARD
HEART OF THE BAY

CITY COUNCIL AGENDA
OCTOBER 15, 2013

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	2
Update on Community Preservation and Improvement (Illegal Dumping) Ordinance (Report from Director of Maintenance Services McGrath)	
Staff Report	6
Approval of Minutes of the City Council Meeting on September 24, 2013	
Draft Minutes	10
Approval of Minutes of the City Council Meeting on October 1, 2013	
Draft Minutes	19
“Pay as You Save” (PAYSS®) Pilot On-Bill Conservation and Efficiency Financing System - Memorandum of Understanding and Concept Paper	
Staff Report	25
Attachment I Resolution.	33
Attachment II SOW for MOU	34
Attachment III Concept Paper.	40
Advanced Metering Infrastructure Feasibility Study: Authorization for the City Manager to Execute Professional Services Agreement with TritonAMI for the Preparation of an Advanced Metering Infrastructure Feasibility Study	
Staff Report	67
Attachment I Resolution.	73
Resolution Establishing the City Contribution for Active and Retiree Medical Premiums Set by the California Public Employee Retirement System (CalPERS) for Calendar Year 2014 pursuant to California Government Code Section 22892 of the Public Employees Medical and Hospital Care Act	
Staff Report	74
Attachment I.	76
Refinancing of Eden Shores Community Facilities District (CFD#1) Special Tax Bonds (Report from Finance Director Vesely)	
Staff Report	77
Attachment I.	79
Attachment II	82



CITY COUNCIL MEETING FOR OCTOBER 15, 2013
777 B STREET, HAYWARD, CA 94541
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CLOSED SESSION
Closed Session Room 2B – 4:30 PM

1. PUBLIC COMMENTS

2. 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, Maintenance Services Director McGrath, Public Works - Engineering and Transportation Director Fakhrai, Human Resources Analyst II Collins, Human Resources Analyst Monnastes

Under Negotiation: All Groups

3. Conference with Legal Counsel

Pursuant to Government Code 54956.9

- Pending Litigation: Joseph Masqulier/City of Hayward, WCAB No. ADJ6420217

4. Conference with Property Negotiators

Pursuant to Government Code 54956.8

- Property Negotiators: City Manager David, City Attorney Lawson, Assistant City Manager McAdoo, Assistant City Attorney Conneely

Under Negotiation: South Hayward Transit-Oriented Development Project, 28901 and 28937 Mission Boulevard

5. Conference with Property Negotiators

Pursuant to Government Code 54956.8

Property Transaction

- Property Negotiators: City Manager David, Assistant City Manager McAdoo, City Attorney Lawson, Assistant City Attorney Conneely, Assistant City Attorney Brick, Heather Gould and Rafael Yaquian of Goldfarb Lipman (outside legal counsel), Libby Seifel of Seifel Consulting (outside financial consultant)

Under Negotiation: 22632 Main Street (APN 428-0066-024-00); 22654 Main Street (APN 428-0066-039-00); 22696 Main Street (APN 428-0066-038-02); 1026 C Street (APN 428-0066-037-00); 1026 C Street (APN 428-0066-038-01)

6. Adjourn to City Council Meeting

**CITY COUNCIL MEETING
Council Chambers – 7:00 PM**

CALL TO ORDER Pledge of Allegiance Council Member Peixoto

ROLL CALL

CLOSED SESSION ANNOUNCEMENT

PROCLAMATION: The Great California ShakeOut Day: October 17, 2013

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.

NON-ACTION ITEMS: *(Work Session and Informational Staff Presentation items are non-action items. Although the Council may discuss or direct staff to follow up on these items, no formal action will be taken. Any formal action will be placed on the agenda at a subsequent meeting in the action sections of the agenda.)*

WORK SESSION (60-Minute Limit)

1. Update on Community Preservation and Improvement (Illegal Dumping) Ordinance (Report from Director of Maintenance Services McGrath)
[Staff Report](#)
-

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 anytime before the Consent Calendar is voted on by Council if you wish to speak on a Consent Item.)*

CONSENT

2. Approval of Minutes of the City Council Meeting on September 24, 2013
[Draft Minutes](#)
3. Approval of Minutes of the City Council Meeting on October 1, 2013
[Draft Minutes](#)

October 15, 2013



4. "Pay as You Save" (PAYS®) Pilot On-Bill Conservation and Efficiency Financing System - Memorandum of Understanding and Concept Paper
[Staff Report](#)
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[Staff Report](#)
[Attachment I](#)
-

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*
-

LEGISLATIVE BUSINESS

7. Refinancing of Eden Shores Community Facilities District (CFD#1) Special Tax Bonds (Report from Finance Director Vesely)
[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, OCTOBER 22, 2013

October 15, 2013



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:



DATE: October 15, 2013

TO: Mayor and City Council

FROM: Director of Maintenance Services

SUBJECT: Update on Community Preservation and Improvement (Illegal Dumping) Ordinance

RECOMMENDATION

That the City Council reviews and comments on this report.

SUMMARY

On November 13, 2012¹ the City Council adopted an amendment to the Community Preservation and Improvement Ordinance (the “Ordinance”) to address increased blight along the City public rights-of-way. The Ordinance amendment made property owners responsible for keeping the street and sidewalk fronting, adjacent, or contiguous to their private properties free of trash and debris, by applying noticing, fee, and penalty consequences for failure to comply with a notice to remove illegal dumping. The purpose of this change was to address community concerns regarding illegal dumping, help to keep the City clean, ensure safe travel for pedestrian and vehicular traffic, as well as prevent further blight in the City.

Since the January 2013 implementation, City staff has seen positive results and believes that the Ordinance implementation has been an effective tool in improving cleanliness in the City. Staff believes that continued enforcement of the Ordinance can reduce the amount of needed City resources associated with the removal and disposal of illegally dumped items, which will allow City staff to perform other maintenance functions with existing resources.

BACKGROUND

Blight along the City’s public rights-of-way has dramatically increased over the last several years. In the four years prior to the adoption of the Ordinance amendment, the City experienced a significant increase in the discarding of furniture, appliances, and trash that were being dumped or placed on City streets and sidewalks. The origin of these materials was unclear; however, it had created a costly, unsafe, unhealthy, and unsightly nuisance in the City.

¹ <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2012/CCA12PDF/cca111312full.pdf>

City staff initially addressed this increase in blight by devoting City resources to cleaning-up the City. In addition, thousands of volunteer hours were also performed by community groups and the Keep Hayward Clean and Green Task Force (KHCG) to clean-up the City. As the problem grew, these hard working volunteer groups requested a better solution in the form of an Ordinance amendment to make it a violation to have items placed and left in the public rights-of-way. City staff developed and recommended an administrative remedy that added Section 5-7.25 to the Hayward Municipal Code, making it a violation to place and leave trash and debris in the public rights-of-way, and assessed fee and penalty amounts to property owners who did not comply with the Ordinance.

At the introduction of the Ordinance on October 23, 2012², staff heard some concerns from the City Council and members of the public regarding the Ordinance and its implementation. Much of the concern was that innocent property owners would bear the financial burden of items illegally dumped in front of their properties by unknown parties. As part of the approval of the Ordinance, staff was instructed to return to the City Council with an update regarding program implementation and its effectiveness.

DISCUSSION

The Ordinance amendment gave staff new tools to address blight in the public rights-of-way. Since the January 2013 implementation, staff has seen a 30% increase in the number of illegal dumping cases reported through Access Hayward. This is relative to the overall increase in the use of the City's Access Hayward Customer Relationship Management tool. Although there was an increase in the number of cases reported, records show a 25% reduction in the cubic yardage of debris removed, as compared to the same time period for the previous year. By working with property owners when illegal dumping issues arise, and letting them know the consequences for non-compliance, the City has achieved a 91% compliance with requests to abate. Over the past nine months, 59 property owners were found to be in violation of the Ordinance and received a notice to abate. The relatively small number of notices to abate reflects staff's prudent review and assessment of each incident, on a case-by-case basis. Only 5 notified properties did not comply with the notice to abate or communicate with City staff after being notified and were assessed a fee and penalty for the removal of the blight.

When developing how the program would be implemented, staff was aware that the process employed would be paramount in deciding the overall success or failure of the Ordinance. Educating the community on the new Ordinance and opening up new lines of communications were major components of implementation and have contributed to a successful execution of the process. Open lines of communication have fostered a team effort, where property owners are becoming partners with City staff in removing items and reducing the amount of items being placed in front of their properties. Once property owners began to receive violation notices, the word spread, and other property owners started to contact City staff to ask about the new Ordinance and its penalties for non-compliance. Most property owners were unaware of the Ordinance and the responsibility of property owners to keep the area fronting their properties clean and safe. Staff has been working

² <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2012/CCA12PDF/cca102312full.pdf>

with property owners to educate them on the Ordinance, and to assist them in removing discarded items. Staff's primary goal in implementing the program continues to be to administer the Ordinance in a prudent and judicious manner. The ability to enforce violations of the Ordinance and hold property owners responsible for the safe condition of the public rights-of-way fronting their properties has reduced the amount of trash and debris left on the streets and sidewalks.

Additional Resources

Two additional tools are available in addressing illegal dumping along the City's public rights-of-way.

1. Availability of Self-Haul Coupons from WMAC

Some waste disposal assistance is being offered to property owners in the form of self-haul coupons from Waste Management of Alameda County (WMAC), the City's franchise garbage service provider. Self-Haul Coupons are coupons that allow a resident to take up to two cubic yards of non-hazardous trash or yard trimmings to the Davis Street Transfer Station in San Leandro, free of charge.

Prior to the Ordinance implementation, a total of 100 coupons were available each month (or 1,200 coupons per year) to residents with cart service. These coupons were issued on a first come first serve basis, with an average of 100 coupons being requested and issued monthly. With the high demand for these coupons, some residents reported that coupons were not available if they called within a few days after the first of the month. Upon review, staff found out from WMAC that the total number of monthly coupons issued reached the 100 coupon maximum; however, that only 30% of these coupons were actually being redeemed.

Staff addressed this issue by making arrangements with WMAC to have all unused coupons be re-issued and submitted to the City for distribution. City staff now makes these coupons available to City residents regardless of whether the request comes from a single family or multi-family resident. Staff also coordinates distribution of these coupons with the KHCG Task Force.

2. Pilot WMAC Program

Another service being provided is the use of WMAC's services to remove illegally dumped items. Staff developed an agreement with WMAC under which the company agreed to provide the necessary services to remove these items from properties at no charge to the City. This has been a major component in assisting City staff in implementing the program. This, along with the effects of the Ordinance reducing the amount of debris left on the public rights-of-way, has reduced City staff hours spent on removing illegal dumping.

It is important to note that the current Franchise Agreement with WMAC will expire in June 2014 (with three one-year options for extension). The City may choose to include a more comprehensive on-call bulky item pick-up service for both single family and multi-family

residents in the new contract, as well as to formalize the services that WMAC is currently providing under the pilot program.

Based on the experiences to date in the first nine months of implementation of the Ordinance, staff recommends continued use of this tool to combat illegal dumping in the City.

ECONOMIC IMPACT

Although only a relatively short time has passed since the implementation of the Ordinance, City staff believes that the Ordinance update has been an effective tool in improving cleanliness in the City, and with continued use, will free up valuable City resources. In addition, the reissue of WMAC coupons and implementation of the WMAC pick-up pilot program have also reduced staff time. As this program continues, staff anticipates that fewer City resources will be required to abate illegally dumped items placed on the City public rights-of-way.

FISCAL IMPACT

Prior to the City removing any items, violations follow a standard notice to abate procedure that allows the property owner an opportunity to remove the debris prior to having fees or penalties assessed. Should a property owner receive a notice to abate, and fail to comply with the abatement notification, the City will have the items removed and will bill the property owner for the expense, which will cause an economic impact to the property owner.

Since the January 2013 implementation, only 5 property owners were billed as a result of their non-compliance. The 5 billing notices were generated based on the determination that the refuse originated from the abutting property. As such, the property owner would have been responsible for cost of disposal had they acted responsibly and contacted WMAC for the service, or made other lawful arrangements, instead of unlawfully dumping the items on the sidewalk or in the street. Therefore, the City billing request for the cost of removal of the items was not an additional financial impact to the property owner.

Prepared by: Denise Blohm, Administrative Analyst II

Recommended by: Matt McGrath, Director of Maintenance Services

Approved by:



Fran David, City Manager



**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, September 24, 2013, 7:00 p.m.**

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

ROLL CALL

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

PUBLIC COMMENTS

Mr. Jim Drake, Hayward resident, disagreed that the Fire Department should be involved with the community health center model.

The following individuals spoke in support of the proposed Fire Station Health Center and urged the Council's support because the Center would fulfill the demand for affordable health care; would provide preventative health care; would relieve overcrowded emergency rooms; would compensate the impending loss of Hayward's Kaiser Hospital; would provide primary care services to marginalized residents; and would save St. Rose Hospital funds.

Ms. Maria Gloria, Hayward resident, spoke via interpreter Ronnie Veliz
Ms. Myeshia Jefferson, Hayward resident and volunteer
Ms. Arely Lopez, Tennyson High School student and volunteer
Mr. Timothy Boyles, Senior Minister with the Church of Christ of South Hayward
Mr. Jorge Espinosa, Hayward resident and business owner
Mr. Antonio Solorio, submitted card but did not speak
Ms. Betty Deforest, South Hayward Parish representative
Ms. Sivan Sadeh, Hayward Day Labor Center representative
Ms. Erika Cortez, Hayward resident and President of Student Senate at Chabot College
Mr. Robert Stump, Hayward resident
Ms. Leticia Guzman, Hayward resident
Mr. Daniel Vasquez, Hayward resident
Ms. Abril Lopez, Hayward resident and volunteer
Ms. Nazma Haroon, Hayward resident
Over 1900 petition signatures were submitted by Ms. Maria Gloria and Mr. Jorge Espinosa.

Mr. Pele, Hayward resident, urged the Council to not consider raising the flag of the People's Republic of China in front of City Hall.

Mr. S.J. Samiul, Hayward resident, suggested the City set up a fund for the building of a new library and he recommended bringing new businesses to Hayward.

WORK SESSION

1. Fire Station Health Center

Staff report submitted by Fire Chief Contreras, dated September 24, 2013, was filed.

City Manager David announced the report and turned the presentation to Fire Chief Contreras.

Fire Chief Contreras introduced Ms. Kristel Acacio from the Alameda County Health Care Services Agency (HCSA) who provided an overview of the Fire Station Health Center model which was developed through the collaboration of HCSA, the Fire Department, and the Tiburcio Vasquez Health Center, with a goal to open the first Fire House Clinic and deliver health care services to marginalized residents. Ms. Acacio added that HCSA contracted with Tramutola Advisors to lead the community outreach efforts of The Organizing and Leadership Academy (TOLA) fellows.

Mr. Ronnie Veliz, TOLA fellow, spoke about the community efforts to support the Fire Station Health Center.

Ms. Evelyn Soto, TOLA fellow, provided information and results from the surveys conducted in the South Hayward area regarding health treatment history and health services requested.

Mr. David Vliet, Tiburcio Vasquez Health Center CEO, expressed the Center's Board of Directors support of the partnership between HCSA, Fire Department and the Center in achieving the proposed model as it would expand access to health care in an area that is in dire need and it would complement the services rendered at the Silva Clinic.

Fire Chief Contreras spoke in support of the Fire Station Health Center in South Hayward.

Discussion ensued and Mayor Sweeney and Council Members expressed support for the Fire Station Health Center concept and provided the following recommendations: identify the budget for Fire Station 7 and the health center; identify funding sources for both projects; engage acute hospitals in the area; ensure that medical liability was not assumed by the City; explore having former Hayward Redevelopment funds that went to the County be returned to serve the needs of the community; and incorporate a health prevention education component and partner with the schools.

CONSENT

2. Approval of Minutes of the Special City Council Meeting on September 10, 2013

It was moved by Council Member Peixoto, seconded by Council Members Salinas and Jones, and carried unanimously, to approve the minutes of the Special City Council Meeting on September 10, 2013.



**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, September 24, 2013, 7:00 p.m.**

3. Resignation of Ms. Allison McManus from the Community Services Commission

Staff report submitted by City Clerk Lens, dated September 24, 2013, was filed.

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

Resolution 13-150, “Resolution Accepting the Written Resignation of Allison McManus from the Community Services Commission”

4. Transit Connector (Shuttle) Feasibility Study – Authorization to Accept Federal Transportation Planning Grant, Appropriation of Funds and Authorizing the City Manager to Execute the Agreement

Staff report submitted by Transportation Manager Frascinella, dated September 24, 2013, was filed.

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

Resolution 13-151, “Resolution of the Hayward City Council Authorizing the City Manager to Execute Agreements with the California Department of Transportation (CALTRANS) Pertaining to a Fund Transfer Agreement of Federal Transportation Grant Monies to be Utilized for a Transit Connector (Shuttle) Feasibility Study, Project 05269”

Resolution 13-152, “Resolution Amending Resolution 13-105, As Amended, The Budget Resolution for Capital Improvement Projects for Fiscal Year 2014, Relating to an Appropriation of Funds from the Street System Improvements Fund (Fund 450) to the Transit Connector (Shuttle) Feasibility Study, Project 05269”

5. Transportation for Clean Air (TFCA) Funds - A Street Corridor Controller Replacement and Signal Timing Project

Staff report submitted by Transportation Manager Frascinella, dated September 24, 2013, was filed.

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

Resolution 13-153, “Resolution Authorizing the City Manager to Execute a Transportation Fund for Clean Air Fund Transfer Agreement, Approving an Amendment to the Previously Approved Professional Services Agreement with Stantec Consulting Services, Inc., for Traffic Signal Timing Design Services, and Approving Purchase Orders for Traffic Signal Controllers and Wireless Radios for the “A” Street Corridor Controller Replacement and Signal Timing Project, Project No. 05706”

Resolution 13-154, “Resolution Amending Resolution 13-105, As Amended, the Budget Resolution for Capital Improvement Projects for Fiscal Year 2014, Relating to an Appropriation of Funds from the Transportation System Improvement Fund (Fund 460) to the “A” Street Corridor Controller Replacement and Signal Timing Project, Project No. 05706”

6. Park In-Lieu Fee Appropriation to the Hayward Area Recreation and Park District for the Sorensdale Kitchen Renovation Project

Staff report submitted by Landscape Architect Koo, dated September 24, 2013, was filed.

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

Resolution 13-155, “Resolution Approving Request of Hayward Area Recreation and Park District for Reimbursement Using Park Dedication In-Lieu Fees Associated with the Sorensdale Recreation Center Kitchen Project for the Purpose of Complying with Americans with Disabilities Act (ADA)”

7. Approval of Participation in the Abandoned Vehicle Abatement Authority

Staff report submitted by Traffic Sergeant Olthoff, dated September 24, 2013, was filed.

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

Resolution 13-156, “Resolution Authorizing the Extension of the Abandoned Vehicle Abatement Program Until May 2023”



**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, September 24, 2013, 7:00 p.m.**

PUBLIC HEARING

8. Proposed Revisions Related to Hayward's Alcoholic Beverage Outlet Regulations, Proposed New Regulations for Cabarets and Dances to Replace Hayward's Public Dance Provisions, and Related Amendments to Zoning Ordinance Definitions and the CC-C and CG Zoning Districts; Proposed New Fees - (Text Amendment Application No. PL-2013-0175 TA); Adoption of Negative Declaration; Applicant: City of Hayward

Staff report submitted by Traffic Sergeant Olthoff, dated September 24, 2013, was filed.

Development Services Director Rizk provided a synopsis of the report.

Discussion ensued among Mayor Sweeney, Council Members, and City staff.

Mayor Sweeney opened the public hearing at 9:30 p.m.

The following speakers expressed opposition to the revisions of the alcohol-related ordinances noting the following concerns: the alcoholic beverage establishment retail license fees discriminate against small businesses; the critical incident responsibility places a burden on businesses; recovery costs should come from law violators; the language in the ordinances should be simpler to understand; and the ordinances, as proposed, would hinder business growth.

Ms. Joeann Pepperell, owner of The Funky Monkey
Mr. Allen Chang, representing Curley's Place
Mr. Kim Huggett, Hayward Chamber of Commerce President
Mr. Darren Guillaume, owner of Doc's Wine Shop
Mr. Aric Yevevino, Hayward resident and owner of the Dirty Bird Lounge
Mr. Paul Schaffer, Hayward business and property owner
Mr. Javier González, California Restaurant Association representative
Mr. Larry Gray, Turf Club owner
Mr. Jim Sommer, Dark Horse Lounge General Manager
Ms. Aya Tang, Dirty Bird Lounge employee
Ms. Jennifer Sommer, Dark Horse Lounge owner

The following speakers expressed support for the proposed revisions to the alcohol-related ordinances noting that: the annual cost-recovery fee would serve to enforce laws; the deemed approved ordinance would protect public safety; the proposed fines would hold establishments accountable and would serve as a deterrent for future violations; and the standards outlined would create a safer environment for the youth and conducive for quality businesses to come to Hayward. Mr. Pratt asked the Council to request

an annual report on the implementation of the ordinance as the data collected could help assess the fee structure.

Mr. Richard Ersted, Hayward property owner

Mr. Robert Goodwill

Ms. Deisy Bates, Hayward resident and Hayward Coalition for Healthy Youth (HCHY) Chair

Ms. Tiffany Neira, Hayward resident and HCHY representative

Ms. Stephanie Aldridge, HCHY representative

Ms. Linda Pratt, Community Prevention of Alcohol-Related Problems (CommPre) Program Director and HCHY representative

Ms. Minane Jameson, Hayward resident and HCHY representative

Mayor Sweeney closed the public hearing at 10:19 p.m.

Discussion among City Council and City staff ensued.

Council Member Salinas offered a motion to: introduce the ordinance related to revisions to Hayward's Alcoholic Beverage Outlet regulations; introduce the ordinance associated with revisions to Zoning Ordinance definitions; introduce the ordinance associated with revisions to General Commercial, Central City-Commercial, and Zoning District regulations; introduce the ordinance related to new regulations for Cabarets and Dances; adopt the resolution approving a Negative Declaration/Initial Study; and direct staff to bring back recommendations for amending the Fiscal Year 2014 Master Fee Schedule associated with revisions to the Alcohol Beverage Outlet Fees, which could reflect a sliding scale of cost recovery fees based on the number of incidents and consideration to the suggestions offered by Mr. Richard Ersted.

Council Member Mendall seconded the motion and offered amendments to the ordinances directing staff to bring them back as part of the revisions to the Master Fee Schedule resolution at a future date. The amendments included: adding a provision that would allow the City to revoke a restaurant's right to happy hours and/or live and amplified music for bad behavior; setting up a mechanism by which the Council could approve a bar in an oversaturated census tract with a supermajority vote; and directing staff to provide the Council with an annual report on the implementation of the new provisions.

Council Member Salinas accepted Council Member Mendall's amendments.

Council Member Zermeño noted he agreed with having healthy youth, promoting healthy establishments, closing noncompliant establishments, and preventing more liquor stores that only sell liquor. Mr. Zermeño suggested the City could meet with restaurant and bar owners and assist businesses that are noncompliant. He expressed he would not support the motion because he did not believe it was conducive to a vibrant economy and would discourage new establishments from coming to Hayward.

