



CITY OF
HAYWARD
HEART OF THE BAY

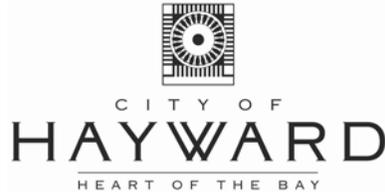
CITY COUNCIL AGENDA

SEPTEMBER 20, 2011

**MAYOR MICHAEL SWEENEY
MAYOR PRO TEMPORE BARBARA HALLIDAY
COUNCIL MEMBER OLDEN HENSON
COUNCIL MEMBER MARVIN PEIXOTO
COUNCIL MEMBER BILL QUIRK
COUNCIL MEMBER MARK SALINAS
COUNCIL MEMBER FRANCISCO ZERMEÑO**

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CITY COUNCIL MEETING FOR SEPTEMBER 20, 2011
777 B STREET, HAYWARD CA 94541
WWW.HAYWARD-CA.GOV

CLOSED SESSION
Closed Session Room 2B – 5:30 PM

1. **PUBLIC COMMENTS** *(Limited to items agendized for Closed Session)*
 2. Conference with Real Property Negotiators
Pursuant to Government Code 54956.8
 - Lead Negotiators: City Manager David, City Attorney Lawson, Assistant City Manager Morariu, Assistant City Attorney Conneely, Public Works Director Bauman; Development Services Director Rizk
 - Under Negotiation: Shoreline Properties
 - APN 438-0080-013-07
 - APN 438-0020-003-06
 - APN 438-0040-001-02
 - APN 438-0060-012
 - APN 438-0060-013 13.25 acres
 - APN 438-0060-013 1.89 acres
 3. Conference with Legal Counsel
Pursuant to Government Code 54956.9
 - Anticipated Litigation
 4. Conference with Legal Counsel
Pursuant to Government Code 54956.9
 - Anticipated Litigation
 5. Adjourn to Special Joint City Council/Redevelopment Agency/Housing Authority Meeting
-

**SPECIAL JOINT CITY COUNCIL/REDEVELOPMENT AGENCY/
HOUSING AUTHORITY MEETING
Council Chambers - 7:00 PM**

CALL TO ORDER Pledge of Allegiance Council Member Halliday

ROLL CALL

CLOSED SESSION ANNOUNCEMENT

PRESENTATION Business Recognition Award

PUBLIC COMMENTS: *(The Public Comment section provides an opportunity to address the City Council on items not listed on the agenda or Work Session, or Informational Staff Presentation items. The Council welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits, and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Council is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff.)*

ACTION ITEMS: *(The Council will permit comment as each item is called for the Consent Calendar, Public Hearings, and Legislative Business. In the case of the Boards, Commissions, Committee, Task Force, and 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.)*

BOARDS, COMMISSIONS, COMMITTEES AND TASK FORCE

1. Appointments and Reappointments to Council's Appointed Bodies

[Staff Report](#)
[Attachment I](#)

CONSENT

2. Adoption of an Ordinance of the City of Hayward Repealing Section 6.33 of the Hayward Traffic Code and Adopting a New Section 6.33 Prohibiting Certain Commercial Vehicles from Parking in Residence Districts

[Staff Report](#)
[Attachment I](#)



3. Adoption of an Ordinance of the City Council of the City of Hayward Repealing Sections 2-3.70 through 2-3.88 of the Hayward Municipal Code Relating to the Human Services Commission and Citizens Advisory Commission and Adding Sections 2-3.90 through 2-3.93 Establishing the Community Services Commission

[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

4. Approval of a Transfer Payment