Council Member Jones expressed that while he agreed with the majority of the ordinances' content, he would not support the recommendation as written. Mr. Jones recommended that the revisions to the Master Fee Schedule associated with revisions to alcohol beverage outlet fees consider the fine structure as a mechanism to impose additional inspection on establishments that violate the ordinance;



**MINUTES OF THE CITY COUNCIL MEETING
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Tuesday, September 24, 2013, 7:00 p.m.**

expressed concern on how the critical incident fee was structured and how it would get applied; suggested adding language to the ordinance about a rating report card that alcohol establishments would be required to post in public places to indicate compliance with the City's regulations; and favored liberalizing the approval process in the downtown entertainment area to allow uses based on administrative use permit basis.

Council Member Halliday expressed she would support the motion. Ms. Halliday noted the proposed annual fees would provide an enforcement mechanism for problematic bars, but agreed the fees needed adjusting; recommended establishing a benchmark for establishments; favored having a nexus to critical incident fees; agreed with deemed approved provisions; and supported having an annual report on the implementation of the recommended provisions.

Council Member Peixoto noted he was in support of the proposed ordinances with reservations about the fee structure and he requested that the suggestions offered by Mr. Richard Ersted be considered. Mr. Peixoto expressed he was concerned about the critical incident fee and was concerned that some establishments would be reluctant to call the police. He recommended that budget information be provided to indicate whether or not the fee structure would produce the site visits.

Mayor Sweeney offered an amendment to the main motion, seconded by Council Member Zermeño, and defeated by the following roll call vote to remove the happy hour provisions from the staff recommendation:

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

Mayor Sweeney expressed he would be supporting the main motion on the floor noting the proposal was a step forward to address problems with bars that drain Police Department resources and impact the operations of surrounding businesses.

It was moved by Council Member Salinas, seconded by Council Member Mendall, and carried by the following roll call vote to introduce the following ordinances, adopt the resolution, and direct staff to bring back recommendations for amending the Fiscal Year 2014 Master Fee Schedule associated with revisions to the Alcohol Beverage Outlet Fees, which could reflect a sliding scale of cost recovery fees based on the number of incidents and consideration to the suggestions offered by Mr. Richard Ersted. There were amendments to the ordinances that would come back as part of the revisions to the Master Fee Schedule resolution at a future date. The amendments to the ordinances consisted of: adding a provision that would allow the City to revoke a restaurant's right to happy hours and/or live and amplified music for bad behavior; setting-up a mechanism by which the Council could approve a bar in

an oversaturated census tract with a supermajority vote; and directing staff to provide the Council with an annual report on the implementation of the new provisions.

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

Introduction of Ordinance 13-_, “Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code Relating to Alcoholic Beverage Outlets”

Introduction of Ordinance 13-_, “Ordinance Amending Hayward Municipal Code Section 10-1.3500, Zoning Ordinance Definitions, to Conform to the City’s Alcoholic Beverage Outlets Ordinance”

Introduction of Ordinance 13-_, “Ordinance Amending Hayward Municipal Code Sections 10-1.1520 Et Seq. and 10-1.1000 Et Seq., Regulating the City’s Central City Commercial (CC-C) Subdistrict and General Commercial (CG) District, to Implement the Alcoholic Beverage Outlets Ordinance”

Introduction of Ordinance 13-_, “Ordinance Amending Chapter 6, Article 2 of the Hayward Municipal Code Relating to Cabarets and Dances”

Resolution 13-157, “Resolution Approving Negative Declaration and Adopted Findings Supporting Text Amendments Related to Proposed, New Alcoholic Beverage Outlets Ordinance and Cabarets and Dances Ordinance”

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Zermeño announced the Keep Hayward Clean and Green Task Force Litter Clean-Up and Graffiti Removal event on September 28, 2013, at the Burbank neighborhood. Mr. Zermeño recommended that the Council send a letter to Measure A Blue Ribbon Task Force to reauthorize Measure A funds to support St. Rose Hospital. There was consensus to add the item to a future Council meeting. Mr. Zermeño also announced that at the League of California Cities the Healthy Eating Active Living Cities Campaign recognized the City of Hayward as an Active HEAL City.

Council Member Salinas announced that Tony Solorio, owner of Tacos Uruapan, and he would be representing the City at the Contra Costa County Mayors’ Healthy Cook-off on October 24, 2013.

Council Member Peixoto announced the National Public Lands Day event along the Juan Bautista de Anza National Historic Trail on September 28, 2013.



**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, September 24, 2013, 7:00 p.m.**

Council Member Halliday shared information from the Alameda County Mosquito Abatement newsletter with the Council.

ADJOURNMENT

Mayor Sweeney adjourned the meeting at 11:09 p.m.

APPROVED:

Michael Sweeney
Mayor, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward



MINUTES OF THE CITY COUNCIL MEETING OF THE CITY OF HAYWARD

City Council Chambers

777 B Street, Hayward, CA 94541

Tuesday, October 1, 2013, 7:00 p.m.

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

ROLL CALL

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

CLOSED SESSION ANNOUNCEMENT

Mayor Sweeney reported that the Council met with labor negotiators pursuant to Government Code 54957.6 regarding all groups; and met with property negotiators pursuant to Government Code 54956.8 regarding property transaction concerning 22632 Main Street (APN 428-0066-024-00), 22654 Main Street (APN 428-0066-039-00), 22696 Main Street (APN 428-0066-038-02), 1026 C Street (APN 428-0066-037-00), 1026 C Street (APN 428-0066-038-01). Mayor Sweeney noted there was no reportable action.

PUBLIC COMMENTS

Mr. Bob Saffarian, with Cypress House Apartments, expressed concern regarding the new regulation to reduce property-related social nuisance behavior because the implementation of the ordinance would place the burden of the eviction process and associated costs on landlords and management.

Mr. Ray Diaz, with Cypress House Apartments, reiterated comments offered by Mr. Saffarian and emphasized the challenges that landlords face with judicial proceedings to resolve nuisance issues.

Mr. Jim Drake, Hayward resident, expressed concern about safety throughout the city and in the schools.

Mr. John Super, Hayward resident, expressed that the Water Tower Park has not been completed as part of Phase I of the Cannery Place Development, as agreed to by the developer.

Mr. Jim Wieder, Hayward resident, urged Council to support the proposed ordinance and noted it would support businesses in downtown and would help enhance the economic vitality of downtown.

Ms. Wynn Greich, Hayward resident, spoke about the health effects of water fluoridation.

Ms. Anna May, Hayward resident, invited all to a fundraiser event “Hallowfest” on November 1, 2013, sponsored by the Rotary Club of F.U.N. Sunset and the Hayward Area Historical Society.

Mr. Ken Coelho, Hayward resident and District 2 Commissioner of the Alameda County Public Health Commission, supported regulations to reduce property-related social nuisance behavior, and recommended that: staff consider the education and public health impacts of the ordinance on the community; engage and work collaboratively with stakeholders; and include in the report the administrative costs associated with the implementation of the ordinance.

Mr. Timothy May, Executive Director of the Rental Housing Association, noted that the new ordinance concerning property-related social nuisance behavior would: address property owners who failed to take action regarding repeated social nuisance behavior; define social nuisance behavior to honor due process; agree with Section 19 of the City's Residential Rent Stabilization Ordinance; assist landlords with the unlawful detainer and eviction process.

WORK SESSION (60-Minute Limit)

1. New Regulations to Reduce Property-Related Social Nuisance Behavior

Staff report submitted by Lieutenant Koller and Assistant City Attorney Alvarado, dated October 1, 2013, was filed.

Lieutenant Mark Koller provided a synopsis of the report.

Discussion ensued among the Council and City staff. There was consensus among Council to support an ordinance that would reduce property-related social nuisance behavior. Council offered the following recommendations: amend Section 19 Eviction for Cause of the Residential Rent Stabilization Ordinance if it allows for a more effective process; consider preventative measures, such as better lighting, to deter criminal activity; add public dumping to the list of social nuisance behavior; apply the ordinance equally; incorporate language in the ordinance ensuring that the City would be a participant in assisting property owners/landlords abate nuisance; and make sure stakeholders were included in drafting the ordinance.

CONSENT

2. Approval of Minutes of the Special Joint City Council/Redevelopment Successor Agency Meeting on September 17, 2013

It was moved by Council/RSA Member Peixoto, seconded by Council/RSA Member Salinas, and carried unanimously, to approve the minutes of the Special Joint City Council/Redevelopment Successor Agency Meeting on September 17, 2013.

LEGISLATIVE BUSINESS

3. Introduction of Ordinances Amending the Hayward Municipal Code by Adding Article 13 to Chapter 4 Relating to Food Sharing Events and Article 14 to Chapter 4 Relating to Park Hours

Staff report submitted by Neighborhood Services Manager Korth, dated October 1, 2013, was filed.



**MINUTES OF THE CITY COUNCIL MEETING OF THE CITY OF
HAYWARD**

City Council Chambers

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Tuesday, October 1, 2013, 7:00 p.m.

Assistant City Manager McAdoo provided a synopsis of the report.

Discussion ensued among the Council and City staff.

Mayor Sweeney opened the public hearing at 8:41 p.m.

The following speakers had concerns about the proposed ordinances relating to food sharing events and park hours noting that the permit requirement to sponsor or engage in food sharing activities would not solve the problem of negative behaviors, would place a burden on food providers, and requested postponing any decision. Most of the speakers agreed that the City should work collaboratively with stakeholders and faith-based organizations; and focus on finding an indoor center to provide meals, restrooms, showers and counseling for the homeless population.

Mr. Steve Mullin, All Saints Church representative

Mr. Kevin Valley, Hayward resident

Mr. Gregg Schlutz, Hayward resident and First United Methodist Church representative

Ms. Sherry Blair, Hayward resident

Mr. Didacus Ramos, Hayward resident

Mr. Robert Goodwill

Mr. Matt Grajeda, San Leandro resident and volunteer

Ms. Tracy Brown, Sacred Space-Hayward representative

Mr. Sean Marley, Hayward resident

Mr. Thomas Heasty, Hayward resident

Mr. Armand Harris, Hayward resident

Mr. Ramon Rios-Parada, Hayward resident and Community Potluck affiliated

Ms. Diane Fagalde, Hayward resident and Community Services Commission member

Ms. Danielle York, South Hayward Parish representative

Ms. Linda L. Simpson

Ms. Doris Rodriguez, Hayward resident

Ms. Betty DeForest, Hayward resident

Ms. Senda Rios, Hayward resident

Ms. Karen Norell, Hayward resident and Hayward Community Action Network (CAN) volunteer

Ms. Marcy Timberman, Hayward resident and Hayward CAN volunteer

Ms. Marlene Rodriguez, Hayward resident and All Saints Church member

Mr. Alexander Anoi, Hayward resident

Ms. Sara Lamnin, Hayward resident

Mr. Josue Garcia, Sprinkler Fitters Local 483 representative

Ms. Sue Merrill, Hayward resident and Executive Director of the South Hayward Parish

Mr. David Siegel, Castro Valley resident and Hayward business owner

Ms. Lisa Watkins, Hayward resident

Mr. Michael Diehl, Berkeley Opportunities for Self-Sufficiency (BOSS) representative

Ms. Carolyn Leandro, Hayward resident and Hayward business owner
Mr. Chuck Horner, Pastor of Calvary Baptist

The following speakers favored the proposed ordinances related to food sharing events and park hours noting that food-sharing activities had caused a concentration of homeless in the downtown which made operating a business difficult; the ordinance would promote safety and would regulate the nuisance; and would provide consideration for merchants in downtown.

Mr. Ben Schweng, owner of Cyclepath Hayward
Ms. Elizabeth Murdock, Hayward resident
Dr. Dharam Salwan, Hayward property owner
Ms. Julie McKillop, Hayward business owner

Mayor Sweeney closed the public hearing at 10:26 p.m.

Mayor Sweeney offered a motion directing staff to amend the ordinance by expanding the definition of “City Park” to include public rights-of-way, sidewalks and city parks; clarifying language about the frequency of food sharing events that could occur and limiting the number of permits issued by site and program; clarifying fee structure for violations of the ordinance; and bringing back the ordinance for reintroduction at a future meeting.

Council Member Halliday seconded the motion.

Council Member Salinas suggested directing staff to bring to Council, along with the amendments to the ordinance, a comprehensive plan that identified a site and funding sources for indoor feeding. Mayor Sweeney recommended giving staff more time to work with stakeholders and remind them that Social Services and Community Development Block Grant funding applications were being accepted until October 25, 2013, and to take advantage of such opportunity.

Council Member Zermeño suggested that staff work with Hayward’s Homeless Task Force and the faith-based community.

Council Member Halliday expressed that while the ordinance would not solve the problems in downtown associated with transients, the Council had the responsibility to balance competing interests, preserve the quality of life in downtown, and regulate behavior on City property. Ms. Halliday concurred with other members that staff needs to work collaboratively with the faith-based community and come up with broader solutions.

Council Member Jones expressed he did not view the ordinance as a solution to the problems expressed by the speakers, but it was the beginning of a process to attempt to solve the problems; agreed on the need for a location where to serve the homeless with dignity; and mentioned that downtown was a difficult area for businesses to thrive.

Council Member Peixoto said he would support the motion offered with the understanding that the City would work collaboratively with stakeholders toward finding a centralized location to provide indoor feeding with the full array of services to help the homeless achieve a productive life.



MINUTES OF THE CITY COUNCIL MEETING OF THE CITY OF HAYWARD

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Tuesday, October 1, 2013, 7:00 p.m.

Council Member Mendall offered a friendly amendment to extend the definition of “City Park” to include all city-owned parks and plazas. Mayor Sweeney was amenable to the amendment and Council Member Zermeño seconded the amendment.

Council Member Mendall expressed he would support the motion and noted that a permanent solution would include: shared indoor site for feeding programs; safe and clean bathrooms; a homeless shelter and variety of services; and regulations for the use of shared public areas. Mr. Mendall asked staff to engage the faith community and noted that it was the City’s responsibility to engage the community and to try and come up with a plan.

Mayor Sweeney pointed out that when the indoor center to feed the homeless was found, there would need to be a community-based organization to run and manage the facility.

Council Member Salinas reiterated his recommendation to direct staff to engage the community and bring back a comprehensive plan that identified a site and funding sources.

It was moved by Mayor Sweeney, seconded by Council Member Zermeño, and carried unanimously by the following roll call vote directing staff to amend the ordinances per Council’s recommendations and bring them back for reintroduction at a future meeting. The amendments included: expand the definition of “City Park” to include public rights-of-way, sidewalks and city-owned parks and plazas; clarify language about the frequency of food sharing events that could occur and limit the number of permits issued by site and program; clarify the fee structure for violations of the ordinance; and engage stakeholders and work with them to come up with a comprehensive plan that identified a site and funding sources for indoor feeding.

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

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Salinas welcomed back Hayward students to a new school year.

Council Member Peixoto reported on his attendance at the Caravan Along the Anza Trail event and thanked Mayor Sweeney and Council Members Salinas and Halliday for supporting the event.

Council Member Halliday announced the Council would be celebrating the 36th Annual Hayward Volunteer Recognition and Awards Dinner on October 8, 2013, at the St. Rose Hospital’s Grand White Tent, and she invited all to attend.

ADJOURNMENT

Mayor Sweeney adjourned the meeting at 10:51 p.m.

APPROVED:

Michael Sweeney
Mayor, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward

DATE: October 15, 2013

TO: Mayor and City Council

FROM: Director of Public Works – Utilities and Environment Services

SUBJECT: “Pay as You Save” (PAYS®) Pilot On-Bill Conservation and Efficiency Financing System - Memorandum of Understanding and Concept Paper

RECOMMENDATION

That the City Council reviews and comments on the “Pay As You Save ®” Concept Paper and adopts the attached resolution authorizing the City Manager to execute a Memorandum of Understanding between the City and the Sonoma County Regional Climate Protection Agency.

SUMMARY

The City of Hayward has received funding from the Bay Area Regional Energy Network (BayREN) to design a “Pay As You Save®” (PAYS®) on-bill financing system to allow multifamily property owners to install water conservation and energy efficiency measures with no up-front costs. The costs of efficiency improvements are repaid over time through a surcharge on the customer’s water bill. A draft Memorandum of Understanding (MOU) between the City and the Sonoma County Regional Climate Protection Agency (RCPA) outlines the roles, responsibilities, and deliverables for the PAYS® design process. RCPA has secured funding from the California Public Utilities Commission (CPUC) through an application by the Association of Bay Area Governments as part of the BayREN to fund the development of pilot programs to utilize water and energy efficiently. RCPA has also presented the City with an initial PAYS® “Concept Paper” to provide a high level description of the pilot program.

BACKGROUND

The City has been awarded a grant by the BayREN to design a PAYS® system. PAYS® allows eligible property owners to have water and energy-saving measures installed 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.

“Pay as You Save” (PAYS®) – The concept for PAYS® was developed in 1999 by the Energy Efficiency Institute, a resource efficiency consultant, and has since been implemented in Hawaii, Kansas, Kentucky, and New Hampshire. The most recent data shows that approximately \$18M in resource efficiency measures have been installed through PAYS® nationwide. The PAYS®

system is currently being piloted in the Town of Windsor in Sonoma County, and with the initial success of that pilot, the Sonoma County RCPA and ABAG were awarded BayREN funding to support the expansion of the PAYS® pilot to other Bay Area water utilities. This funding will cover program design costs, technical assistance, and will offset some start-up costs for up to three water utilities seeking to implement the program. Currently, the City of Hayward and the Town of Windsor were selected to receive funding, and the East Bay Municipal Utility District (EBMUD) and the San Francisco Public Utility Commission (SFPUC) are also in preliminary discussions to implement their own PAYS® systems. The Town of Windsor has received funding to expand their program to include commercial properties.

Hayward staff submitted a non-binding “letter of intent” on May 15, 2013 to RCPA to indicate interest in the system and apply for grant funding. The BayREN selection committee determined that Hayward was a suitable candidate for the funding and responded with a “partnership letter” on May 22, 2013, formally selecting Hayward to begin program design. A preliminary PAYS® overview was presented to the Council Sustainability Committee on July 1, 2013¹, and the proposed Concept Paper and Memorandum of Understanding were presented on October 2, 2013.

City Council Sustainability Committee – The Concept Paper and draft MOU were presented to the City Council Sustainability Committee on October 2, 2013. The Committee expressed support for the program and recommended that the City Council approve execution of the MOU. Specific comments from the Committee included:

- The program should give preference to local contractors
- A fee to cover the cost of staff time should be included for each project
- If the program is funded with the City’s enterprise funds, we should build in an interest rate that is similar to the borrowing rate on the open market so that if an outside loan is secured in the future, the surcharges on water bills would not need to be increased.
- Include landscaping and irrigation as eligible measures.
- Toilets using 0.84 gallons per flush (gpf) may not be accepted by the community. We should also allow installation of 1.6 gpf toilets as an eligible measure.

Staff will address the above concerns during preparation of the detailed Program Design. However, it is possible that 1.6 gpf toilets may not provide the immediate savings on the water bill that are necessary to make the program attractive to customers. Staff will explore this issue with the consultant team. Furthermore, including landscaping and irrigation improvements as an approved measure may take some time and this measure may not be available initially.

DISCUSSION

The PAYS® system would align with the efforts already undertaken by staff in the areas of water conservation, energy efficiency, and greenhouse gas reductions.

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

Staff has been working closely with the PAYS® design team to draft a Scope of Work (see Attachment II) and Memorandum of Understanding between RCPA and the City to define roles, responsibilities, and deliverables. On September 3, 2013, the PAYS® design team submitted a Draft Concept Paper (see Attachment III), which provides a high-level description of the pilot program, including information about:

- The target market and scale of a pilot program
- Potentially feasible efficiency measures
- Recommended program outreach and marketing
- Roles and responsibilities of key program partners
- Preliminary ideas about capital requirements

RCPA Memorandum of Understanding - The purpose of the Memorandum of Understanding between the City and RCPA is to define the expectations for the program and initiate a partnership to design a PAYS® Pilot with the goal of requesting the City Council consider approval of the pilot for implementation in 2014. RCPA was created in 2009 to improve coordination on climate change issues and establish a clearinghouse for efforts to reduce greenhouse gas (GHG) emissions in Sonoma County. Currently, they are the representing agency for Sonoma County in the BayREN. RCPA secured funding from the California Public Utilities Commission (CPUC) through an application by ABAG as part of the BayREN to fund the development of pilot programs to utilize water and energy efficiently, thereby charging the agency with expanding the PAYS® system. The proposed scope of work and schedule has been carefully designed to allow for appropriate Council Sustainability Committee and Council involvement at key steps, including review of the final Program Design in January 2014.

PAYS® Concept Paper – The purpose of the Concept Paper is to provide a high-level description of the pilot program, with the goal of resolving key issues before a comprehensive Program Design is undertaken. The Concept Paper will be revised based on feedback received from the Council Sustainability Committee and the City Council and will be expanded into a Program Design. The Program Design, if approved by the City Council, will serve as an “Implementation Manual.” Below are summaries of key program components discussed in the Concept Paper. Staff is requesting that the Council review and comment on the Concept Paper, particularly on the aspects highlighted below.

Target Market – The target market for this pilot is multifamily complexes with 20 or more dwelling units (although buildings with fewer units will also be eligible). The concept paper outlines a goal of 2,000 dwelling units served during the one year pilot. Other characteristics about the target market are:

- Master-metered water service and central water heating systems;
- Toilets that use 3.5 or more gallons per flush (gpf);
- Per-unit water usage that is higher than the national average;
- Property owners who express interest in installing energy- and water-saving measures without incurring undue risk or increasing their debt load; and
- Customers in good account standing

Pilot Measures – Under the Hayward Efficiency PAYS® system, efficiency measures must follow the 80% rule, which requires that the annual surcharge payments not exceed 80% of the estimated annual utility bill savings and that the maximum term of the monthly payment amount does not exceed 80% of the useful life of the measure.

Measure cost effectiveness can be determined once savings estimates and costs are known for an identified 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 bimonthly 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 co-pay.

There will be basic, custom, and municipal measures explored for the pilot. Basic Measures require no upfront co-payment and consist of the following:

- High efficiency showerheads - 1.5 gallons per minute (gpm)
- High efficiency aerators -1.0 gpm for bathrooms and 1.5 gpm for kitchen
- High efficiency toilets - 0.84 gallon per flush
- LED light bulbs – to be provided to the tenant in exchange for their cooperation in implementing the measures.

The current State Building Code requires new toilets to be 1.6 gallons per flush or less. The City has an existing high efficiency toilet rebate program that provides a \$100 rebate per toilet for replacement of the older 3.6 gallon per flush toilet when replaced with a qualified model (1.28 gallons per flush). The number of rebates is limited to three rebates per living unit and ten rebates per account.

Custom measures require a Pilot-approved assessment to determine anticipated resource savings based on pre-existing equipment, usage, and utility rates. Custom measures will deliver primarily energy savings with high quality professional installations. Due to the highly technical nature of determining the potential for energy savings in multifamily buildings, a Custom Measure Assessor will evaluate a potential custom measure (including the appropriateness of the measure for the property and its savings). The Custom Measure Assessor would not be City staff, but rather a part of the “Certification Agent” team, compensated through a “program fee” added onto each surcharge. Examples of a custom measure could include but are not limited to clothes washers, space cooling and heating measures, landscaping, and duct measures.

Additionally, as part of the detailed Program Design, the Design Team will work with City staff to evaluate the potential for the Pilot to help municipal and community entities purchase solar hot water or photovoltaic systems, and also help Hayward test a recommended weather-based irrigation controller that might qualify with little or no rebate funding.

Marketing and Outreach – While “Hayward Efficiency PAYS®” is used throughout this Concept Paper, it has not been officially adopted as the program name. Before launching the marketing and outreach program for the pilot, a brand name needs to be identified and approved. Staff suggested the following names to the Sustainability Committee:

- Hayward Efficiency PAYS®
- Hayward Water/Energy PAYS®
- Hayward Green PAYS®
- Green Hayward PAYS®

The Committee was split with two votes each for “Hayward Green PAYS®” and “Green Hayward PAYS®”. Staff would prefer to use “Green Hayward PAYS®” because “Green Hayward” is already being used to identify sustainability programs on the City’s website.

Currently, two phases of marketing and outreach are proposed. In Phase 1, the Design Team recommends that Hayward staff first meet with interested property owner groups such as the Rental Housing Owners Association with the goal of:

- Developing 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 from attendees by noting that they are among the few allowed to participate in this limited pilot; and
- Collecting the names of building owners who indicate that they want or don’t want to be contacted by the Certification Agent.

In Phase 2, once Hayward staff has contacted property owners, the Certification Agent will contact individual high-use multifamily building owners to explain how the program works. Printed materials (e.g., a brochure with Hayward and program logos) would be available to send to potential participants. The Design Team anticipates that the Certification Agent will need to meet on site with interested customers to:

- Explain the program;
- 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, and;
- Gauge the owner’s interest in Custom Measures.

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

- 1. Marketing** - Upon referral from Hayward’s initial contact, the Certification Agent will be responsible for conveying the pilot’s offer to interested Hayward multifamily property owners and contractors.

2. **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. The Certification Agent also performs quality control after project installation.
3. **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 that all data on forms and agreements are correct based on quality control verification.

During development of the Program Design, the duties and responsibilities of the Certification Agent will be delineated, contracts finalized to institutionalize these duties and responsibilities. The Certification Agent will be selected using an appropriate process such as a RFP. As mentioned at the July Council meeting, StopWaste has expressed interest in serving as the Certification Agent. Private consulting firms would also be qualified to submit proposals for consideration. The procurement process for selection of a Certification Agent will follow the standard process for selection of firms for professional services

Capital – In order to obtain the needed capital to run the PAYS® system, the City will need to decide whether to self-fund or seek a loan. The details of self-funding the program are still being studied. However, the option is a viable one, particularly in the beginning stages of the program, given that if it is successful, the City would likely have an easier time seeking additional financing beyond the initial “pilot” phase. The source of self-funding would utilize water enterprise funds, not General Fund monies. If the decision is made to utilize third-party funding in lieu of self-funding, the Design Team recommends that Hayward seek a Non-Revolving Guidance Line of Credit of up to \$4,000,000. The Line of Credit would allow Hayward to make up to 15 draws in one year (monthly draws for multifamily building projects and up to three draws for community solar projects and, if necessary, the weather-based irrigation controller to be tested). Except for an origination fee, which will vary by lender, the City of Hayward’s financial obligations would be incurred only when it draws down funds to pay the Certification Agent and vendors for approved, completed projects. There would be no obligation to pay for unused funds made available by the Capital Provider for this pilot.

Hayward would sign a Non-Revolving Guidance Line of Credit with a Capital Provider. Each month Hayward would issue checks to the Certification Agent, Certified Contractors, and Certified Suppliers based on the number of measures installed in approved completed projects, after drawing down funds from the Line of Credit. Hayward would add PAYS® charges to participants’ bi-monthly bills and track their payments. In addition, the City would repay the Capital Provider on a monthly or bi-monthly basis regardless of its collections from customers.

Bad Debt – To date, based on the data from the rather limited implementation, all programs based on the PAYS system have experienced higher than normal utility customer payment rates

with minimal program-associated bad debt. To ensure similarly high payment rates for this pilot, the City will follow its normal collection protocol, and to clearly define the eligibility requirements of participating customers. For example, the City could require that only customers in “good standing” may participate. “Good standing” would be defined as current, and without delinquencies within the past year. It is important to note that bad debt, if any, will be the responsibility of the City of Hayward, Water Enterprise Fund. If there is any bad debt, some could be recovered by extending the payment term at the project location if the measure is still functioning. Another option that will be studied will be the ability to add this surcharge to the property tax bill, an option currently available for delinquent water and sewer charges. This would entail modifying the ordinance which authorizes placement of delinquent charges to include this specific surcharge.

ECONOMIC IMPACT

A PAYS® system 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 would also benefit from the increased workload from efficiency measure installations.

FISCAL IMPACT

The BayREN grant that the City received will cover most of the costs associated with design of the PAYS® system for implementation. The capital requirements to run the program, as mentioned previously, are currently being explored, and include the option of obtaining outside funding, as well as the option of utilizing enterprise resources to fund the program. This system would not utilize any monies from the General Fund. Ultimately, the principal amount of funding for the system is paid back over time by customers.

Related to staff resources, this program would require efforts from not only Utilities and Environmental Services staff, but also Finance staff. Logistically, the surcharge would be added as a line item to a participant’s water bill once the project is complete. With respect to payment of contractors, the Certification Agent would issue an invoice to the City for the work completed. Initial setup of the program would require contract and purchase order initiation for the approved contractors and Certification Agent, in order to facilitate the invoice process. Customer service inquiries, marketing, and outreach related to this program will also require staff attention. The processes already in place for non-payment of the utility bill would be applied to this program as well.

PUBLIC CONTACT

Given that the initial pilot program is limited to multifamily complexes, staff made an initial presentation to the Rental Housing Association on August 13, 2013 to gauge interest and collect initial input. Members were skeptical about using ultra low flow toilets, but indicated a strong interest in water conservation in landscaping. Staff will continue to communicate with the Rental Housing Association and individual multi-family property owners during the development of the Program Design. Once program design is launched, staff will engage qualified property owners and occupants through a comprehensive marketing and outreach plan.

NEXT STEPS

Staff will incorporate any comments received from the Council and use the Concept Paper to develop a Program Design, which will be presented to the Council Sustainability Committee and the City Council in January 2014.

Prepared by: Corinne Ferreyra, Administrative Analyst I

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

Approved by:



Fran David, City Manager

Attachments:

Attachment I	Council Resolution
Attachment II	Scope of Work for Draft Memorandum of Understanding
Attachment III	PAYS® Concept Paper – September 20, 2013

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF HAYWARD AND SONOMA COUNTY REGIONAL CLIMATE PROTECTION AGENCY FOR PROGRAM DESIGN SERVICES FOR THE PAY AS YOU SAVE ON-BILL FINANCING EFFICENCY PROGRAM

BE IT 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 memorandum of understanding for program design services to design the Pay As You Save on-bill financing efficiency program, in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

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

SCOPE OF WORK - BayREN PAYS® Pilot

The Sonoma County Regional Climate Protection Authority (RCPA) will assist the City of Hayward with the development of a Bay Area Regional Energy Network (BayREN) “Pay As You Save”® (PAYS®) Pilot. The BayREN is composed of county-level public agencies representing the Association of Bay Area Government’s (ABAG) nine-county region, with Stopwaste acting as the representing agency for Alameda County and RCPA the representing agency for Sonoma County.

SECTION 1: SCOPE OF WORK

Activities, Milestones and Associated Expectations

Through the BayREN PAYS® Pilot, the RCPA and the City of Hayward will lead the following activities and deliverables as so identified.

1. One Draft Program Concept Paper and Draft Contracts – RCPA

- a. This deliverable would provide a high-level description for one way a tariffed on-bill resource efficiency program might be developed for Hayward. The Concept Paper will briefly describe:
 - target market and scale suggested by Hayward that RCPA believes is feasible,
 - potential program measures,
 - recommended program outreach and marketing,
 - suggested implementers and their roles and responsibilities, and
 - preliminary capital requirements, and the sources of financing likely to best meet those requirements.

The Concept Paper will include:

- a preliminary cost effectiveness analysis for potential program measures based on Hayward provided water and PG&E rates (i.e., either current or proposed rates and the tiers most target customers are likely subject to)
 - preliminary estimates of baseline equipment and usage by the target market in order to provide Hayward with sufficient cost and savings data to evaluate whether implementing a pilot is viable.
 - Draft Contracts (collectively covered under the Intellectual Property agreement already signed by Hayward, and based upon existing contracts from previous PAYS® pilots) to reflect the preliminary roles and responsibilities for program implementer as identified within the Concept Paper.
- b. Expectations of City of Hayward Staff: Hayward, through its assigned point of contact Erik Pearson or his designate, will provide timely responses to RCPA information requests and follow-up requests for clarification, and timely introduction to any additional points of contact for persons in its service area who might be able to provide required information that would help ensure relevant data informs RCPA development of the Program Concept. In the

absence of Hayward-provided information, RCPA will use more generic information already in its possession.

2. One Concept Paper Review Meeting - RCPA

- a. Attended by the RCPA Team to provide an opportunity to discuss main points of Concept Paper with Hayward staff and answer questions, identify elements of Concept Paper needing further clarification, identify elements of Concept Paper that need to be changed, and answer preliminary questions about roles and responsibilities within the Draft Contracts.
- b. Expectations of City of Hayward Staff: Hayward staff will coordinate internal discussions so that individuals/departments needing to review the Concept Paper and Draft Contracts are aware of Hayward's reasons for participation in this Program Concept development and any background information Hayward deems important. Hayward staff attending the review meeting will have read the Concept Paper and Draft Contracts (as necessary) prior to the meeting.

3. One Revision of the Concept Paper - RCPA

- a. RCPA team will provide one revision of the Concept Paper, incorporating feedback from the Review Meeting.
- b. Expectations of City of Hayward Staff: Hayward staff will provide timely response to RCPA information requests, if any, and follow up requests for clarification as necessitated by feedback from the Review Meeting.

4. Council Sustainability Committee Review of Concept Paper and MOU with RCPA – City of Hayward

- a. The Council Sustainability Committee will review and consider the Concept Paper and MOU with RCPA and make a recommendation to the City Council.

5. City Council Review of Concept Paper and MOU with RCPA – City of Hayward

- a. The City Council will review and consider approval of the Concept Paper and MOU with RCPA.

6. One Draft Program Design, Draft RFPs, and Second Draft of Contracts - RCPA

- a. Written as an implementation manual to be based upon vetted Program Concept Paper. Will include:
 - i. protocols to be followed by implementers (capital provider, contractors, marketers, the certification agent, and key utility staff),
 - ii. customized forms and contracts that define the relationships between these entities and customers for the program,
 - iii. draft RFPs to procure implementers
 - iv. training agendas for certification agent, utility, and contractors' staff,
 - v. recommended changes to utility billing and collection procedures, and
 - vi. recommendations for program evaluation and data management (including cellular tablet based web based systems if appropriate).

- b. Expectations of City of Hayward Staff: Hayward staff will provide timely response to RCPA information requests and follow up requests for clarification as similarly outlined above.

7. Second Draft of Program Design and Final RFPs/Procurement Strategy– RCPA

- a. Based upon comments on the Draft Program Design from Hayward Staff, the RCPA Team will provide an updated and current Program Design. In addition to updated forms and contracts, this will include final RFPs and a recruitment strategy to be used by Hayward in its implementer procurement process.
- b. Expectations of City of Hayward Staff: Hayward staff is asked to maintain the Program Design (and supporting forms, contracts, and other implementation documents), inform EEl of changes to these documents, and keep them current to the program as it is implemented.

8. Procurement Process – City of Hayward

- a. Based upon the Procurement Strategy, the RCPA Team will provide draft content for RFPs (or other similar documents typically used by Hayward for procurement of services) and will work with Hayward staff to develop a strategy to recruit interested implementers (contractors, vendors, etc.), issue any RFPs, and conduct the review of bids received. As appropriate, the RCPA Team can assist with evaluation of bids received.
- b. Expectations of City of Hayward Staff: Hayward staff would directly manage any procurement process.

9. Council Sustainability Committee Review of Program Design – City of Hayward

- a. City staff will facilitate Council Sustainability Committee review of the Program Design. The Committee will make a recommendation to the City Council.

10. City Council Review of Program Design – City of Hayward

- a. City staff will facilitate City Council review of the Program Design. The City Council will consider the Program Design for final approval.

11. Marketing Collateral and Messaging - RCPA

- a. Aligned with marketing plan as outlined within the Program Design, RCPA will help Hayward integrate BayREN PAYS® Pilot marketing collateral and messaging with existing Hayward programs and resources and the BayREN Multi-Family program. Hayward can use the established brand name, Hayward Efficiency PAYS® or a brand name of its choosing.
- b. Expectations of City of Hayward Staff: Hayward staff will provide details on any City protocols and requirements for marketing and outreach. Hayward staff will participate in meetings required to develop logos, branding, and other program messaging, and will facilitate internal approvals as necessary and in a timely way to facilitate a February 2014 start date.

12. Final Draft of the Program Design - RCPA

- a. Based upon final comments on the Draft Program Design from Hayward staff, Council Sustainability Committee, and City Council, and coordination details worked out in the course of implementer on-boarding and training, the RCPA Team will provide an updated and current Program Design (and supporting forms, contracts, and other implementation documents) to serve as the final reference document for program implementation.
- b. Expectations of City of Hayward Staff: Hayward staff is asked to maintain the Program Design (and supporting forms, contracts, and other implementation documents), inform EEI of changes to these documents, and keep them current to the program as it is implemented.

13. Technical Assistance: One Training for Program Implementers - RCPA

- a. Developed and delivered by RCPA Team in coordination with Hayward staff. Training will address:
 - i. Roles and responsibilities for each implementer as outlined in the Program Design
 - ii. Protocols and procedures to facilitate coordination of implementer roles
 - iii. Recommendations for marketing and guidelines for use of program marketing collateral
 - iv. Guidelines for referral to, or recommendation of, existing Hayward programs and services aligned with the goals of the Hayward BayREN PAYS® Pilot.

The training curriculum would be provided to Hayward for use in any future trainings that may be required.
- b. Expectations of City of Hayward Staff: Hayward staff would secure venue for the training and coordinate communications with, and attendance of, program implementers.

14. Technical Assistance: Ongoing - RCPA

- a. Offered through the first year of program field operations, or December 31, 2014, whichever comes first. The RCPA Team will be available to Hayward staff as necessary to answer questions regarding:
 - i. implementation of the Program Design,
 - ii. customized forms, contracts, and other implementation documents, and
 - iii. billing and/or data management systems and protocols as related to the Hayward BayREN PAYS® pilot.
- b. Expectations of City of Hayward Staff: Through the first year of program field operations, or December 31, 2014, whichever comes first, quarterly reporting to the RCPA on program participation and performance metrics and coordination with RCPA on BayREN related needs for Evaluation, Measurement, and Verification.

Additional Clarifications Regarding RCPA Commitments

RCPA is committed to partnering with Hayward to develop a program design that will “lead to final City Council consideration for approval and implementation of a successful pilot based on the PAYS® system,” so long as Hayward is able to meet the expectations identified above.

- As Hayward identifies specific information needs or communications that would assist in securing such approval, the RCPA Team will do its best to provide such information or language.
- The RCPA has allocated limited funding to help offset hard costs that Hayward may encounter in the set-up and launch of any BayREN PAYS® Pilot. RCPA designates RCPA Team member BKi as the primary party to negotiate and issue payment for such costs.
- The timeline in Section 2 outlines anticipated dates for the major milestones outlined above. These dates are contingent upon Hayward meeting the associated expectations outlined above and may need to be adjusted in accordance with approvals that Hayward may require for program implementation.

SECTION 2: PROPOSED TIMELINE FOR SCOPE OF WORK

Activity	Anticipated Start	Anticipated End
Milestone 1 - Program Concept Paper and Contracts	1-Aug-13	2-Sep-13
Hayward Review of Program Concept Paper and Contracts – 2 weeks		Sept. 2-9, 2013
Milestone 2 - Concept Paper Review Meeting	9-Sep-13	13-Sep-13
Milestone 3 – Revision of Concept Paper	13-Sep-13	20-Sep-13
Milestone 4 – Council Sustainability Committee Review of Concept Paper and MOU		2-Oct-13
Milestone 5 – City Council Review of Concept Paper and MOU		15-Oct-13
Milestone 6 – Draft Program Design, Draft RFPs, and 2nd Draft Contracts	20-Sep-13	1-Nov-13
Hayward Staff Review of Program Design/RFPs/Contracts– 2 weeks	1-Nov-13	15-Nov-13
Milestone 7 – 2nd Draft Program Design, Final RFPs/Procurement Strategy, Contracts for Procurement	15-Nov-13	1-Dec-13
Milestone 8 - Procurement Process		Dec. 2013 - Jan. 2014
Hayward Releases RFPs		2-Dec-13
Hayward hosts RFP Meetings		13-Dec-13
RFP Due Date		6-Jan-14
Hayward Review of RFPs/Procurement Process		Jan. 2014
Milestone 9 – Council Sustainability Committee Review of Program Design		15-Jan-14

Milestone 10 – City Council Review of Program Design		28-Jan-14
Milestone 11 - Marketing Collateral and Messaging	1-Jan-14	1-Feb-14
Milestone 12 – Final Draft of Program Design		20-Feb-14
Milestone 13 – Technical Assistance: Training for Program Implementers		20-Feb-14
Program Launch		1-Mar-14
Milestone 14 – Technical Assistance: Ongoing		31-Dec-14

Hayward Efficiency PAYS[®]

a Pay As You Save[®] (PAYS[®]) Pilot Program Concept

prepared for

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

September 20, 2013

The Energy Efficiency Institute, Inc.

Colchester, Vermont

BKi

Oakland, California

Purpose of this Hayward Efficiency PAYS[®] Pilot¹ Concept Paper

This Concept Paper provides a high-level description of a tariffed on-bill resource efficiency pilot program that might be operated in the City of Hayward. This description includes:

- the target market and scale of a pilot program,
- potentially feasible measures,
- recommended program outreach and marketing,
- the roles and responsibilities of key program partners, and
- preliminary ideas about capital requirements and potential sources of financing.

By sketching out critical program elements, this Concept Paper is intended to focus discussion among the program partners about a Hayward Efficiency PAYS[®] pilot program with the goal of resolving key issues before a comprehensive Program Design is undertaken. For example, there is no way to finalize which program measures could be offered with no up-front cost until mechanisms to leverage rebates from other programs (e.g., the BayREN Multifamily program) have been established. Similarly, preliminary ideas about capital requirements in this Concept Paper will be refined as the target market and program measures are finalized.

The Concept Paper will be revised based on feedback from City of Hayward staff, the City's Sustainability Committee, and the City Council. Once accepted by the City, the Concept Paper will be expanded into a comprehensive Program Design which, pending City of Hayward approval, will serve as an Implementation Manual for Hayward Efficiency PAYS.

¹ While "Hayward Efficiency PAYS" is used throughout this Concept Paper, it has not been adopted as the program name. Before launching the MEO program for the pilot, a brand name needs to be identified and approved by Hayward.

Table of Contents

1.	Executive Summary	1
2.	Program Roles	2
3.	Target Market	3
4.	Pilot Measures.....	5
5.	Leveraging BayREN Multifamily Program	7
6.	Marketing, Education & Outreach (MEO).....	9
7.	Certification Agent	12
8.	Certified Contractors.....	13
9.	Customer Offer.....	16
10.	Capital	17
11.	Bad Debt.....	19
12.	Billing Program Charges	19
13.	Training.....	20
14.	Evaluation.....	20
15.	Timeline.....	22
16.	Glossary of Terms.....	23

Appendices

Appendix A Multifamily Measure Screen

Appendix B Multifamily Measure Performance Screen

1. Executive Summary

The City of Hayward (Hayward) is working with the Sonoma County Regional Climate Protection Authority (RCPA) to design and implement a tariffed on-bill resource efficiency pilot program. The pilot's 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 RCPA leads the pilot's Design Team on behalf of Hayward and the Bay Area Regional Energy Network (BayREN), with funding provided to BayREN 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 checks, 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.

The Hayward Efficiency PAYS® pilot will target multifamily buildings with:

- 20 or more units;
- master-metered water service and central water heating systems;
- primarily toilets that use 3.5 or more gallons per flush (gpf);
- higher than 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.

This pilot concept has already stimulated interest from potential capital providers, contractors, measure distributors, and certification agents. Measures will be selected and payments structured so that for every \$0.80 in Hayward Efficiency PAYS on-bill charges, there is estimated customer-bill savings of at least \$1.00.

Residential solar installations are not discussed in this Concept Paper because at current energy rates and measure costs, solar typically has a payback term longer than ten years. However, at the request of Hayward staff the Design Team will also examine the potential for the pilot to help municipal and community entities implement solar hot water or photovoltaic systems and help Hayward test the viability of a specific weather-based irrigation controller as a program measure in future pilots.

The current schedule calls for the pilot to begin operation in February 2014.

2. Program Roles

Hayward Efficiency PAYS involves the interaction and cooperation of a number of key players so that the development and implementation of the program delivers widespread resource efficiency in Hayward.

Utility

Hayward's water utility will provide three basic program functions: 1) general program oversight including oversight of the Certification Agent; 2) preliminary 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 charge² from customers.

Capital Provider

If third-party capital (rather than self-financing) is to be used to fund the pilot, Hayward will seek a Non-Revolving Guidance Line of Credit of up to \$4,000,000 using a request for proposals (RFP) process. Hayward will repay the Capital Provider(s) with interest paid only on the capital drawn.

Certification Agent

A Certification Agent, selected using an RFP process, will be responsible for day-to-day operations including marketing, project approvals and contracts, and program data collection.

Custom Measure Assessor

The Custom Measure Assessor, selected using an RFP process, will be responsible for evaluating Custom Measures for the tariff.

Certified Contractors

Only Certified Contractors may install measures during the pilot. The Pilot's initial Basic and Custom Measure Contractors will be selected using an RFP process. "Customer Choice" contractors brought to the program by Property Owners are also eligible to become Certified Contractors. To become certified, a contractor must agree to the pilot's terms and provide evidence of successful projects involving comparable installations.

Certified Suppliers

Manufacturers and distributors of the pilot's pre-qualified Basic Measures will be selected 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 for allowing access to their units.

² The utility authorized charge at the meter location where certified Hayward Efficiency PAYS measures have been installed.

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 Hayward Efficiency PAYS 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.

Implementer summary

Role	Procurement Method	Contracted To	Paid By ³
Capital Provider	RFP	City of Hayward	Repaid by City of Hayward
Certification Agent	RFP or selected directly by City of Hayward	City of Hayward	City of Hayward
Custom Measure Assessor	RFP	Certification Agent	City of Hayward
Certified Contractor	RFP for initial contractors; customer choice contractors to be certified by Certification Agent	Certification Agent	City of Hayward
Certified Suppliers	RFP	Certification Agent	City of Hayward

3. Target Market

The Hayward Efficiency PAYS pilot will target multifamily buildings that have:

- 20 or more units as primary target, 5-19 units as secondary target⁴;
- master-metered water service and central water heating systems;
- primarily toilets that use 3.5 or more gallons per flush (gpf)⁵;

³ The City of Hayward will make upfront payments to pay for all pilot services. These costs will be re-paid over time by those customers benefiting from installed measures by paying the Hayward Efficiency PAYS® charges on their water utility bills.

⁴ 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.

- 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.

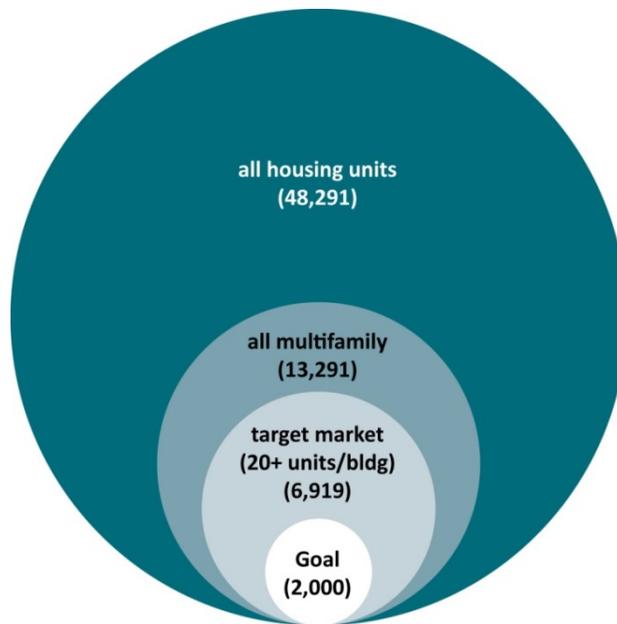
Participating building owners must agree to program terms, including that they:

- pay for measures over time (out of their savings);
- disclose the payment obligation to successor owners or building managers, and;
- maintain and not damage the measures.

Building owners (or their representative) 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 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.

EI recommends that Hayward evaluate its 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

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

⁵ During the Program Design stage, the Design Team will verify its preliminary conclusion that it will often be cost effective to replace some 1.6 gpf toilets by packaging them with a number of other measures, ensuring these retrofits provide participants with immediate net savings on their utility bills.

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

to meet this goal would be 100 buildings (i.e., 2,000 units ÷ 20 units per building = 100 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.

4. Pilot Measures

Pilot measures, their cost, and their eligibility criteria will be finalized as part of the detailed Program Design and the recommended bidding process. The measures identified in this section are based on preliminary analysis by EEI and its subcontractor, RPP. EEI anticipates manufacturer and contractor responses to RFPs will result in prices at or below RPP's estimates. The Pilot's Basic Measures will be selected based on Hayward's assessment of measure quality, suppliers' willingness to take back unused units at no additional cost, extended warranties, price, and availability.

Measures eligible for the Hayward Efficiency PAYS tariff must screen as cost effective under the *80% rule*: annual payments cannot exceed 80% of the estimated annual utility bill savings and the maximum term of the monthly payment amount cannot exceed 80% of the useful life of the measure. Since the 80% rule provides the minimum 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.

Measure cost effectiveness can be determined once savings estimates and costs are known for an identified 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 co-pay.

The Design Team will supply Hayward and its partners with two Excel workbooks with which to evaluate a measure or package of measures:

- The Multifamily Measure Screen determines whether Basic Measure packages qualify based on variables that include: the number of units, vacancy, average number of tenants per unit, number of 3.5 gpf toilets per unit, etc.
- The PAYS Custom Measure Screen determines whether Custom Measures qualify based on variables such as measure and labor costs, rebates, program fees, utility rates, cost for capital, etc.

Because usage varies depending on the occupants' behavior, to assure customer savings the Pilot will use occupant behavior assumptions that are based on a conservative estimate for existing annual water usage: 75% of national estimates for average tenant water usage. Participating Customers will be able to use the PAYS Multifamily Measure Screen to rescreen Basic measure cost effectiveness based on their own assumptions about occupancy and tenant water usage if they desire. The Certification Agent and Certified Contractors will explain how monthly PG&E and bi-monthly Hayward water bills will vary, but that over time, the participant will receive savings on these bills that are significantly greater than the PAYS charge.

Eligible Measures

Eligible measures will save water, 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 Participant damage, misuse, or lack of maintenance), measures will be repaired or the associated payment obligation will end.⁷

Basic Measures

Basic Measures, if eligible, must be installed in each tenant's unit, unless there are medical reasons or pre-existing conditions⁸ preventing installation, if the participating building owner wants to install Custom Measures in the building. Basic Measures require no upfront co-payment and consist of the following:

- **High efficiency showerheads:** Contractors will install a chrome 1.5 gpm showerhead to replace any existing showerhead. Customers may choose between either a wall-mounted or hand-held showerhead that uses 1.5 gallons per minute (gpm).
- **High efficiency aerators:** Contractors will install 1.0 gpm pressure compensating bathroom aerators and 1.5 gpm pressure compensating kitchen aerators unless tenants refuse them or installation is not possible.
- **High efficiency toilets:** Contractors will install a 0.84 gallon per flush toilet to replace any existing toilet in the building that uses 3.5 gpf or more.
- **LED light bulbs:** Dimmable LED bulbs will be installed in tenants' units as an incentive for their participation and to allow them to share in the savings. A maximum of 5 LEDs will be installed, 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.

Custom Measures

Custom measures require a Pilot-approved assessment to determine anticipated resource savings based on pre-existing equipment, usage, and utility rates. Using measure costs, including assessment costs, and the PAYS Measure Screen, the Certification Agent can easily determine which Custom measures and how much of their cost are eligible for the tariff and how much, if any, copay would be required.

Custom measures will deliver primarily energy savings with high quality professional installations. Due to the highly technical nature of determining the potential for energy savings in multifamily buildings, the Custom Measure Assessor will evaluate a potential custom measure (including the appropriateness of the measure for the property and its savings) so the Certification Agent can determine whether the measure qualifies for the tariff; the table on Page 8 lists a range of measures which could be eligible for a PAYS tariff.

⁷ 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 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, then the remaining payment obligation would instead be cancelled.

⁸ 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.

If possible, the Custom Measure Assessor should assess hot water measures which typically are cost effective in multifamily buildings: hot water demand control systems and insulation of accessible existing hot water supply and return pipes. Significant energy is often wasted if water heating systems circulate water all the time to ensure hot water is available 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 or when a unit is calling for hot water.

Measure Costs and Rebates

The Multifamily Measure Screen and Custom Measure Screen will determine the portion of program measure costs eligible for the Pilot tariff. Costs for certain measures (including showerheads and aerators in the Basic Measure category) will be eligible for the tariff and as a result will require no up-front cost to participants. For other measures, the portion of their cost deemed not eligible for the tariff must be met by a combination of customer co-pay up front and/or available rebates.

Conversion of inefficient toilets to high efficiency toilets will require using the existing Hayward toilet rebate in order to make this installation available to most participants with no up-front cost. During Program Design, the Design Team will work with Hayward staff to determine the most efficient use of rebate funding to assure the greatest number of toilet upgrades.⁹

Most Custom Measures will have a portion of the cost that must be met with a co-pay or a rebate. Customers who value benefits provided by these products that are unrelated to savings or who expect water or energy rates to increase may still want to install such measures. The Design Team is working on ways to deploy existing rebates, including those offered by the BayREN Multifamily Pilot, in a way that allows multifamily property owners with central hot water and/or space heating to install eligible Custom Measures with no co-pay.

Municipal Solar and Landscaping Measures (to be evaluated)

Additionally, as part of the detailed Program Design, the Design Team will work with Hayward staff to evaluate the potential for the Pilot to help municipal and community entities purchase solar hot water or photovoltaic systems, and also help Hayward test a recommended weather-based irrigation controller that might qualify with little or no rebate funding as a measure for multifamily, municipal, and commercial customers. Key attributes sought by the Design Team for technology to reduce water used to irrigate an existing landscape include:

- minimum lifecycle cost per gallon of water saved;
- simplicity of installation and programming; and
- water-saving performance that does not depend on purchasing support services.

5. Leveraging BayREN Multifamily Program

Hayward Efficiency PAYS may leverage the rebates available through the Bay Area Regional Energy Network Multifamily Subprogram (MF Program) in order to expand the scope and quantity of energy saving projects completed in the PAYS program. The MF Program rebates will help “buy down” the total cost of installing these additional energy-saving measures, making them eligible for the PAYS tariff with no (or a greatly reduced) customer co-pay.

⁹ The PAYS system allows current rebates for most measures to be significantly reduced or eliminated even as customer take-up rates increase.

The MF Program 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 MF Program seeks to upgrade 5,000 dwelling units in 225 buildings by the end of 2014. More information about the MF Program is available at <https://multifamily.energyupgradeca.org/>.

Upgrade Measures

The MF Program 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. Hayward Efficiency 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 (MF Program includes measures that save tenants money, but excludes water measures; PAYS excludes measures that save tenants money, but includes water measures), not all MF Program measures are eligible for the PAYS tariff, and not all PAYS measures will qualify for an MF Program rebate. Further, some energy saving measures may not be eligible for the PAYS tariff based on who the utility payer is (i.e., which in-unit water and energy usages are paid by the property owner).

The following table identifies measures that apply to the MF Program, Hayward Efficiency PAYS, or both, assuming the 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). Measures that apply to both programs are highlighted in blue. Some measures that are potentially eligible for the PAYS tariff may require a large co-pay to fulfill the 80% rule.

Upgrade measures potentially applicable to Hayward Efficiency PAYS and/or MF Program¹⁰

Measure	Measure end-use location	Eligible for PAYS (reduces property owner utility bills)	Eligible for BayREN MF rebate (reduces energy use)
Building envelope measures	In-unit	No	Yes
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
Refrigerator	In-unit	No	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
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
Standard landscaping	Common	Yes	No

¹⁰ 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.

Toilet	In-unit	Yes	No
Vending machine controls	Common	Yes	Yes
Water heating measures	In-unit	Yes	Yes
Water heating measures	Common	Yes	Yes

Program Design

If MF Program measures are included in the Hayward Efficiency PAYS pilot, there are several aspects of program design 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 assessors and 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 MF Program and Hayward Efficiency PAYS pilot.

Additional Research Needed

The Design Team is currently working with MF Program staff to evaluate whether the MF Program’s modeled energy savings estimates can be used to reliably calculate PAYS eligibility. If and when it is determined that the MF Program energy savings estimates meet Hayward Efficiency PAYS pilot standards, the Design Team will work further with the MF Program implementers to coordinate program designs.

6. Marketing, Education & Outreach (MEO)

Creating an offer that works requires a well thought out, strategic marketing plan. The MEO activities for this pilot should be rooted in the objective to enroll sufficient properties to meet the pilot’s target of 2,000 units served. The MEO will be launched in two-phases. First, a direct contact by Hayward staff to familiarize eligible customers with this unique offer will determine whether there is interest. Second, a follow-up contact by the Certification Agent will market specific goods and services and bring in Certified Contractors as appropriate when the customer is ready to discuss product, installation, and cost specifics.

Brand Name

While Hayward Efficiency PAYS is used throughout this Concept Paper, it has not been adopted as the program name. Before launching the MEO program for the pilot, a brand name needs to be identified and approved by Hayward. A group discussion with representatives of Hayward, the Design Team, and others as appropriate should be conducted to address and adopt a brand name.

Key Messages and Communications Goal

The key message for the program will be its 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."

A Focused MEO Campaign

The MEO plan recommended for Hayward Efficiency PAYS will try to 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 units ÷ buildings with 100 units = 20 buildings). However, because customers are not familiar with the pilot's offer, the Design Team wants to caution Hayward that it may prove necessary to supplement the proposed MEO with a broader effort to create confidence and interest in the pilot offer. Early monitoring of pilot uptake will help ensure that there will still be time to implement a full-fledged customer education campaign if necessary.

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 don't want to be contacted by the Certification Agent.

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 determine their interest. 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 indicating that they do not want to be contacted by the Certification Agent. 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 press releases as part of its education efforts.

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 FAQs.

Phase 2: Certification Agent Marketing and Outreach to Customers

Once Hayward staff have contacted property owners, the Certification Agent will contact individual high-use multifamily building customers to explain to them how the program works. Printed materials (e.g., a brochure with Hayward and program logos) should be available to send to potential participants who want to think about the offer and verify its legitimacy.

If Contractors (either Basic or Custom Measure contractors) seek to market the pilot, their marketing effort should be approved only if would-be participants will be adequately informed of the utility bill savings opportunities from both Basic and Custom Measures. Custom Measure contractors must explain that Basic Measures must be installed. Basic Measure Contractors must explain a Custom Measure Assessor will assess which Custom Measures can be installed.

Experience has shown that when two contractors are necessarily involved (e.g., one to install LED lights and toilets in units and another to work on space and water heating systems), coordination problems undermine program success. It is for this reason that the Design Team recommends that the Certification Agent handle the majority of marketing for the pilot and approve any Contractor marketing to ensure clear communication with potential participants, provide accurate information, and facilitate installation of both Basic and Custom Measures.

The Design Team anticipates that the Certification Agent will need to meet on site with interested customers to:

- explain the program (especially the use of national averages);
- 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; and
- gauge the owner’s interest in Custom Measures.

The Certification Agent should decide whether to invite the Custom Measure Assessor or the Basic Measure Contractor to this meeting based on a the building owner’s level of interest. While BayREN Multifamily rebates are available, it is likely the Certification Agent will bring the appropriate BayREN Multifamily program staff to this meeting.

A Broad MEO Campaign

If Hayward decides to expand the pilot to all multifamily customers at some future time, a more traditional, well-organized and thorough consumer education phase will need to be added. 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, the consumer education campaign should utilize “trusted messengers” such as local media and community and opinion leaders.

With an expanded program, utility bill stuffers and web sites must announce, explain, and inform customers about the program. Having tenants contact their property owners will further help the customer education effort.

As part of the development of an expanded education campaign, Hayward staff and program partners would also need to identify, meet with, and seek support from key local business and community leaders such as Chambers of Commerce, churches, or civic organizations to enroll them in promoting the pilot to their community (e.g., setting up meetings for utility managers, presentations to service organizations with invitations to help, letters to editor, etc.). The support of local community leaders

who customers know and respect should lend credibility and create confidence in the program. During development of the education campaign, thought should be given to which local groups within each pilot city/town, if any, would be most helpful to create trust and excitement.

Again, at this time the Design Team does not recommend a broad ME&O 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.

7. Certification Agent

The Certification Agent is the gatekeeper to all Hayward Efficiency PAYS program activity and needs to be widely trusted by customers. Hayward participants need to 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. Hayward needs the Certification Agent to field all customer inquiries and resolve issues so Hayward's staff is not burdened by customer questions or complaints about the pilot.

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

- **Marketing:** Upon referral from Hayward's initial contact, 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. The Certification Agent 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 agreements and forms.

Potential purchasers of measures installed in a program based on the PAYS system 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 the water utility of a reliable payment stream from installed products that produce reliable savings for enough years to recover all costs.

The Certification Agent will provide customers with the following services:

- Certification of program contractors, including arranging for them to sign contracts, verifying insurance coverage and bonding that protects owners/customers for the duration of payments, and training contractors to meet program standards.

- Verification by telephone and selected on-site pre-inspections that measures qualify and that measures are appropriate for the building.
- Verification that contractors' savings estimates are accurate, that no other savings or performance claims beyond those approved by Hayward have been made, that the 80% rule has been met, and that the Multifamily Measure Performance Screen and Customer Measure Screen have calculated the correct PAYS charge.
- Verification of appropriate measure installation by telephone or on-site, post-installation inspection. All participants will receive telephone inspections. On-site inspections will be budgeted for about twenty percent of participants. Contractors whose performance necessitates additional on-site inspections will pay for unbudgeted inspections.
- Assurance that program limits on participation and funding (e.g., the \$4,000,000 cap on available capital) are not exceeded and that contractors abide by rules.
- Help resolving disputes with contractors and assistance in obtaining relief if measures fail (i.e., effecting cost-effective repairs or payment cessation) for reasons other than property owner or tenant fault.
- Requiring manufacturers to make good on their warranties.
- Requiring contractors (or their bonding agent) to make good on their contracts, including paying penalties for failed inspections.
- Determining disbursements to Certified Contractors for measure installations and repairs.
- Notifying Hayward to initiate billing of tariffs (including the amount and type of charges) and when to stop charges if measures fail and cannot be repaired.

One office/field staff person (i.e., one FTE) should be able to handle the Certification Agent responsibilities for this pilot. Even if the pilot meets its goal of retrofitting 2,000 units, the maximum number of projects is about 100. It is more likely the number of buildings served will be closer to the minimum of 20 buildings depending on the number of units in each building. If this pilot produces the same offer acceptance rate (i.e., 50% or higher) as every other program based on the PAYS system, the maximum number of initial customer contacts will be between 40 and 200. The Design Team estimates this staff person would be able to provide visits to up to 300 buildings especially if it uses the recommended process of using telephone calls to screen participants to avoid wasted visits. The Program Design will likely call for 20% on-site post-installation inspections.

During development of the Program Design, the duties and responsibilities of the Certification Agent will be delineated, contracts finalized to institutionalize these duties and responsibilities, and a Certification Agent will be selected using an RFP process. The Design Team has verified that there is interest among one or more qualified entities in serving as the Certification Agent.

8. Certified Contractors

To participate in the pilot, contractors must be certified by the pilot's Certification Agent. Certification requires:

- demonstrating that staff understand the pilot rules and protocols prior to undertaking any work;
- having required insurance and bonding (or an irrevocable letter of credit);
- signing a Contractor's Agreement that allows the Certification Agent to act as the participant's Agent; and

- providing evidence of successful comparable projects.

The Program Design will establish clear criteria for certifying contractors to access the PAYS tariff to offer quality assurance to Hayward and its customers. All Certified Contractors must agree to sign a Contractor Agreement and abide by all program rules.

There will be three types of Certified Contractors:

The Pilot’s Basic Measures Contractor. A Basic Measures Contractor will be selected based on an RFP process. The pilot’s Contractor will be selected based on its price, references, and demonstrated success installing the pilot’s water-saving measures in multifamily buildings. This Contractor will be recommended to property owners to install Basic Measures in customers’ buildings.

The Pilot’s Custom Measures Contractor(s). One or more Custom Measures Contractors will be selected based on an RFP process. The pilot’s Contractor(s) will be selected based on its price, references, and demonstrated success installing typical water heating, space heating, and other efficiency measures in multifamily buildings. This (these) contractor(s) will be recommended to property owners to install eligible custom measures. It is possible more than one Custom Measure Contractor will be required if one contractor does not fulfill all identified program skills and certifications.

Customer-Choice Contractors. Participating customers may select a their own contractor to install Basic and/or Custom Measures in their building providing the Contractor is willing to sign a Contractor Agreement and meet Pilot contractor certification requirements (i.e., provide the required level of insurance, bonding, etc.). If a Customer-Choice Contractor installs Basic Measures, it must do so for the established program price or the property owner must pay the difference (treating any additional cost as a co-pay). The Customer-Choice Contractor must be willing to meet with the Certification Agent on site prior to starting any work or incurring any expense to go over program guidelines (i.e., to be trained). There will be a one-time cost (training fee) paid by the interested contractor to the Certification Agent for this meeting.

Contractor summary

	Basic Measure Contractor	Custom 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	Standard price set by RFP for Basic Measures; Variable by project for Custom Measures
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)

Participants must understand that Basic and Custom Measures installed by Customer-Choice Contractors will not be provided the same quality assurances as other PAYS-eligible Basic and Custom Measures. When measures are installed by Customer-Choice Contractors, Hayward

- will repair failed measures and extend the term of payments when there is reasonable expectation the measures will continue to function for the extended term;

- will not stop the PAYS charge if these measures cannot be repaired in order to avoid disputes about the cause of measure failure (i.e., for measures installed by Customer-Choice Contractors, the customer must continue to pay the charges even if the measure is not working); and
- will require a disclosure lien be filed with the property's records - the lien will notify successor customers that the payment obligation will automatically transfer to them if they purchase the building, unless they or the building owner pay off the remaining obligation and repay Hayward for any rebates or other expenses associated with installing measures at this location. The disclosure lien will also notify the successor customer that if they accept the charges, they must agree in writing to adhere to all conditions in the Purchase Agreement and Exhibits (i.e., available from the City of Hayward).

Contractor Agreement

The Contractor Agreement will require Certified Contractors to provide a high level of assurance to customers. The detailed Program Design and the accompanying Contractor Agreement will specify Certified Contractor responsibilities, which will include agreeing to:

- be bonded or provide an irrevocable letter of credit from a bank to assure compliance;
- provide labor warranties;
- be responsible for the quality of its workmanship and compliance with federal, state and local standards;
- be responsible for identifying any pre-existing conditions that would preclude installation of program measures (e.g., rotted floor boards at the toilet rough-out or corroded shower pipes);
- secure required permits and include this cost in their proposed project price;
- pay any required training fees and any penalties related to failed program inspections, which will be used to pay for additional quality control inspections; and
- successfully complete required training in order to be allowed to make offers to customers.

Contractor Selection

The Design Team proposes using RFPs both to select two Certified Contractors: one Basic Measures and one Recommended Custom Measures contractor. These RFPs will also be used to establish fixed prices for the installation of Basic Measures. There has been sufficient contractor interest in the pilot, the PAYS offer, and the responsibilities outlined above to expect that one or more contractors will respond to the RFP. It is likely that final selection after initial screening will require an interview and references check.

Although the Certification Agent will recommend the use of these selected contractors, any customer that prefers that another contractor install measures may do so and pay for the installation through the tariff, providing that their contractor is willing meet the requirements for the Customer-Choice Contractor.

The Pilot's Program Design will provide further detail for how to make the customer experience as simple and easy as possible (as few contractor visits and contracts signed as possible) yet provide customers with access to contractors able to offer all the products customers might want.

9. Customer Offer

Once the Certification Agent receives a list from Hayward of the high-use multifamily building customers that have been contacted and have not opted out, it will contact each building owner and explain the Hayward Efficiency PAYS offer prior to visiting the building. If owner expresses interest, the Certification Agent will meet the owner at the site bringing along the appropriate contractors and the Custom Measure Assessor.

The purpose of this visit is to determine which Basic Measures qualify for the PAYS tariff and to make an offer to the customer. If the customer is ready to go ahead with the project, the Certification Agent may leave with a signed Purchase Agreement for Basic Measures. If not, the agreement can be left behind and signed when the customer is ready.

Additionally, the Custom Measure Assessor, if present, will review the opportunities for installation of Custom Measures and determine the owner's interest. If the owner is interested, the Custom Measure Assessor will gather needed information to analyze Custom Measures including a firm price from the contractor. The Custom Measure Assessor will get back to owner once the analysis is completed and send a Purchase Agreement for any qualifying measures.

Once customers accept the pilot offer 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. Certified Contractors should have no trouble closing the deal when they are able to offer customers installations with the following offer:

- I install measures and you pay me nothing. Your water utility pays me.
- After a waiting period of 45 days from project completion, you will see a PAYS charge on your water utility bill. However, your total utility bills, even with the new charge, will be significantly less each year than what they would have been without installing the measures; the tariff is designed to provide the bill payer at this location with immediate net savings.
- You and your building have no loan, no lien, and no debt associated with this obligation; just lower utility bills.
- If you sell the building at any time, your payment obligation ends (except for Custom Measures installed by a Customer-Choice Contractor); the next bill payer at this location gets the remaining savings and makes the remaining payments.
- If you report that a measure fails at any time during the payment period and it is not repaired, your payment obligation ends (except for Custom Measures installed by a Customer-Choice Contractor).
- If a Basic or Custom Measure installed by the program contractor fails, you did not damage it, and it can be repaired, you will not pay for the repair at that time. The payment term will be extended to recover repair costs; whoever is in the location at that time will continue to pay a little longer but only if the measure continues to function.
- If, at any time during the payment period, it is discovered that I put in the wrong measure, put it in incorrectly, or failed to get required permits, the utility has required my company be bonded for the duration of the payments. That means I or another contractor will fix the deficiency at no cost to you, even if I go out of business.

During development of the Program Design, the Design Team will develop protocols for how Contractors may adjust this offer to account for co-pays and custom measures.

Referral 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, Energy Savers and Energy Assistance Programs, the BayREN Multifamily Program, and other such initiatives.¹¹

10. Capital

To sufficiently fund Hayward's pilot, the Design Team recommends Hayward secure access to up to \$4,000,000.¹² 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 projects and up to 3 draws for community solar projects and, if necessary, the weather-based irrigation controller to be tested). 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.

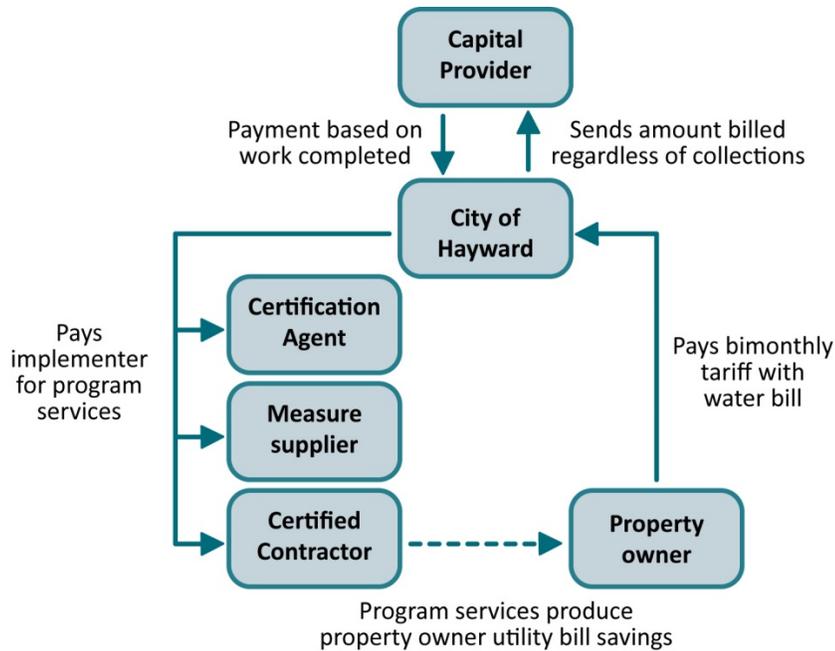
Any third-party Capital Provider will be selected based on an RFP process to ensure the lowest possible rate and most flexible terms (e.g., origination fees and the duration of quoted interest rates). Capital Providers will bid the interest rate for its funds, the duration (up to one year) that they will make funds available at that interest rate, and the minimum duration between any changes to the interest rate.

Hayward would sign a Non-Revolving Guidance Line of Credit with a Capital Provider. Each month Hayward would issue checks to the Certification Agent, Certified Contractors, and Certified Suppliers based on the number of measures installed in approved completed projects, after drawing down funds from the Line of Credit. 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.

¹¹ This approach led to Energy Upgrade referrals in Windsor Efficiency PAYS.

¹² RCPA successfully obtained a commitment for a Non-Revolving Guidance Line of Credit from an interested capital provider for up to \$4,000,000 for the Windsor Efficiency PAYS pilot that would have required up to 15 year payment terms, two draws every month, and three different payment streams (or 72 different loans in per year). Hayward's pilot will serve more financially stable customers (multifamily property owners compared to single family customers) and require only 15 draws with all but three of them for the same payment term. The \$4,000,000 estimate for Hayward was based on using the Multifamily Measure Performance Screen to evaluate different scenarios. This analysis is available upon request.

Capital flow in the PAYS program



At Hayward’s request, the Design Team has initiated conversations with capital providers including a local bank. Prior to further discussions during the Program Design phase with potential capital providers, Hayward should decide whether it will self-finance its pilot. If Hayward decides to use third party capital the RFP process will establish the rates and mechanics for capital availability. Variable rates will not be acceptable. Any amount of at least \$4 million (or more if additional measures are added by Hayward during the design phase) will be acceptable. The Capital Provider will be required to provide at least 90 days notice of any interest rate increase before it takes effect. The Program Design process will involve working with potential capital providers to assess credit quality and Hayward’s needs using readily available information. Any interest rate below or equal to 7% will easily facilitate an offer that works. The final selection of one or more Capital Providers will be made by Hayward.

Alternatively, Hayward could 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.

Final estimated capital needs will be determined during development of the detailed Program Design. However 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 BayREN Multifamily pilot (which should generate a significant amount of the financing required to meet the customer’s out of pocket expense for energy saving measures); and
- whether customers are interested in Custom and Co-pay measures.

11. Bad Debt

To date, all programs based on the PAYS system have experienced higher than normal utility customer payment rates with minimal program-associated bad debt¹³. 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.

Bad debt, if any, will be the responsibility of Hayward. If there is any bad debt, some could be recovered by extending the payment term at the project location if the measure is still functioning. To minimize this risk, eligible customers will be required to be in good standing with their Hayward utility billing account.¹⁴

12. Billing Program Charges

The Hayward Efficiency PAYS pilot will limit initial on-bill charges for multifamily participants to a single, ten year duration to simplify pilot administration and access to third-party capital. Final payment durations will be determined by measure performance and bill payments made. At this point, the Design Team estimates that:

- Basic measure payments will be spread over 10 years;
- Custom measure payments will be spread over 10 years¹⁵; and
- Custom and Basic measures likely will require separate charges on the customer's bill;

If available, community solar projects will be spread over 12 years. The Design Team encourages Hayward's billing and information staff to work with staff at the Town of Windsor and Tyler Technologies to make sure the Eden modules developed for Windsor Efficiency PAYS meet Hayward's needs or are quickly modified to do so.

Finally, if Hayward were to make 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 monthly basis, and single-gallon billing would better measure (and reward) savings. Additionally, single gallon volumetric wastewater billing will increase the value of installing water saving measures to participants.

¹³ 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.

¹⁴ "Good standing" will be further defined in the Program Design based upon discussion with Hayward utility billing.

¹⁵ While BayREN's Multifamily rebate program is available, a high percentage of customers should accept Custom Measures; absent the rebates, there is no way to estimate how many, if any, Custom Measure projects participants will implement.

13. Training

Training modules developed during the Program Design phase for everyone involved in delivering pilot services ensure that program guidelines are followed, resulting in an effective pilot. All key players must know and understand the protocols they are supposed to follow and that their contracts require them to follow. The Program Design is intended to provide these guidelines so the implementing utilities and their program associates make all policy decisions in advance rather than in the field. Staff and Contractor's goals or immediate needs may or may not be in alignment with this pilot so it is important that all key policy decisions be aligned with the Program Design.

The Design Team recommends training Certification Agent staff, Certified Contractors, and each utility's customer service (or the individuals who may respond to customer enquiries) and billing staff to ensure that protocols will be followed and to allow these individuals to propose and help develop better responses to typical questions and customer issues. The training will also help key program partners to develop effective and consistent approaches for explaining:

- an offer that works and eligible measures;
- why Hayward is implementing this new approach;
- why customers should accept the new offer; and
- customer rights and responsibilities if they accept Hayward Efficiency PAYS measures.

The Design Team will prepare detailed training agendas and lists of recommended materials for manuals for the trainings.

14. Evaluation

Hayward's billing system, and the pilot's Measure screens and forms will provide significant data on the energy, water, and customer bill savings achieved by pilot participants.

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

Process Evaluation

Process evaluation should occur four months after pilot start-up. Typically process evaluation is an internal process, however, if funds are available for a skilled outside process evaluator, that is preferred. At a minimum the process evaluation should include:

- a survey of impacted utility staff, Certification Agent staff, Certified Contractors, and community leaders; and
- a focus group of customers who chose to participate and those who did not.

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

- Does the program overcome the key market barriers to customer installation of efficiency measures?

- Do more customers accept installation of targeted measures with PAYS than with other programs?
- What, if any, utility bad debt was associated with the tariff?
- Has any customer been disconnected because of pilot related bad debt?
- What worked well and what could be improved?
- What comments, if any, have been received from pilot participants?
- What would make customers accept more and or bigger offers?
- What, if any, problems have customers experienced with contractors?
- What, if any, bill problems have been experienced by customers?
- Were there adequate sources of capital for efficiency measures?
- Can the utilities document that all capital providers were paid on time?
- Do customers want specific measures to be added to the program?
- Would customers recommend the program to other building owners?
- What improvements should be made to the pilot delivery structure?

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

Programs based on the PAYS system require the Certification Agent to review and approve every project. If part of the approval process is a requirement to enter data needed for evaluation into a spreadsheet, evaluation will be easy at any time throughout the program and for 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 co-payments)
- 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 co-payments

To keep impact costs affordable, unless the CPUC or another source provides grant funds, cost savings data should be based on engineering estimates (to be provided by EEI and RPP during the detailed program design) recorded at the time customers participate by the Certification Agent and

supplemented by contractor reported replaced measure data (e.g., actual watts, gallons per flush, and gallons per minute removed). Estimated savings should be recorded for water, gas, and electricity. 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 pilot is not continued)

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

15. Timeline

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.

Concept Paper and Contracts/Forms: Staff Review & Revision

Date: September 20, 2013

A review of this Concept Paper and draft Contracts and Forms by Hayward staff by September 13, 2013 followed by revisions made to this Concept Paper by the Design Team by September 20, 2013 should facilitate approvals by City of Hayward Council and the Sustainability Council.

City Council & Sustainability Council Approval of Concept Paper

Date: October 15, 2013

Approval of this Concept Paper by the City of Hayward Council and the Sustainability Council, and discussion thereof will inform the Design Team's development of a detailed Program Design.

Delivery of a Program Design and Revised Contracts/Forms

Date: November 1, 2013

The Design Team will necessarily begin work on the Program Design upon submission of this Concept Paper on September 3, 2013. It will continue to work with potential contractors and measure suppliers, and will incorporate suggestions from staff, the Sustainability Council and the Town Council as appropriate to maintain the program's offer to customers.

Contract/Forms Review and Approval

Date: November 15, 2013

Lawyers and other interested parties need to review 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 started 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.

Release of RFPs

Date: December 2, 2013

The Design Team will work with Hayward Staff through the course of Program Design activities to develop RFPs for key program roles, including a Certification Agent, Capital Provider, Basic and Custom Measures Contractors, and Basic Measures Suppliers.

Review of Proposals in Response to RFPs

Date: January 20, 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 a Certification Agent, Capital Provider, Basic and Custom Measures Contractors, Basic Measures Suppliers and other key program parties.

Approval of Program Design

Date: January 28, 2014

The Hayward Efficiency PAYS pilot will only be implemented if the Program Design is approved by the Sustainability Council and City of Hayward Council by January 28, 2014.

Training

Date: February 20, 2014

As part of the Program Design, the Design Team will include recommendations for 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: February, 2014

The pilot as described in the final draft of the Program Design to be submitted on February 20, 2014 will be ready for implementation.

16. Glossary of Terms

80% rule

When calculating PAYS tariffed charges and payment terms a measure, the 80% rule dictates 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.

Participant

A City of Hayward water utility customer that participates in the Hayward Efficiency PAYS pilot.

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.

DATE: October 15, 2013

TO: Mayor and City Council

FROM: Director of Public Works – Utilities & Environmental Services

SUBJECT: Advanced Metering Infrastructure Feasibility Study: Authorization for the City Manager to Execute Professional Services Agreement with TritonAMI for the Preparation of an Advanced Metering Infrastructure Feasibility Study

RECOMMENDATION

That the City Council adopts the attached resolution authorizing the City Manager to execute a professional services agreement with TritonAMI for the preparation of an Advanced Metering Infrastructure Feasibility Study, in an amount not to exceed \$45,000.

BACKGROUND

Water service is provided by the City of Hayward to residential, commercial, industrial, and governmental customers, with all of Hayward's water supply received from the San Francisco Public Utilities Commission. Customers are billed for actual water use as measured by water meters, which are read bi-monthly. The majority of customer meters are manually read. Approximately 7,100 meters are "radio read" models, which means they can be read from a certain distance by using a handheld device to record the consumption. In general, however, Hayward has what would be considered a manual metering system.

In recent years, technology has become available which enables two-way communication over a fixed network between the utility system and the metering endpoints (customers), allowing meters to be read, monitored, and managed from a remote, central location. Known as Advanced Metering Infrastructure (AMI), the system typically refers to the measurement and data collection system, including meters at the customer site, communication networks between the customer and the utility, and data reception and management systems that make information available to the utility and to the customer. Some nearby water agencies, including Dublin San Ramon Services District, City of San Francisco, City of Redwood City, and the City of Santa Rosa have converted their metering systems to AMI or are in the process of doing so.

AMI technology is provided by a number of vendors, and each system's design varies slightly. In general, however, AMI systems are fixed-based, which is a method where a network is permanently installed to capture meter readings, and can consist of a series of antennas, towers, collectors, repeaters, or other permanently installed infrastructure to collect transmissions of meter readings

from AMI capable meters and get the data to a central computer without a person in the field to collect it. Meter reading data is fed from a meter with a “transmitting unit” (which allows the meter to have two-way communication) to strategically placed “data collectors” throughout the City. The data collector units then transmit meter reads via the internet to utility system computers. The information received from the data collector units is transformed into reports that detail water usage. An additional component often included in an AMI system is a customer web portal, which allows customers to see detailed water usage information.

One of the distinguishing features of AMI systems is the increased amount of consumption data collected. While radio and manual meter reading systems provide the minimum information required to support the billing function, AMI systems can enable a utility to no longer be limited to periodic data collection. Rather, meters can be read more frequently, such as day or hour, for example. The ability to retrieve interval consumption data can assist in evaluating utility operations and customer engagement, among other things. An AMI system provides a number of benefits to the customer as well, in that by allowing for an increased frequency of reads (every day, or hour, for example), customers are better able to understand and manage their water usage. AMI systems can allow both the utility and customers to be alerted to possible leaks or other unusual occurrences, and may result in lower overall water consumption.

Based on the City Council’s sustainability priorities, funding was included in the Ten-Year Capital Improvement Program (CIP) to study the feasibility of implementing AMI in Hayward. The goals of the AMI feasibility study are to evaluate: 1) work process efficiencies (i.e. leak detection, billing inquiries, etc.), improved communications and responsiveness to customers; 2) integration into existing software and database systems; 3) environmental and other non-monetary benefits; and 4) cost-effectiveness to rate payers. In order to fully assess all of these factors and prepare a thorough recommendation to City Council about whether or not to proceed with implementation of an AMI system, it is necessary to utilize the services of an expert.

DISCUSSION

The implementation of AMI into a water utility environment is a complex initiative. It can bring with it significant utility and customer benefits and has the potential to transform the utility into an information-enabled enterprise, provided that customer meters, transmission infrastructure, and computer programming are effectively integrated. Further, there are multiple AMI vendors and system types available on the market. The feasibility study will consider the basic issues that are critical to implementation of an AMI system, including hardware and software needs, warranty analysis, and meter compatibility. The feasibility study will provide a detailed financial analysis so that the City will fully understand the potential costs associated with an AMI system.

Staff recognizes, however, that some potential benefits of implementing an AMI system are intangible and can difficult to quantify; therefore, in making a decision about whether to deploy an AMI system, it is beneficial to look beyond basic financial data to determine whether this technology is appropriate for Hayward.

Examples of these potential benefits include:

Water Conservation

Hayward has a long-standing and active commitment to water conservation. The City has implemented cost-effective water demand management measures to reduce water usage by all customer sectors, offering a mix of voluntary programs including rebates, audits, education, and fixture replacements. AMI systems can provide detailed information to help measure the overall effectiveness of targeted conservation initiatives, allowing water that would otherwise have been wasted to be conserved. This information can form the basis of its own conservation program by informing customers about potential leaks or overly high consumption, as well as complement existing conservation efforts. Analyzing AMI provided data by frequent time intervals could also enable the City to look at consumption profile data for education and awareness related to conservation. A goal of the feasibility study is to determine how implementation of an AMI system could enhance existing water conservation efforts.

Customer Service

Implementation of an AMI system could also have positive impacts on customer service. The feasibility study will examine how to use the increased amount of data to inform customers about how they can reduce their own consumption. For example, customers could use a mobile telephone application or visit a secure webpage to see how much water they have consumed in the past day, or week, giving them the opportunity to change their behavior immediately, versus only seeing their total consumption from a single bi-monthly read. This would be a benefit for the consumer, who sees a lower water bill, and the City, in less water consumed. Customers can also be notified of unusual increased water usage, which could be the result of a leak, because it will be easier to pinpoint the timing of the increased water usage with more frequent reads.

Environmental Benefits

AMI systems eliminate the need for manual meter reading, since the data is transmitted directly to a remote server. The feasibility study will analyze the environmental benefits associated with implementing an AMI system, such as the resulting reduced vehicle trips and greenhouse gas emissions.

Improved Meter Register Accuracy

The feasibility study will address the issue of improved meter register accuracy. There are two main concerns with meter accuracy. First, as water meters age and begin to wear, they tend to underread the amount of water actually consumed. This means that some customers may not be paying for less than their actual consumption. To the extent that water rates are increased to make up for that lost revenue, all customers bear the burden. Second, with a potential for meter read errors in any system, regardless of age or type, AMI can allow for a more detailed consumption history to be established for each account. This allows staff to more readily detect any accidental errors and correct them before bills are issued.

Staff Health and Safety Benefits

Water meter reading is repetitive work and somewhat monotonous. A typical workday includes lifting the meter box cover, reading, and registering on average, 350 meter reads. In the past, several of the City's meter readers have suffered work injuries and have been unable to work for extended periods of time. This system can automate this work and help protect the health and safety of our workers. The affected staff can then be reassigned to other positions within the department.

Meter Replacement

The study will assist the City in assessing the current meter stock throughout the service area, establishing a comprehensive meter inventory. This will allow staff to determine which meters are most in need of replacement and also provide for an opportunity to create a database of meters that can be readily accessed and assist in the generation of reports based on specific criteria. The scope of work does not include further meter accuracy testing, as representative samples of meters were tested as part of the City's water balance and audit in 2011.

Leak Detection

Leaks in the water distribution system or at customer sites represent not only lost water, but in most cases, wasted energy to pump it. With the increased consumption information provided by AMI systems, the City can be proactive instead of reactive when it comes to leak detection. Remote notification of leaks allows for the ability to alert customers to an issue before the customer is aware of it or before any damage occurs.

Consultant Selection

Staff issued requests for proposals to five firms with experience and knowledge in the AMI field and received two proposals at the end of August. Staff reviewed the proposals, conducted an interview with each firm, and recommends that the City enter into an agreement with TritonAMI to prepare the study.

TritonAMI has recent experience in preparing AMI feasibility studies, conducting AMI pilot programs, and managing the installation of AMI systems, having performed similar work for the East Bay Municipal Utility District, City of San Juan Capistrano and other water agencies. Providing agencies with assistance in AMI implementation is the firm's core business, and they have demonstrated a good understanding of the available technology, issues to be considered in determining the feasibility of an AMI system, and Hayward's objectives in undertaking this study. Staff contacted other agencies for which TritonAMI provided AMI-related services and received favorable comments.

ECONOMIC IMPACT

There is no economic impact to customers in preparing the feasibility study, as the work will be done with funds already allocated in the Capital Improvement Program. As part of the study, an assessment of economic impacts associated with implementation of an AMI system will be prepared, considering such factors as increased customer awareness and control of consumption and improved water usage

data to assist with setting fair and equitable water rates. Also, as mentioned earlier, a major factor of AMI implementation would be the health and safety benefits of automating the repetitive meter reading functions, which could result in cost savings due to reduced injuries.

FISCAL IMPACT

The cost of the study will not exceed \$45,000. The agreement would include \$31,000 for basic services, and \$14,000 for additional services if needed and authorized by the City. While the allocation for additional services, as a percentage of the basic services, may seem somewhat high, staff believes that it is an appropriate amount to address potential project needs as they arise. For example, as noted, the basic scope does not include meter testing; however, it may be necessary to conduct further such testing in order to verify assumptions about the benefits of AMI to Hayward. Also, although staff does not anticipate additional costs for the pilot programs, depending on the extent, additional project management may be beneficial.

The (CIP) includes \$50,000 in the Water Replacement Fund for this feasibility study. Furthermore, a total of \$6 million has been allocated in the CIP for implementation of a system-wide AMI project. The feasibility study will determine whether this is a sufficient amount, depending on the technology selected, the number of meters that need replacement, and other factors that will drive the final cost. This project will be entirely funded by the Water Enterprise and therefore has no impact on the General Fund.

PUBLIC CONTACT

No specific public contact is anticipated for the feasibility phase of this project. If full implementation of AMI is initiated, it will be necessary to engage the public to ensure that customers are fully informed about the new metering system and to receive their input and comments.

NEXT STEPS

Following City Council approval, staff will finalize a professional services agreement with TritonAMI. The following schedule has been developed for this project:

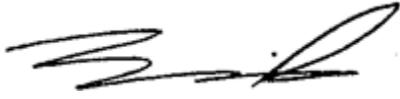
Notice to Proceed	November 4, 2013
Completion of Study	June 30, 2014

Staff will return to the City Council when the feasibility study is completed with a recommendation on whether or not to proceed with AMI implementation.

Prepared by: Corinne Ferreyra, Administrative Analyst I

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

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Resolution Authorizing the City Manager to Execute a Professional Services Agreement with TritonAMI

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF HAYWARD AND TRITON AMI, FOR PROFESSIONAL SERVICES TO PREPARE AN AUTOMATIC METERING INFRASTRUCTURE FEASIBILITY STUDY IN AN AMOUNT NOT TO EXCEED \$45,000

BE IT 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 professional services agreement with TritonAMI to prepare an automatic metering infrastructure feasibility study, in an amount not to exceed \$45,000, in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

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: October 15, 2013

TO: Mayor and City Council

FROM: Director of Human Resources

SUBJECT: Resolution Establishing the City Contribution for Active and Retiree Medical Premiums Set by the California Public Employee Retirement System (CalPERS) for Calendar Year 2014 pursuant to California Government Code Section 22892 of the Public Employees Medical and Hospital Care Act

RECOMMENDATION

That the City Council approves the attached resolution authorizing the implementation of the mandatory minimum employer contributions to active and retiree medical premiums for calendar year 2014.

BACKGROUND

The City contracts with CalPERS to provide competitive health benefits to its active and retired employees. California Government Code Section 22892 of the Public Employees Medical and Hospital Care Act (PEMHCA) establishes the minimum employer health contribution. As of January 1, 2009, the employer contribution is adjusted annually by the CalPERS Board to reflect any change in the Medical Care Component of the Consumer Price Index, rounded to the nearest dollar. The table below shows the minimum employer contribution required by CalPERS for the last five years, and the 2014 rate:

Calendar Year	Employer Contribution
2009	\$101.00
2010	\$105.00
2011	\$108.00
2012	\$112.00
2013	\$115.00
2014	\$119.00

DISCUSSION

This action is necessary to meet the requirement that the governing body adopt a resolution agreeing to the minimum contribution amount established by CalPERS. The City currently contributes to medical premiums in accordance with the terms of the existing agreements between each of the bargaining units, based on the health plan and family status the employee elects and for which they are eligible. For both retirees and active employees, the total amount the City contributes towards medical benefit premiums meets (and in some cases, exceeds) the statutory minimum contribution required by CalPERS.

FISCAL AND ECONOMIC IMPACT

This action is for administrative purposes only. There is no fiscal or economic impact associated with this report because the City's current contribution toward employee medical premiums as provided for in applicable Memoranda of Understanding has already been established and this action does not provide an increase to the current total City contribution towards medical premiums.

Prepared by: Nina S. Collins, Acting Senior Human Resources Analyst

Recommended by: Frances M. Robustelli, Human Resources Director

Approved by:



Fran David, City Manager

Attachment I: Resolution Establishing the City Contribution for Active and Retiree Medical Premiums for CY 2014

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-

Introduced by Council Member _____

RESOLUTION ESTABLISHING THE CITY CONTRIBUTION FOR ACTIVE AND RETIREE MEDICAL PREMIUMS SET BY THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM (CalPERS) FOR CALENDAR YEAR 2014 PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 22892 OF THE PUBLIC EMPLOYEES MEDICAL AND HOSPITAL CARE ACT

WHEREAS, the City of Hayward provides medical coverage for its employees and their eligible dependents, and to qualified retirees; and

WHEREAS, Government Code Section 22892 of the Public Employees Medical and Hospital Care Act (PEMHCA) provides that a local agency governing body must adopt a resolution agreeing to the minimum contribution amount established by the California Public Employees Retirement System (CalPERS); and

WHEREAS, the California Public Employees Retirement System Board adjusts the minimum contribution rate annually based on changes to the Medical Care Component of the Consumer Price Index.

NOW, THEREFORE, BE IT RESOLVED, that effective January 1, 2014, the employer's contribution towards the cost of employee and retiree cost of health benefits shall be a minimum of \$119 per month as required by CalPERS.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2012

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: October 15, 2013
TO: Mayor and City Council
FROM: Director of Finance
SUBJECT: Refinancing of Eden Shores Community Facilities District (CFD#1) Special Tax Bonds

RECOMMENDATION

That City Council approves a resolution authorizing the issuance and sale of special tax refunding bonds for the Eden Shores Community Facilities District, and approving and authorizing related documents and actions.

BACKGROUND

In 2002, the City established the Eden Shores Community Facilities District and issued special tax bonds to fund infrastructure improvements related to the Eden Shores Business Park. The outstanding bonds (\$9,020,000) have an average interest rate of 6.42% and amortize through FY 2033. All of the bond debt service is paid through a special tax levied on properties within the Eden Shores Business Park.

The City does not have any financial responsibility for the 2002 special tax bonds and only handles the collection and disbursement of the annual special tax levy. The City is entitled to collect a one-time administrative fee to reimburse for staff time and resources required to process the refinancing. Initial estimates for the administrative fee are between \$50,000 and \$90,000 that could be provided to the General Fund as reimbursement for staff time and resources.

DISCUSSION

Following approval to proceed by the Council Budget & Finance Committee on June 13, 2013, the appropriate bond documentation and resolutions have been prepared by the City's financing team (Bond Counsel (Jones Hall) and Financial Advisor (NHA Advisors)) as incorporated in this report.

Given the low interest rate environment, the remaining term of the original 2002 special tax bonds and the improved credit quality of the property located within the community facilities district ("CFD"), the City has the ability to lower the interest rate on the bonds and reduce the annual debt service to the property owners.

The special tax formula requires all developed parcels to be taxed at the approved maximum rate until such time as all properties have been developed in the CFD. The initial reduction in debt

service is anticipated to lower the annual special tax on the undeveloped parcels which will improve the economics and marketability of the property to potential developers. As the undeveloped properties are improved, the special tax levy will be reduced to all participating parcels within the CFD.

The City has contracted with Jones Hall as Bond Counsel and NHA Advisors as Financial Advisor, on this refinancing. The City has worked with each of these firms for many years on various projects and financings. The City, through NHA Advisors, has received bids from community banks and other funding institutions to privately place the refunding bonds. It is estimated that the winning bank will be purchasing the bonds with an interest rate of 4.25%-4.50%, which will generate total savings over \$1,000,000. The proposed documents included in the agenda item relate to the refunding of the 2002 bonds through a private placement.

FISCAL IMPACT

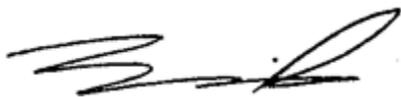
Current market conditions indicate that a refinancing could lower the average interest rate to 4.25%-4.50% that will result in a reduction of total debt service by \$1,000,000. Annual special tax savings will exceed \$80,000, which would be approximately 12% of the annual levy.

PUBLIC CONTACT

The Council Budget & Finance Committee reviewed the refunding plans during a special meeting on June 13, 2013, at which time the Committee voted to support staff's recommendation to proceed with the refunding.

Prepared and Recommended by: Tracy Vesely, Director of Finance

Approved by:



Fran David, City Manager

Attachments:

- Attachment I – Resolution
- Attachment II – Draft Fiscal Agent Agreement

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-

Introduced by Council Member _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD
AUTHORIZING THE ISSUANCE AND SALE OF
SPECIAL TAX REFUNDING BONDS, AND APPROVING AND AUTHORIZING
RELATED DOCUMENTS AND ACTIONS

City of Hayward
Community Facilities District No. 1 (Eden Shores)
Special Tax Refunding Bonds, Series 2013

WHEREAS, the City Council of the City has conducted proceedings under and pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code (the "Act"), to form "City of Hayward Community Facilities District No. 1 (Eden Shores)" (the "CFD"), to authorize the levy of special taxes upon the land within the CFD, and to issue bonds secured by said special taxes the proceeds of which are to be used to finance certain public improvements (the "Facilities"), all as described in those proceedings; and

WHEREAS, under the provisions of the Act, the City issued, for and on behalf of the CFD, its \$9,965,000 initial principal amount City of Hayward Community Facilities District No. 1 (Eden Shores) Special Tax Bonds, Series 2002 (the "Prior Bonds"); and

WHEREAS, this City Council now wishes to refinance the outstanding principal amount of the Prior Bonds and proposes to issue its City of Hayward Community Facilities District No. 1 (Eden Shores) Special Tax Refunding Bonds, Series 2013 (the "Bonds"), and there has been submitted to this City Council certain documents described below providing for the issuance of the Bonds for the CFD and the use of the proceeds of those Bonds, and this City Council with the aid of its staff, has reviewed the documents and found them to be in proper order; and

WHEREAS, all conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of the Bonds and the levy of the special taxes as contemplated by this resolution and the documents referred to herein exist, have happened and have been performed in due time, form and manner as required by the laws of the State of California, including the Act;

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

Section 1. Bonds Authorized. Pursuant to the Act, this Resolution and the Fiscal Agent Agreement (as defined in Section 3 of this Resolution), bonds designated the "City of Hayward Community Facilities District No. 1 (Eden Shores) Special Tax Refunding Bonds, Series 2013" (the "Bonds") in the principal amount not to exceed Seven Million Five Hundred Thousand dollars (\$7,500,000) are hereby authorized to be issued. The Bonds shall be dated, shall bear interest at the rates, shall mature on the dates (provided that the final maturity date of the

Bonds shall not exceed the final maturity date of the Prior Bonds), shall be issued in the form, shall be subject to redemption, and shall otherwise be issued on the terms and conditions, all as set forth in the Fiscal Agent Agreement and in accordance with this Resolution; provided, however, that the issuance of the Bonds must meet the savings and maturity date parameters set forth in Section 4. The Fiscal Agent (as defined in Section 3 of this Resolution), an Authorized Officer (as defined in Section 2 of this Resolution) and other responsible officers of the City are hereby authorized and directed to take such actions as are required to cause the delivery of the Bonds upon receipt of the purchase price thereof.

The City hereby finds that the Bonds constitute “refunding bonds” within the meaning of the Act because the proceeds thereof will be used to refund the Prior Bonds. For the purposes of these proceedings for the issuance of the Bonds, the City hereby determines that the total net interest cost to maturity on the Bonds, plus the principal amount of the Bonds is less than the total net interest cost to maturity of the Prior Bonds plus the principal amount of the Bonds to be refunded. The City further finds and determines that it would be prudent in the management of its fiscal affairs to issue the Bonds to refund the Prior Bonds.

Section 2. Authorities Granted. Each of the Mayor, City Manager, Finance Director, and such other official of the City as may be designated by such officer pursuant to Section 6 hereof (each, an “Authorized Officer”) is hereby authorized and directed to execute and deliver the documents approved herein in substantially the form on file with the City Clerk, together with such additions or changes as are approved by such Authorized Officer, including such additions or changes as are necessary or advisable to permit the timely issuance, sale and delivery of the Bonds. The approval of such additions or changes shall be conclusively evidenced by the execution and delivery by an Authorized Officer of the documents herein specified.

Section 3. Fiscal Agent Agreement. The Council hereby approves the form of the Fiscal Agent Agreement by and between the City, for and on behalf of the CFD, and Wells Fargo Bank, National Association, as fiscal agent (the “Fiscal Agent Agreement”) with respect to the Bonds, in substantially the form on file with the City Clerk. The terms and provisions of the Fiscal Agent Agreement, as executed, are incorporated herein by this reference as if fully set forth herein. An Authorized Officer is hereby authorized and directed to execute the Fiscal Agent Agreement on behalf of the City and the City Clerk is hereby authorized and directed to attest thereto. For the purposes hereof, the “Escrow Fund” established under the Fiscal Agent Agreement shall constitute the “refunding fund” under the Act and the “designated costs of issuing the refunding bonds” under the Act shall include the Costs of Issuance as defined in the Fiscal Agent Agreement.

Section 4. Sale of the Bonds. The Council hereby approves the sale of the Bonds on a private placement basis through Southwest Securities, Inc., acting as private placement agent (the “Private Placement Agent”). The net present value savings realized by the City by issuing the Bonds shall be at least 10% of the outstanding principal amount of the Prior Bonds and the principal amount shall not exceed the amount specified in Section 1 above. The City Council hereby determines that the sale of the Bonds on a private placement basis will result in a lower overall cost than other means of sale, including a public sale with competitive bidding.

Section 5. Engagement of Professional Services. In connection with the issuance and sale of the Bonds, the City Council hereby authorizes the engagement of the services of NHA

Advisors, Inc. (the "Financial Advisor") to act as financial advisor to the City, and the firm of Jones Hall, A Professional Law Corporation, to act as bond counsel to the City. The City Manager is hereby authorized and directed to execute an agreement with each such firm, in the respective forms on file with the City Clerk.

Section 6. Actions Authorized. All actions heretofore taken by the officers and agents of the City with respect to the establishment of the CFD and the sale and issuance of the Bonds are hereby approved, confirmed and ratified, and the appropriate officers of the City are hereby authorized and directed to do any and all things and take any and all actions and execute any and all certificates, agreements and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Bonds in accordance with this resolution, including but not limited to any actions required in connection with issuance of ratings or a municipal bond insurance policy with respect to the Bonds, and any certificate, agreement, and other document described in the documents herein approved. All actions to be taken by an Authorized Officer, as defined herein, may be taken by such Authorized Officer or any designee, with the same force and effect as if taken by the Authorized Officer.

Section 7. Effectiveness. This resolution shall take effect from and after its adoption. The provisions of any previous resolutions in any way inconsistent with the provisions hereof in and for the issuance of the Bonds as herein described are hereby repealed.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

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

**DRAFT
FISCAL AGENT AGREEMENT**

by and between the

CITY OF HAYWARD

and

**WELLS FARGO BANK, NATIONAL ASSOCIATION
as Fiscal Agent**

Dated as of October 1, 2013

Relating to:

**\$ _____
City of Hayward
Community Facilities District No. 1
(Eden Shores)
Special Tax Refunding Bonds, Series 2013**

Section 5.13. Yield of the 2013 Bonds 29
 Section 5.14. Maintenance of Tax-Exemption 29
 Section 5.15. No Continuing Disclosure 29
 Section 5.16. Limits on Special Tax Waivers and Bond Tenders 29
 Section 5.17. City Bid at Foreclosure Sale..... 29
 Section 5.18. Limitation on Principal Amount of Parity Bonds 30
 Section 5.19. Amendment of Rate and Method 30
 Section 5.20. Small Issuer Exemption from Bank Nondeductibility Restriction 30

ARTICLE VI
 INVESTMENTS; LIABILITY OF THE CITY

Section 6.01. Deposit and Investment of Moneys in Funds 31
 Section 6.02. Liability of City 32
 Section 6.03. Employment of Agents by City 33

ARTICLE VII
 THE FISCAL AGENT

Section 7.01. The Fiscal Agent 34
 Section 7.02. Liability of Fiscal Agent..... 35
 Section 7.03. Information; Books and Accounts 36
 Section 7.04. Notice to Fiscal Agent 36
 Section 7.05. Compensation, Indemnification 36

ARTICLE VIII
 MODIFICATION OR AMENDMENT

Section 8.01. Amendments Permitted 38
 Section 8.02. Owners' Meetings..... 39
 Section 8.03. Procedure for Amendment with Written Consent of Owners 39
 Section 8.04. Disqualified Bonds..... 39
 Section 8.05. Effect of Supplemental Agreement 39
 Section 8.06. Endorsement or Replacement of Bonds Issued After Amendments..... 40
 Section 8.07. Amendatory Endorsement of Bonds 40

ARTICLE IX
 MISCELLANEOUS

Section 9.01. Benefits of Agreement Limited to Parties 41
 Section 9.02. Successor and Predecessor 41
 Section 9.03. Discharge of Agreement..... 41
 Section 9.04. Execution of Documents and Proof of Ownership by Owners 42
 Section 9.05. Waiver of Personal Liability 42
 Section 9.06. Notices to and Demands on City and Fiscal Agent..... 42
 Section 9.07. Partial Invalidity 43
 Section 9.08. Unclaimed Moneys 43
 Section 9.09. Applicable Law 43
 Section 9.10. Conflict with Act..... 43
 Section 9.11. Conclusive Evidence of Regularity..... 43
 Section 9.12. Payment on Business Day 43
 Section 9.13. State Reporting Requirements 43
 Section 9.14. Counterparts..... 44

EXHIBIT A: FORM OF 2013 BOND
 EXHIBIT B: OFFICER'S CERTIFICATE REQUESTING DISBURSEMENT FROM COSTS OF
 ISSUANCE FUND
 EXHIBIT C: OFFICER'S CERTIFICATE REQUESTING DISBURSEMENT FROM
 ADMINISTRATIVE EXPENSE FUND
 EXHIBIT D: ESCROW INSTRUCTIONS TO PRIOR BONDS FISCAL AGENT

FISCAL AGENT AGREEMENT

THIS FISCAL AGENT AGREEMENT (the "Agreement") is made and entered into as of October 1, 2013, by and between the CITY OF HAYWARD, a municipal corporation and chartered city organized and existing under and by virtue of the Constitution and laws of the State of California (the "City") for and on behalf of the "City of Hayward Community Facilities District No. 1 (Eden Shores)" (the "CFD"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America with a corporate trust office located in San Francisco, California, as fiscal agent (the "Fiscal Agent").

WITNESSETH:

WHEREAS, the City Council of the City has formed the CFD under the provisions of the Mello-Roos Community Facilities Act of 1982, as amended (section 53311 *et seq.* of the California Government Code) (the "Act"); and

WHEREAS, the City Council, as the legislative body with respect to the CFD, is authorized under the Act to levy special taxes to pay for the costs of facilities within the CFD and to authorize the issuance of bonds secured by said special taxes under the Act; and

WHEREAS, under the provisions of the Act, the City, on behalf of the CFD, previously issued its \$9,965,000 initial principal amount City of Hayward Community Facilities District No. 1 (Eden Shores) Special Tax Bonds, Series 2002 (the "Prior Bonds"), pursuant to a Fiscal Agent Agreement, dated as of August 1, 2002 (the "Prior Bonds Fiscal Agent Agreement"), between the City and Wells Fargo Bank, National Association, as fiscal agent (the "Prior Bonds Fiscal Agent"); and

WHEREAS, the City wishes to refinance the outstanding principal amount of the Prior Bonds and proposes to issue its City of Hayward Community Facilities District No. 1 (Eden Shores) Special Tax Refunding Bonds, Series 2013 (the "2013 Bonds"); and

WHEREAS, on October 15, 2013, the City Council adopted Resolution No. _____ (the "Resolution") authorizing the issuance of the 2013 Bonds on behalf of the CFD; and

WHEREAS, it is in the public interest and for the benefit of the City, the CFD and the persons responsible for the payment of special taxes that the City enter into this Agreement to provide for the issuance of the Bonds (as defined below) hereunder to refinance the Prior Bonds and to provide for the disbursement of proceeds of the Bonds, the disposition of the special taxes securing the Bonds and the administration and payment of the Bonds; and

WHEREAS, the City has determined that all things necessary to cause the Bonds, when authenticated by the Fiscal Agent and issued as provided in the Act, the Resolution and this Agreement, to be legal, valid, binding and limited obligations in accordance with their terms, and all things necessary to cause the creation, authorization, execution and delivery of this Agreement and the creation, authorization, execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized.

NOW, THEREFORE, in consideration of the covenants and provisions herein set forth and for other valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

“Annual Debt Service” means, for each Bond Year, the sum of (i) the interest due on the Outstanding Bonds in such Bond Year, assuming that the Outstanding Bonds are retired as scheduled, and (ii) the principal amount of the Outstanding Bonds due in such Bond Year (including any mandatory sinking payment due in such Bond Year).

“Auditor” means the auditor/controller of the County, or such other official at the County who is responsible for preparing property tax bills.

“Authorized Officer” means the City Manager, the Finance Director, the City Clerk, or any other officer or employee authorized by the City Council of the City or by an Authorized Officer to undertake the action referenced in this Agreement as required to be undertaken by an Authorized Officer.

“Bond Counsel” means Jones Hall, A Professional Law Corporation or any other attorney or firm of attorneys acceptable to the City and nationally recognized for expertise in rendering opinions as to the legality and tax-exempt status of securities issued by public entities.

“Bond” or “Bonds” means the 2013 Bonds and, if the context requires, any Parity Bonds, at any time Outstanding under this Agreement or any Supplemental Agreement.

“Bond Fund” means the fund designated the “City of Hayward, Community Facilities District No. 1 (Eden Shores) Special Tax Bonds Bond Fund” established and administered under Section 4.04.

“Bond Year” means the one-year period beginning on September 2nd in each year and ending on September 1 in the following year, except that the first Bond Year shall begin on the Closing Date and shall end on September 1, 2014.

“Business Day” means any day other than (i) a Saturday or a Sunday or (ii) a day on which banking institutions in the state in which the Fiscal Agent has its principal corporate trust office are authorized or obligated by law or executive order to be closed.

“CDIAC” means the California Debt and Investment Advisory Commission of the Office of the State Treasurer, or any successor agency, board or commission.

“CFD” means the “City of Hayward Community Facilities District No. 1 (Eden Shores)” formed under the Resolution of Formation.

“CFD Value” means the market value, as of the date of the appraisal described below and/or the date of the most recent County real property tax roll, as applicable, of all parcels of real property in the CFD subject to the levy of the Special Taxes and not delinquent in the payment of any Special Taxes then due and owing, including with respect to such nondelinquent parcels the value of the then existing improvements and any facilities to be constructed or acquired with any amounts then on deposit in the Improvement Fund relating to the Prior Bonds and with the proceeds of any proposed series of Parity Bonds, as determined with respect to any parcel or group of parcels by reference to (i) an appraisal performed within six (6) months of the date of issuance of any proposed Parity Bonds by an MAI appraiser (the “Appraiser”) selected by the City, or (ii), in the alternative, the assessed value of all such nondelinquent parcels and improvements thereon as shown on the then current County real property tax roll available to the Finance Director. It is expressly acknowledged that, in determining the CFD Value, the City may rely on an appraisal to determine the value of some or all of the parcels in the CFD and/or the most recent County real property tax roll as to the value

the investment is traded on an established securities market (within the meaning of section 1273 of the Tax Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, (iii) the investment is a United States Treasury Security—State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the City and related parties do not own more than a ten percent (10%) beneficial interest if the return paid by such fund is without regard to the source of the investment.

“Federal Securities” means: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), the payment of principal of and interest on which are unconditionally and fully guaranteed by the United States of America; and (b) any obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

“Finance Director” means the official of the City, or such official’s designee, who acts in the capacity as the chief financial officer of the City, including the controller or other financial officer.

“Fiscal Agent” means Wells Fargo Bank, National Association, the Fiscal Agent appointed by the City and acting as an independent fiscal agent with the duties and powers herein provided, its successors and assigns, and any other corporation or association which may at any time be substituted in its place, as provided in Section 7.01.

“Fiscal Year” means the twelve-month period extending from July 1 in a calendar year to June 30 of the succeeding year, both dates inclusive.

“Independent Financial Consultant” means any consultant or firm of such consultants appointed by the City or the Treasurer, and who, or each of whom: (i) is judged by the Treasurer to have experience in matters relating to the issuance and/or administration of bonds under the Act; (ii) is in fact independent and not under the domination of the City; (iii) does not have any substantial interest, direct or indirect, with or in the City, or any owner of real property in the CFD, or any real property in the CFD; and (iv) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make reports to the City.

“Interest Payment Date” means each September 1 and March 1 of every calendar year, commencing with March 1, 2014.

“Maximum Annual Debt Service” means the largest Annual Debt Service for any Bond Year after the calculation is made through the final maturity date of any Outstanding Bonds.

“Moody’s” means Moody’s Investors Service, Inc., and its successors.

“MSRB” means the Municipal Securities Rulemaking Board.

“Officer’s Certificate” means a written certificate of the City signed by an Authorized Officer of the City.

short-term rating category by any Rating Agency, or whose long-term obligations are rated A or better by any Rating Agency, which mature not more than 270 days following the date of investment therein;

(f) obligations the interest on which is excludable from gross income pursuant to Section 103 of the Tax Code and which are either (a) rated A or better by any Rating Agency, or (b) fully secured as to the payment of principal and interest by Federal Securities;

(g) obligations issued by any corporation organized and operating within the United States of America having assets in excess of Five Hundred Million (\$500,000,000), which obligations are rated A or better by any Rating Agency;

(h) money market funds (including money market funds for which the Fiscal Agent, its affiliates or subsidiaries provide investment advisory or other management services) which invest in Federal Securities or which are rated in the highest short-term rating category by any Rating Agency; and

(i) any investment agreement representing general unsecured obligations of a financial institution rated A or better by any Rating Agency, by the terms of which the Fiscal Agent is permitted to withdraw all amounts invested therein in the event any such rating falls below A.

(j) the Local Agency Investment Fund established pursuant to Section 16429.1 of the Government Code of the State of California, *provided, however*, that the Fiscal Agent shall be permitted to make investments and withdrawals in its own name and the Fiscal Agent may restrict investments in the such fund if necessary to keep moneys available for the purposes of this Fiscal Agent Agreement.

(k) the California Asset Management Program.

“Principal Office” means such corporate trust office of the Fiscal Agent as may be designated from time to time by written notice from the Fiscal Agent to the City, initially being at the address set forth in Section 9.06, or such other office designated by the Fiscal Agent from time to time; except that with respect to presentation of Bonds for payment or for registration of transfer and exchange such term shall mean the office or agency of the Fiscal Agent at which, at any particular time, its corporate trust agency business shall be conducted.

“Prior Bonds” means the City of Hayward Community Facilities District No. 1 (Eden Shores) Special Tax Bonds, Series 2002, issued in the initial principal amount of \$9,965,000.

“Prior Bonds Fiscal Agent” means Wells Fargo Bank, National Association.

“Prior Bonds Fiscal Agent Agreement” means the Fiscal Agent Agreement, dated as of August 1, 2002, between the City, for and on behalf of the CFD, and the Prior Bonds Fiscal Agent.

“Project” means those items described as the “Facilities” in the Resolution of Formation.

“Record Date” means the fifteenth day of the calendar month next preceding the applicable Interest Payment Date, whether or not such day is a Business Day.

“Supplemental Agreement” means an agreement the execution of which is authorized by a resolution which has been duly adopted by the City under the Act and which agreement is amendatory of or supplemental to this Agreement, but only if and to the extent that such agreement is specifically authorized hereunder.

“Tax Code” means the Internal Revenue Code of 1986 as in effect on the date of issuance of the Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the Bonds, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the Tax Code.

“Tax Consultant” means an independent financial or tax consultant retained by the City for the purpose of computing the Special Taxes.

“Term Bonds” means the 2013 Bonds maturing on September 1, 2032.

“2013 Bonds” means the Bonds so designated and authorized to be issued under Section 2.01 hereof.

“2013 Reserve Fund” means the fund designated the “City of Hayward, Community Facilities District No. 1 (Eden Shores), Special Tax Bonds, 2013 Reserve Fund” established and administered under Section 4.03.

“2013 Reserve Requirement” means, as of the date of any calculation, an amount equal to _____.

to the applicable Record Date, which instructions shall continue in effect until revoked in writing, or until such Bonds are transferred to a new Owner. The principal of the Bonds and any premium on the Bonds are payable in lawful money of the United States of America upon surrender of the Bonds at the Principal Office of the Fiscal Agent. All Bonds paid by the Fiscal Agent pursuant to this Section shall be canceled by the Fiscal Agent. The Fiscal Agent shall destroy the canceled Bonds and, upon request of the City, issue a certificate of destruction of such Bonds to the City.

Section 2.03. Redemption.

(A) Redemption Provisions.

(i) **Optional Redemption.** The 2013 Bonds maturing on September 1, 20__ and thereafter are subject to redemption prior to their stated maturities, on any Interest Payment Date, in whole or in part, at a redemption price (expressed as a percentage of the principal amount of the 2013 Bonds to be redeemed) as set forth below, together with accrued interest thereon to the date fixed for redemption:

<u>Redemption Date</u>	<u>Redemption Price</u>
On or before September 1, 20__	___%
On September 2, 20__ through September 1, 20__	___
On September 2, 20__ and thereafter	___

(ii) **Mandatory Sinking Fund Redemption.** The Term Bond maturing on September 1, 2032 is subject to mandatory redemption in part by lot, from sinking fund payments made by the City from the Bond Fund, at a redemption price equal to the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts all as set forth in the following table:

<u>Sinking Fund Redemption Date (September 1)</u>	<u>Principal Amount Subject to Redemption</u>
2014	\$
2015	
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030	
2031	
2032	

redemption, at their addresses appearing on the Bond registration books in the Principal Office of the Fiscal Agent; but such mailing shall not be a condition precedent to such redemption and failure to mail or to receive any such notice, or any defect therein, shall not affect the validity of the proceedings for the redemption of such Bonds.

(ii) **Contents of Notices.** Such notice shall state the redemption date and the redemption price and, if less than all of the then Outstanding Bonds are to be called for redemption shall state as to any Bond called in part the principal amount thereof to be redeemed, and shall require that such Bonds be then surrendered at the Principal Office of the Fiscal Agent for redemption at the said redemption price, and shall state that further interest on such Bonds will not accrue from and after the redemption date. The cost of mailing any such redemption notice and any expenses incurred by the Fiscal Agent in connection therewith shall be paid by the City.

(iii) **Redemption.** Whenever provision is made in this Agreement for the redemption of less than all of the Bonds of any maturity or any given portion thereof, the Fiscal Agent shall select the Bonds to be redeemed, from all Bonds or such given portion thereof not previously called for redemption, by lot in any manner which the Fiscal Agent in its sole discretion shall deem appropriate; provided, however, that if Bonds are to be redeemed as a result of Special Tax Prepayments, Bonds shall be selected for redemption on a pro-rata basis among maturities.

(iv) **New Bonds.** Upon surrender of Bonds redeemed in part only, the City shall execute and the Fiscal Agent shall authenticate and deliver to the registered Owner, at the expense of the City, a new Bond or Bonds, of the same series and maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond or Bonds of such registered Owner.

(E) **Effect of Redemption.** From and after the date fixed for redemption, if funds available for the payment of the principal of, and interest and any premium on, the Bonds so called for redemption shall have been deposited in the Bond Fund, such Bonds so called shall cease to be entitled to any benefit under this Agreement other than the right to receive payment of the redemption price, and no interest shall accrue thereon on or after the redemption date specified in the notice of redemption. All Bonds redeemed and purchased by the Fiscal Agent under this Section 2.03 shall be canceled by the Fiscal Agent. The Fiscal Agent shall destroy the canceled Bonds in accordance with the Fiscal Agent's retention policy then in effect.

Section 2.04. Form of Bonds. The 2013 Bonds, the Fiscal Agent's certificate of authentication and the assignment, to appear thereon, shall be substantially in the forms, respectively, set forth in Exhibit A attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Agreement, the Resolution and the Act.

shall at all times be open to inspection by the City during regular business hours upon reasonable notice; and, upon presentation for such purpose, the Fiscal Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, the ownership of the Bonds as hereinbefore provided. The City and the Fiscal Agent will treat the Owner of any Bond whose name appears on the Bond register as the absolute Owner of such Bond for any and all purposes, and the City and the Fiscal Agent shall not be affected by any notice to the contrary. The City and the Fiscal Agent may rely on the address of the Owner as it appears in the Bond register for any and all purposes.

Section 2.08. Temporary Bonds. The Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such authorized denominations as may be determined by the City, and may contain such reference to any of the provisions of this Agreement as may be appropriate. Every temporary Bond shall be executed by the City upon the same conditions and in substantially the same manner as the definitive Bonds. If the City issues temporary Bonds, it will execute and furnish definitive Bonds without delay and thereupon the temporary Bonds shall be surrendered, for cancellation, in exchange for the definitive Bonds at the Principal Office of the Fiscal Agent or at such other location as the Fiscal Agent shall designate, and the Fiscal Agent shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Agreement as definitive Bonds authenticated and delivered hereunder.

Section 2.09. Bonds Mutilated, Lost, Destroyed or Stolen.

(A) Mutilated. If any Bond shall become mutilated, at the expense of the Owner of such Bond, the City shall execute and the Fiscal Agent shall authenticate and deliver a replacement Bond of like tenor and principal amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Fiscal Agent of the Bond so mutilated. Every mutilated Bond so surrendered to the Fiscal Agent shall be canceled by it and destroyed by the Fiscal Agent, in accordance with the Fiscal Agent's retention policy then in effect.

(B) Destroyed or Stolen. If any Bond shall be lost, destroyed or stolen, the City shall execute and the Fiscal Agent shall authenticate and deliver a replacement Bond of like tenor and principal amount in lieu of and in substitution for the Bond so lost, destroyed or stolen, at the expense of the Owner, but only following provision by the Owner to the Fiscal Agent of indemnity for the City and the Fiscal Agent satisfactory to the Fiscal Agent. The City may require payment of a sum not exceeding the actual cost of preparing each a replacement Bond delivered under this Section and the City and the Fiscal Agent may require payment of the expenses which may be incurred by the City and the Fiscal Agent for the preparation, execution, authentication and delivery thereof. Any Bond delivered under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the City whether or not the Bond so alleged to be lost, destroyed or stolen is at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Agreement with all other Bonds issued under this Agreement.

(C) Additional Stock. If the Fiscal Agent has an insufficient stock of unauthenticated printed Bonds for such purpose, it shall communicate with the Finance Director with respect to the printing of an additional stock of Bonds, in such quantities and as otherwise approved in writing by the Finance Director.

the purpose of registering transfers with respect to such 2013 Bonds, and for all purposes whatsoever. The Fiscal Agent on behalf of the City shall pay all principal of and premium and interest on the 2013 Bonds only to or upon the order of the Owners as shown on the bond register, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to the principal of and premium and interest on the 2013 Bonds to the extent of the sums or sums so paid.

No person other than an Owner, as shown on the bond register, shall receive a physical 2013 Bond. Upon delivery by DTC to the City and the Fiscal Agent of written notice to the effect the DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the transfer provisions in Section 2.06 hereof, references to "Cede & Co." in this Section 2.11 shall refer to such new nominee of DTC.

DTC may determine to discontinue providing its services with respect to the 2013 Bonds at any time by giving written notice to the City and to the Fiscal Agent during any time that the 2013 Bonds are Outstanding, and discharging its responsibilities with respect thereto under applicable law. The City may terminate the services of DTC with respect to the 2013 Bonds if it determines that DTC is unable to discharge its responsibilities with respect to the Bonds or that continuation of the system of book-entry transfer through DTC is not in the best interest of the Beneficial Owners, and the City shall mail notice of such termination to the Fiscal Agent.

Upon termination of the services of DTC as provided in the previous paragraph, and if no substitute Depository willing to undertake the functions hereunder can be found which is willing to undertake such functions upon reasonable or customary terms, or if the City determines that it is in the best interest of the Beneficial Owners of the 2013 Bonds that they be able to obtain certified Bonds, the Bonds shall no longer be restricted to being registered in the bond register of the Fiscal Agent in the name of Cede & Co., as nominee of DTC, but may be registered in whatever name or names the Owners shall designate at that time, in accordance with Section 2.06.

To the extent that the Beneficial Owners are designated as the transferee by the Owners, in accordance with Section 2.06, the 2013 Bonds will be delivered to such Beneficial Owners.

hereunder. The City may issue such Parity Bonds subject to the following specific conditions precedent:

(A) Compliance. The City shall be in compliance with all covenants set forth in this Agreement and all Supplemental Agreements, and issuance of the Parity Bonds shall not cause the City to exceed the bonded indebtedness limit of the CFD.

(B) Same Payment Dates. The Supplemental Agreement providing for the issuance of such Parity Bonds shall provide that interest thereon shall be payable on the Interest Payment Dates, and principal thereof shall be payable on the same date in any year in which principal is payable on the 2013 Bonds (provided that there shall be no requirement that any Parity Bonds pay interest on a current basis).

(C) Separate Funds; Reserve Fund Deposit. The Supplemental Agreement providing for issuance of the Parity Bonds may provide for the establishment of separate funds and accounts, and shall provide for (i) a deposit to the 2013 Reserve Fund in an amount necessary such that the amount deposited therein shall equal the 2013 Reserve Requirement following issuance of the Parity Bonds, (ii) a deposit to a reserve account for the Parity Bonds (and such other series of Parity Bonds identified by the City) in an amount defined in such Supplemental Agreement, as long as such Supplemental Agreement expressly declares that the Owners of such Parity Bonds will have no interest in or claim to the 2013 Reserve Fund and that the Owners of the Bonds covered by the 2013 Reserve Fund will have no interest in or claim to such other reserve account or (iii) no deposit to either the 2013 Reserve Fund or another reserve account as long as such Supplemental Agreement expressly declares that the Owners of such Parity Bonds will have no interest in or claim to the 2013 Reserve Fund or any other reserve account.

(D) Refunding Bonds. The Parity Bonds shall constitute Refunding Bonds.

(E) Certificates. The City shall deliver to the Fiscal Agent an Officer's Certificate certifying that the conditions precedent to the issuance of such Parity Bonds set forth in subsections (A), (B), (C) and (D) of this Section 3.06 have been satisfied.

(D) Closing of Fund. The Fiscal Agent shall maintain the Costs of Issuance Fund for a period of 90 days from the Closing Date and then the Fiscal Agent shall transfer any moneys remaining therein, including any investment earnings thereon, to the City for deposit in the Bond Fund to pay interest on the 2013 Bonds on the next Interest Payment Date.

Section 4.03. 2013 Reserve Fund.

(A) Establishment of Fund. The 2013 Reserve Fund is hereby established as a separate fund to be held by the Fiscal Agent to the credit of which a deposit shall be made as required by Section 4.01, which deposit, as of the Closing Date, is equal to (or in excess of) the initial 2013 Reserve Requirement with respect to the 2013 Bonds, and deposits shall be made as provided in Sections 3.06(C) and 4.05(B). Moneys in the 2013 Reserve Fund shall be held in trust by the Fiscal Agent for the benefit of the Owners of the 2013 Bonds and such Parity Bonds specified in a Supplemental Agreement (the "related bonds") as a reserve for the payment of the principal of, and interest and any premium on, the related Bonds and shall be subject to a lien in favor of the Owners of the related Bonds.

(B) Use of 2013 Reserve Fund. Except as otherwise provided in this Section, all amounts deposited in the 2013 Reserve Fund shall be used and withdrawn by the Fiscal Agent solely for the purpose of making transfers to the Bond Fund in the event of any deficiency at any time in the Bond Fund of the amount then required for payment of the principal of, and interest and any premium on, the related Bonds or, in accordance with the provisions of this Section, for the purpose of redeeming related Bonds from the Bond Fund. Whenever a transfer is made from the 2013 Reserve Fund to the Bond Fund due to a deficiency in the Bond Fund, the Fiscal Agent shall provide written notice thereof to the Finance Director specifying the amount withdrawn.

(C) Transfer of Excess of 2013 Reserve Requirement. Whenever, on or before any Interest Payment Date, or on any other date at the request of the Finance Director, the amount in the 2013 Reserve Fund exceeds the 2013 Reserve Requirement, the Fiscal Agent shall provide written notice to the Finance Director of the amount of the excess and shall transfer an amount equal to the excess from the 2013 Reserve Fund to the Bond Fund, to be used to pay interest on the Bonds on the next Interest Payment Date.

(D) Transfer for Rebate Purposes. Amounts in the 2013 Reserve Fund shall be withdrawn for purposes of making payment to the federal government to comply with Section 5.11, upon receipt by the Fiscal Agent of an Officer's Certificate specifying the amount to be withdrawn and to the effect that such amount is needed for rebate purposes; *provided, however*, that no amounts in the 2013 Reserve Fund shall be used for rebate unless the amount in the 2013 Reserve Fund following such withdrawal equals the 2013 Reserve Requirement.

(E) Transfer When Balance Exceeds Outstanding Related Bonds. Whenever the balance in the 2013 Reserve Fund exceeds the amount required to redeem or pay the Outstanding related Bonds, including interest accrued to the date of payment or redemption and premium, if any, due upon redemption, the Fiscal Agent shall, upon the written request of the Finance Director, transfer any cash or Permitted Investments in the 2013 Reserve Fund to the Bond Fund

of, and interest and any premium, due and payable on such Interest Payment Date on the Bonds.

At least five (5) Business Days prior to each Interest Payment Date, the Fiscal Agent shall determine if the amounts then on deposit in the Bond Fund are sufficient to pay the debt service due on the Bonds on the next Interest Payment Date. In the event that amounts in the Bond Fund are insufficient for such purpose, the Fiscal Agent promptly shall notify the Finance Director by telephone (and confirm in writing) of the amount of the insufficiency.

In the event that amounts in the Bond Fund are insufficient for the purpose set forth in the preceding paragraph with respect to any Interest Payment Date, the Fiscal Agent shall withdraw from the 2013 Reserve Fund, in accordance with the provisions of Section 4.03, and such other reserve fund established by a Supplemental Agreement, to the extent of any funds or Permitted Investments therein, amounts to cover the amount of such Bond Fund insufficiency. Amounts so withdrawn from the 2013 Reserve Fund and such other reserve fund shall be deposited in the Bond Fund.

If, after the foregoing transfers, there are insufficient funds in the Bond Fund to make the payments provided for in the second sentence of the first paragraph of this Section 4.04(B), the Fiscal Agent shall apply the available funds first to the payment of interest on the Bonds, then to the payment of principal due on the Bonds other than by reason of sinking payments, if any, and then to payment of principal due on the bonds by reason of sinking payments.

(C) Disbursements from the Special Tax Prepayments Account. Moneys in the Special Tax Prepayments Account shall be transferred by the Fiscal Agent to the Bond Fund on the next date for which notice of redemption of Bonds can timely be given under Section 2.03(A)(iii) and shall be used (together with any amounts transferred pursuant to Section 4.03(F)) to redeem Bonds on the redemption date selected in accordance with Section 2.03.

(D) Investment. Moneys in the Bond Fund and the Special Tax Prepayments Account shall be invested under Section 6.01. Interest earnings and profits resulting from such investment shall be retained in the Bond Fund.

(E) Deficiency. If at any time it appears to the Fiscal Agent that there is a danger of deficiency in the Bond Fund and that the Fiscal Agent may be unable to pay Debt Service on the Bonds in a timely manner, the Fiscal Agent shall report to the Finance Director such fact. The City covenants to increase the levy of the Special Taxes in the next Fiscal Year (subject to the maximum amount authorized by the Resolution of Formation) in accordance with the procedures set forth in the Act for the purpose of curing Bond Fund deficiencies.

(F) Excess. Any excess moneys remaining in the Bond Fund, following the payment of Debt Service on the Bonds on any September 1, shall be transferred to the Special Tax Fund.

Section 4.05. Special Tax Fund.

(A) Establishment of Special Tax Fund. The Special Tax Fund is hereby established as a separate fund to be held by the Fiscal Agent, to the

(C) Investment. Moneys in the Special Tax Fund shall be invested and deposited by the Fiscal Agent under Section 6.01. Interest earnings and profits resulting from such investment and deposit shall be retained in the Special Tax Fund to be used for the purposes thereof.

Section 4.06. Administrative Expense Fund.

(A) Establishment of Administrative Expense Fund. The Administrative Expense Fund is hereby established as a separate fund to be held by the Fiscal Agent, to the credit of which deposits shall be made as required by Section 4.05(A). Moneys in the Administrative Expense Fund shall be held by the Fiscal Agent for the benefit of the City, and shall be disbursed as provided below.

(B) Disbursement. Amounts in the Administrative Expense Fund shall be withdrawn by the Fiscal Agent and paid to the City or its order upon receipt by the Fiscal Agent of an Officer's Certificate, in substantially the form of Exhibit C hereto, stating the amount to be withdrawn, that such amount is to be used to pay an Administrative Expense or a Cost of Issuance and the nature of such Administrative Expense or such Cost of Issuance. Amounts deposited to the Administrative Expense Fund pursuant to Section 4.01(v) shall be separately identified at all times, and shall be expended for purposes of the Administrative Expense Fund prior to the use of amounts transferred to the Administrative Expense Fund from the Special Tax Fund pursuant to Section 4.05(A).

Annually, on the last day of each Fiscal Year, the Fiscal Agent shall withdraw from the Administrative Expense Fund and transfer to the Special Tax Fund any amount in excess of that which is needed to pay any Administrative Expenses incurred but not yet paid, and which are not otherwise encumbered, as identified by the Finance Director in an Officer's Certificate.

(C) Investment. Moneys in the Administrative Expense Fund shall be invested by the Fiscal Agent under Section 6.01. Interest earnings and profits resulting from such investment shall be retained by the Fiscal Agent in the Administrative Expense Fund to be used for the purposes of such fund.

Section 4.07. Escrow Instructions. The City shall deliver to the Prior Bonds Fiscal Agent, on the Closing Date, the Escrow Instructions for redemption of the Prior Bonds in substantially the form attached hereto as Exhibit D.

proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the ad valorem taxes on real property.

Section 5.02. Covenant to Foreclose. Under the Act, the City hereby covenants with and for the benefit of the Owners of the Bonds that it will order, and cause to be commenced as hereinafter provided, and thereafter diligently prosecute to judgment (unless such delinquency is theretofore brought current), an action in the superior court to foreclose the lien of any Special Tax or installment thereof not paid when due as provided in the following two paragraphs. The Finance Director shall notify the City Attorney of any such delinquency of which the Finance Director is aware, and the City Attorney shall commence, or cause to be commenced, such proceedings.

On or about March 30 and June 30 of each Fiscal Year, the Finance Director shall compare the amount of Special Taxes theretofore levied in the CFD to the amount of Special Tax Revenues theretofore received by the City, and:

(A) Individual Delinquencies. If the Finance Director determines that any single parcel subject to the Special Tax in the CFD is delinquent in the payment of Special Taxes in the aggregate amount of \$5,000 or more, then the Finance Director shall send or cause to be sent a notice of delinquency (and a demand for immediate payment thereof) to the property owner within 45 days of such determination, and (if the delinquency remains uncured) foreclosure proceedings shall be commenced by the City within 90 days of such determination.

(B) Aggregate Delinquencies. If the Finance Director determines that (i) the total amount of delinquent Special Tax for the prior Fiscal Year for the entire CFD, (including the total of delinquencies under subsection (A) above), exceeds 5% of the total Special Tax due and payable for the prior Fiscal Year, or (ii) there are ten (10) or fewer owners of real property within the CFD, determined by reference to the latest available secured property tax roll of the County, the Finance Director shall notify or cause to be notified property owners who are then delinquent in the payment of Special Taxes (and demand immediate payment of the delinquency) within 45 days of such determination, and shall commence foreclosure proceedings within 90 days of such determination against each parcel of land in the CFD with a Special Tax delinquency.

The Finance Director and the City Attorney, as applicable, are hereby authorized to employ counsel to conduct any such foreclosure proceedings. The fees and expenses of any such counsel (including a charge for City staff time) in conducting foreclosure proceedings shall be an Administrative Expense hereunder.

Section 5.03. Punctual Payment. The City will punctually pay or cause to be paid the principal of, and interest and any premium on, the Bonds when and as due in strict conformity with the terms of this Agreement and any Supplemental Agreement, and it will faithfully observe and perform all of the conditions covenants and requirements of this Agreement and all Supplemental Agreements and of the Bonds.

Section 5.04. Extension of Time for Payment. In order to prevent any accumulation of claims for interest after maturity, the City shall not, directly or indirectly, extend or consent to the extension of the time for the payment of any claim for interest on any of the Bonds and shall not, directly or indirectly, be a party to the approval of any such arrangement by purchasing or funding said claims for interest or in any other manner. In case any such claim for interest shall

investment earnings, if any, to the federal government, to the extent that such section is applicable to the 2013 Bonds. The Finance Director shall take note of any investment of monies hereunder in excess of the yield on the 2013 Bonds, and shall take such actions as are necessary to ensure compliance with this Section 5.11, such as increasing the portion of the Special Tax levy for Administration Expenses as appropriate to have funds available in the Administrative Expense Fund to satisfy any rebate liability under this Section. If necessary to satisfy its obligations under this Section 5.11, the City may use:

- (A) Earnings on the 2013 Reserve Fund if the amount on deposit in the 2013 Reserve Fund, following the proposed transfer, is equal to the 2013 Reserve Requirement;
- (B) Amounts on deposit in the Administrative Expense Fund; and
- (C) Any other funds available to the CFD, including amounts advanced by the City, in its sole discretion, to be repaid by the CFD as soon as practicable from amounts described in the preceding clauses (A) and (B).

Section 5.12. No Arbitrage. The City shall not take, or permit or suffer to be taken by the Fiscal Agent or otherwise, any action with respect to the proceeds of the 2013 Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the 2013 Bonds would have caused the 2013 Bonds to be "arbitrage bonds" within the meaning of section 148 of the Tax Code.

Section 5.13. Yield of the 2013 Bonds. In determining the yield of the 2013 Bonds to comply with Sections 5.11 and 5.12, the City will take into account redemption (including premium, if any) in advance of maturity based on the reasonable expectations of the City, as of the Closing Date, regarding prepayments of Special Taxes and use of prepayments for redemption of the 2013 Bonds, without regard to whether or not prepayments are received or 2013 Bonds redeemed.

Section 5.14. Maintenance of Tax-Exemption. The City shall take all actions necessary to assure the exclusion of interest on the 2013 Bonds from the gross income of the Owners of the 2013 Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the date of issuance of the 2013 Bonds.

Section 5.15. No Continuing Disclosure. The City is not obligated to provide continuing disclosure with respect to the 2013 Bonds.

Section 5.16. Limits on Special Tax Waivers and Bond Tenders. The City covenants not to exercise its rights under the Act to waive delinquency and redemption penalties related to the Special Taxes or to declare Special Tax penalties amnesty program if to do so would materially and adversely affect the interests of the Owners of the Bonds and further covenants not to permit the tender of Bonds in payment of any Special Taxes except upon receipt of a certificate of an Independent Financial Consultant that to accept such tender will not result in the City having insufficient Special Tax Revenues to pay the principal of and interest on the Bonds and any Parity Bonds remaining Outstanding following such tender.

Section 5.17. City Bid at Foreclosure Sale. The City will not bid at a foreclosure sale of property in respect of delinquent Special Taxes, unless it expressly agrees to take the property subject to the lien for Special Taxes imposed by the District and that the Special Taxes levied on the property are payable while the City owns the property.

ARTICLE VI

INVESTMENTS; LIABILITY OF THE CITY

Section 6.01. Deposit and Investment of Moneys in Funds.

(A) **General.** Moneys in any fund or account created or established by this Agreement and held by the Fiscal Agent shall be invested by the Fiscal Agent in Permitted Investments, which in any event by their terms mature prior to the date on which such moneys are required to be paid out hereunder, as directed pursuant to an Officer's Certificate filed with the Fiscal Agent at least two (2) Business Days in advance of the making of such investments. In the absence of any such Officer's Certificate, the Fiscal Agent shall invest any such moneys in Permitted Investments described in Section (h) of the definition thereof which by their terms mature prior to the date on which such moneys are required to be paid out hereunder to the extent reasonably practicable, and if such investments cannot be made shall hold such funds uninvested. The Finance Director shall make note of any investment of funds hereunder in excess of the yield on the Bonds so that appropriate actions can be taken to assure compliance with Section 5.11.

(B) **Moneys in Funds.** Moneys in any fund or account created or established by this Agreement and held by the Finance Director shall be invested by the Finance Director in any Permitted Investment or in any other lawful investment for City funds, which in any event by its terms matures prior to the date on which such moneys are required to be paid out hereunder. Obligations purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account, subject, however, to the requirements of this Agreement for transfer of interest earnings and profits resulting from investment of amounts in funds and accounts. Whenever in this Agreement any moneys are required to be transferred by the City to the Fiscal Agent, such transfer may be accomplished by transferring a like amount of Permitted Investments.

(C) **Actions of Officials.** The Fiscal Agent and its affiliates or the Finance Director may act as sponsor, advisor, depository, principal or agent in the acquisition or disposition of any investment. Neither the Fiscal Agent nor the Finance Director shall incur any liability for losses arising from any investments made pursuant to this Section. The Fiscal Agent shall not be required to determine the legality of any investments.

(D) **Valuation of Investments.** Except as otherwise provided in the next sentence, all investments of amounts deposited in any fund or account created by or pursuant to this Agreement, or otherwise containing gross proceeds of the Bonds (within the meaning of section 148 of the Tax Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Agreement or the Tax Code) at Fair Market Value. Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under the applicable provisions of the Tax Code and (unless valuation is undertaken at least annually) investments in the subaccounts within the 2013 Reserve Fund shall be valued at their present value (within the meaning of section 148 of the Tax Code). The Fiscal Agent shall not be liable for verification of the application of such sections of the Tax Code or for any determination of Fair Market Value or present value and may conclusively rely upon an Officer's Certificate as to such valuations.

(E) **Commingled Money.** Investments in any and all funds and accounts may be commingled in a separate fund or funds for purposes of making, holding and disposing of investments, notwithstanding provisions herein for transfer to or holding in or to the credit of particular funds or accounts of amounts received or held by the Fiscal Agent or the Finance

Section 6.03. Employment of Agents by City. In order to perform its duties and obligations hereunder, the City may employ such persons or entities as it deems necessary or advisable. The City shall not be liable for any of the acts or omissions of such persons or entities employed by it in good faith hereunder, and shall be entitled to rely, and shall be fully protected in doing so, upon the opinions, calculations, determinations and directions of such persons or entities.

Section 7.02. Liability of Fiscal Agent.

(A) General. The recitals of facts, covenants and agreements herein and in the Bonds contained shall be taken as statements, covenants and agreements of the City, and the Fiscal Agent assumes no responsibility for the correctness of the same, nor makes any representations as to the validity or sufficiency of this Agreement or of the Bonds, nor shall the Fiscal Agent incur any responsibility in respect thereof, other than in connection with the duties or obligations herein or in the Bonds assigned to or imposed upon it. The Fiscal Agent shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct. The Fiscal Agent assumes no responsibility or liability for any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds. All indemnifications and releases from liability granted to the Fiscal Agent hereunder shall extend to the directors, officers and employees of the Fiscal Agent.

The Fiscal Agent shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay ("unavoidable delay") in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, Acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Fiscal Agent.

(B) Reliance. The Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates, documents, written instructions or opinions furnished to the Fiscal Agent and conforming to the requirements of this Agreement; but in the case of any such certificates, documents, written instructions or opinions by which any provision hereof are specifically required to be furnished to the Fiscal Agent, the Fiscal Agent shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement. Except as provided above in this paragraph, the Fiscal Agent shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in accordance with the terms of this Agreement, upon any resolution, order, notice, request, consent or waiver, certificate, statement, affidavit, facsimile transmission, electronic mail, or other paper or document which it shall reasonably believe to be genuine and to have been adopted or signed by the proper person or to have been prepared and furnished pursuant to any provision of this Agreement, and the Fiscal Agent shall not be under any duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument.

(C) No Duty to Inquire. The Fiscal Agent shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements of the City or the CFD herein or of any of the documents executed by the City or the CFD in connection with the Bonds, or as to the existence of a default or event of default thereunder.

(D) Errors in Judgment. The Fiscal Agent shall not be liable for any error of judgment made in good faith by a responsible officer of the Fiscal Agent unless it shall be proved that the Fiscal Agent was negligent in ascertaining the pertinent facts.

ATTACHMENT II

employees, incurred in and about the performance of their powers and duties under this Agreement, but the Fiscal Agent shall not have a lien therefor on any funds at any time held by it under this Agreement. The City further agrees, to the extent permitted by applicable law, to indemnify and save the Fiscal Agent, its officers, employees, directors and agents harmless against any liabilities, costs, claims or expenses, including fees and expenses of its attorneys, which it may incur in the exercise and performance of its powers and duties hereunder which are not due to its negligence or willful misconduct. The obligations of the City under this Section shall survive resignation or removal of the Fiscal Agent under this Agreement, and payment of the Bonds and discharge of this Agreement, but any monetary obligation of the City arising under this Section shall be limited solely to amounts on deposit in the Administrative Expense Fund.

Section 8.02. Owners' Meetings. The City may at any time call a meeting of the Owners. In such event the City is authorized to fix the time and place of said meeting and to provide for the giving of notice thereof and to fix and adopt rules and regulations for the conduct of said meeting.

Section 8.03. Procedure for Amendment with Written Consent of Owners. The City and the Fiscal Agent may at any time adopt a Supplemental Agreement amending the provisions of the Bonds or of this Agreement or any Supplemental Agreement, to the extent that such amendment is permitted by Section 8.01(A), to take effect when and as provided in this Section 8.03. A copy of such Supplemental Agreement, together with a request to Owners for their consent thereto, shall be mailed by first class mail, by the Fiscal Agent, at the expense of the City, to each Owner of Bonds Outstanding, but failure to mail copies of such Supplemental Agreement and request shall not affect the validity of the Supplemental Agreement when assented to as in this Section 8.03 provided.

Such Supplemental Agreement shall not become effective unless there shall be filed with the Fiscal Agent the written consents of the Owners of at least sixty percent (60%) in aggregate principal amount of the Bonds then Outstanding (exclusive of Bonds disqualified as provided in Section 8.04) and a notice shall have been mailed as hereinafter in this Section 8.03 provided. Each such consent shall be effective only if accompanied by proof of ownership of the Bonds for which such consent is given, which proof shall be such as is permitted by Section 9.04. Any such consent shall be binding upon the Owner of the Bonds giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Fiscal Agent prior to the date when the notice hereinafter in this Section 8.03 provided for has been mailed.

After the Owners of the required percentage of Bonds shall have filed their consents to the Supplemental Agreement, the City shall mail a notice to the Owners in the manner hereinbefore provided in this Section 8.03 for the mailing of the Supplemental Agreement, stating in substance that the Supplemental Agreement has been consented to by the Owners of the required percentage of Bonds and will be effective as provided in this Section 8.03 (but failure to mail copies of said notice shall not affect the validity of the Supplemental Agreement or consents thereto). Proof of the mailing of such notice shall be filed with the Fiscal Agent. A record, consisting of the papers required by this Section 8.03 to be filed with the Fiscal Agent, shall be proof of the matters therein stated until the contrary is proved. The Supplemental Agreement shall become effective upon the filing with the Fiscal Agent of the proof of mailing of such notice, and the Supplemental Agreement shall be deemed conclusively binding (except as otherwise hereinabove specifically provided in this Article) upon the City and the Owners of all Bonds at the expiration of sixty (60) days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such sixty-day period.

Section 8.04. Disqualified Bonds. Bonds owned or held for the account of the City, excepting any pension or retirement fund, shall not be deemed Outstanding for the purpose of any vote, consent or other action or any calculation of Outstanding Bonds provided for in this Article VIII, and shall not be entitled to vote upon, consent to, or take any other action provided for in this Article VIII. Upon request of the Fiscal Agent, the City shall specify in a certificate to the Fiscal Agent those Bonds disqualified pursuant to this Section and the Fiscal Agent may conclusively rely on such certificate.

Section 8.05. Effect of Supplemental Agreement. From and after the time any Supplemental Agreement becomes effective under this Article VIII, this Agreement shall be

ARTICLE IX

MISCELLANEOUS

Section 9.01. Benefits of Agreement Limited to Parties. Nothing in this Agreement, expressed or implied, is intended to give to any person other than the City, the Fiscal Agent and the Owners, any right, remedy, claim under or by reason of this Agreement. Any covenants, stipulations, promises or agreements in this Agreement contained by and on behalf of the City shall be for the sole and exclusive benefit of the Owners and the Fiscal Agent.

Section 9.02. Successor and Predecessor. Whenever in this Agreement or any Supplemental Agreement either the City or the Fiscal Agent is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the City or the Fiscal Agent shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 9.03. Discharge of Agreement. If the City shall pay and discharge the entire indebtedness on all Bonds Outstanding in any one or more of the following ways:

(A) by paying or causing to be paid the principal of, and interest and any premium on, all Bonds Outstanding, as and when the same become due and payable;

(B) by depositing with the Fiscal Agent, in trust, at or before maturity, money which, together with the amounts then on deposit in the funds and accounts provided for in the Bond Fund and the 2013 Reserve Fund hereof, is fully sufficient to pay all Bonds Outstanding, including all principal, interest and redemption premiums; or

(C) by irrevocably depositing with the Fiscal Agent, in trust, cash and/or Federal Securities in such amount as the City shall determine, as confirmed by an independent certified public accountant, will, together with the interest to accrue thereon and moneys then on deposit in the fund and accounts provided for in the Bond Fund and the 2013 Reserve Fund (to the extent invested in Federal Securities), be fully sufficient to pay and discharge the indebtedness on all Bonds (including all principal, interest and redemption premiums) at or before their respective maturity dates.

If the City shall have taken any of the actions specified in (A), (B) or (C) above, and if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in this Agreement provided or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, then, at the election of the City, and notwithstanding that any Bonds shall not have been surrendered for payment, the pledge of the Special Taxes and other funds provided for in this Agreement and all other obligations of the City under this Agreement with respect to such Bonds Outstanding shall cease and terminate. Notice of such election shall be filed with the Fiscal Agent.

Notwithstanding the foregoing, the following obligations and pledges of the City shall continue in any event: (i) the obligation of the City to pay or cause to be paid to the Owners of the Bonds not so surrendered and paid all sums due thereon, (ii) the obligation of the City to pay amounts owing to the Fiscal Agent pursuant to Section 7.05, and (iii) the obligation of the City to

Wells Fargo Bank, National Association
Corporate Trust Department
MAC A0119-181
333 Market Street, 18th Floor
San Francisco, CA 94105
Attn: Corporate Trust Services

Section 9.07. Partial Invalidity. If any Section, paragraph, sentence, clause or phrase of this Agreement shall for any reason be held by a court of competent jurisdiction to be illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Agreement. The City hereby declares that it would have adopted this Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Agreement may be held illegal, invalid or unenforceable.

Section 9.08. Unclaimed Moneys. Anything contained herein to the contrary notwithstanding, any moneys held by the Fiscal Agent in trust for the payment and discharge of the principal of, and the interest and any premium on, the Bonds which remains unclaimed for two (2) years after the date when the payment of such principal, interest and premium have become payable, if such moneys were held by the Fiscal Agent at such date, shall be repaid by the Fiscal Agent to the City as its absolute property free from any trust, and the Fiscal Agent shall thereupon be released and discharged with respect thereto and the Owners of such Bonds shall look only to the City for the payment of the principal of, and interest and any premium on, such Bonds. Any right of any Owner to look to the City for such payment shall survive only so long as required under applicable law.

Section 9.09. Applicable Law. This Agreement shall be governed by and enforced in accordance with the laws of the State applicable to contracts made and performed in the State.

Section 9.10. Conflict with Act. In the event of a conflict between any provision of this Agreement with any provision of the Act as in effect on the Closing Date, the provision of the Act shall prevail over the conflicting provision of this Agreement.

Section 9.11. Conclusive Evidence of Regularity. Bonds issued under this Agreement shall constitute conclusive evidence of the regularity of all proceedings under the Act relative to their issuance and the levy of the Special Taxes.

Section 9.12. Payment on Business Day. In any case where the date of the maturity of interest or of principal (and premium, if any) of the Bonds, or the date fixed for redemption of any Bonds, or the date any action is to be taken under this Agreement, is other than a Business Day, the payment of interest or principal (and premium, if any) or the action shall be made on the next succeeding day which is a Business Day with the same force and effect as if made on the date required and no interest shall accrue for the period from and after such date.

Section 9.13. State Reporting Requirements. In addition to Section 5.15, the following requirements shall apply to the Bonds:

(A) Annual Reporting. Not later than October 30 of each calendar year, beginning with the October 30 first succeeding the date of the 2013 Bonds, and in each calendar year thereafter until the October 30 following the final maturity of the Bonds, the Treasurer shall cause the following information to be supplied to CDIAC: (i) the principal amount of the Bonds

ATTACHMENT II

IN WITNESS WHEREOF, the City and the Fiscal Agent have caused this Agreement to be executed as of the date first written above.

CITY OF HAYWARD,
for and on behalf of
COMMUNITY FACILITIES DISTRICT
NO. 1 (EDEN SHORES)

By: _____
Finance Director

WELLS FARGO BANK, NATIONAL
ASSOCIATION,
as Fiscal Agent

By: _____
Authorized Officer

registered Owner's address as it appears on the registration books maintained by the Fiscal Agent at the close of business on the Record Date preceding the Interest Payment Date, or by wire transfer made on such Interest Payment Date upon written instructions of any Owner of \$1,000,000 or more in aggregate principal amount of Bonds delivered to the Fiscal Agent prior to the applicable Record Date. The principal of the Bonds and any premium on the Bonds are payable in lawful money of the United States of America upon surrender of the Bonds at the Principal Office of the Fiscal Agent or such other place as designated by the Fiscal Agent.

Notwithstanding anything herein to the contrary, so long as the 2013 Bonds are owned by the Original Purchaser, (i) the Fiscal Agent will pay principal of and interest and redemption premium on the 2013 Bonds when due by wire transfer in immediately available funds to the Original Purchaser in accordance with such wire transfer instructions as shall be filed by the Original Purchaser with the Fiscal Agent from time to time, (ii) payments of principal on the 2013 Bonds shall be made without the requirement for presentation and surrender of the 2013 Bonds by the Original Purchaser, provided that principal the 2013 Bond which is payable at maturity shall be made only upon presentation and surrender of the 2013 Bond at the Office of the Fiscal Agent as provided in the Fiscal Agent Agreement, and (iii) the Fiscal Agent shall not be required to give notice to the Original Purchaser of the sinking fund payments of the 2013.

This Bond is one of a duly authorized issue of bonds in the aggregate principal amount of \$_____ approved by resolution of the City Council of the City on October 15, 2013 (the "Resolution"), under the Mello-Roos Community Facilities Act of 1982, as amended, sections 53311, *et seq.*, of the California Government Code (the "Act") for the purpose refinancing the outstanding \$9,965,000 initial principal amount City of Hayward Community Facilities District No. 1 (Eden Shores) Special Tax Bonds, Series 2002 (the "Prior Bonds"), and is one of the series of bonds designated "City of Hayward Community Facilities District No. 1 (Eden Shores) Special Tax Refunding Bonds, Series 2013" (the "Bonds").

The issuance of the Bonds and the terms and conditions thereof are provided for by a Fiscal Agent Agreement, dated as of October 1, 2013 (the "Agreement"), between the City and Wells Fargo Bank, National Association (the "Fiscal Agent") and this reference incorporates the Agreement herein, and by acceptance hereof the owner of this Bond assents to said terms and conditions. The Agreement is authorized under, this Bond is issued under and both are to be construed in accordance with, the laws of the State of California.

Pursuant to the Act, the Resolution and the Agreement, the principal of and interest on this Bond are payable solely from "Special Tax Revenues", as defined in the Agreement, which consist primarily of the proceeds of the annual special tax authorized under the Act to be collected within the CFD (the "Special Tax"), and certain funds held under the Agreement. Any tax for the payment hereof shall be limited to the Special Tax, except to the extent that provision for payment has been made by the City, as may be permitted by law. The Bonds do not constitute obligations of the City for which the City is obligated to levy or pledge, or has levied or pledged, general or special taxation other than described hereinabove. Neither the faith and credit nor the taxing power of the City (except to the limited extent set forth in the Agreement) or the State of California or any political subdivision thereof is pledged to the payment of the Bonds.

Optional Redemption. All of the Bonds are subject to redemption prior to their stated maturities, on any Interest Payment Date, in whole or in part, at a redemption price (expressed as a percentage of the principal amount of the Bonds to be redeemed) as set forth below, together with accrued interest thereon to the date fixed for redemption:

<u>Redemption Date</u>	<u>Redemption Price</u>
On or before September 1, 20__	___%
On September 2, 20__ through September 1, 20__	___
On September 2, 20__ and thereafter	___

Notice of redemption with respect to the Bonds to be redeemed shall be given to the registered owners thereof, in the manner, to the extent and subject to the provisions of the Agreement.

This Bond shall be registered in the name of the owner hereof, as to both principal and interest. Each registration and transfer of registration of this Bond shall be entered by the Fiscal Agent in books kept by it for this purpose and authenticated by its manual signature upon the certificate of authentication endorsed hereon.

No transfer or exchange hereof shall be valid for any purpose unless made by the registered owner, by execution of the form of assignment endorsed hereon, and authenticated as herein provided, and the principal hereof, interest hereon and any redemption premium shall be payable only to the registered owner or to such owner's order. The Fiscal Agent shall require the registered owner requesting transfer or exchange to pay any tax or other governmental charge required to be paid with respect to such transfer or exchange. No transfer or exchange hereof shall be required to be made (i) fifteen days prior to the date established by the Fiscal Agent for selection of Bonds for redemption or (ii) with respect to a Bond after such Bond has been selected for redemption.

The Agreement and the rights and obligations of the City thereunder may be modified or amended as set forth therein. The principal of the Bonds is not subject to acceleration upon a default under the Agreement or any other document.

This Bond shall not become valid or obligatory for any purpose until the certificate of authentication and registration hereon endorsed shall have been dated and signed by the Fiscal Agent.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED by the City that all acts, conditions and things required by law to exist, happen and be performed precedent to and in the issuance of this Bond have existed, happened and been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other indebtedness of the City, does not exceed any debt limit prescribed by the laws or Constitution of the State of California.

[Applicable only if the Bonds are DTC Book-Entry Only: Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Fiscal Agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.]

FORM OF ASSIGNMENT

For value received, the undersigned do(es) hereby sell, assign and transfer unto

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within Bond and do(es) hereby irrevocably constitute and appoint _____, attorney, to transfer the same on the registration books of the Fiscal Agent, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

NOTICE: Signature guarantee shall be made by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Fiscal Agent.

NOTICE: The signature on this assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

SCHEDULE A

Payee Name and Address

Purpose of Obligation

Amount

SCHEDULE A

Payee Name and Address

Purpose of Obligation

Amount

IN WITNESS WHEREOF, the City has caused this Escrow Instructions to Prior Bonds Fiscal Agent to be executed as of the date first written above.

CITY OF HAYWARD,
for and on behalf of
COMMUNITY FACILITIES DISTRICT
NO. 1 (EDEN SHORES)

By: _____
Finance Director

ACKNOWLEDGED AND ACCEPTED:

WELLS FARGO BANK, NATIONAL
ASSOCIATION,
as Fiscal Agent

By: _____
Authorized Officer

APPENDIX E
INVESTOR LETTER

City of Hayward
777 B Street
Hayward, CA 94541
Attn: Finance Director

cc. Fiscal Agent

Re: *City of Hayward Community Facilities District No. 1 (Eden Shores)
Special Tax Refunding Bonds, Series 2013*

Ladies and Gentlemen:

The City of Hayward (the "Issuer") has issued the above-referenced bonds (the "Bonds") for its "City of Hayward Community Facilities District No. 1 (Eden Shores)" (the "District") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended. Capitalized terms used in this letter but not defined have the meaning given them in the Fiscal Agent Agreement relating to the Bonds.

In connection with our purchase on the date hereof of \$_____ principal amount of the Bonds, the undersigned (the "Bond Purchaser") hereby represents, warrants and agrees as follows:

- (a) The Bond Purchaser is any of the following:
 - (i) an "accredited investor" as such term is defined in Rule 501(a) promulgated under the Securities Act of 1933, as amended (the "Securities Act");
 - (ii) a "qualified institutional buyer" as such term is defined in Rule 144A promulgated under the Securities Act;
 - (iii) a bank, savings institution or insurance company (whether acting in a trustee or custodial capacity for any qualified institutional buyer or on its own behalf); or
 - (iv) a trust, custodial or similar arrangement the ownership interests in which are to be distributed through the issuance of (A) securities that are registered under the Securities Act and/or are exempt from the registration requirements of the Securities Act, and are rated "A" or "A2" or better, without respect to modifier, by S&P or Moody's, respectively, (or an equivalent rating by another nationally recognized rating agency) or securities the pass-through payments on which are guaranteed by an insurer or guarantor, the unsecured long-term obligations of which are rated "A" or "A2" or better, without respect to modifier, by S&P or Moody's, respectively, (or an equivalent rating by another nationally recognized rating agency) or (B) non-investment-grade securities representing a residual interest in such trust, custodial or similar arrangement

By: _____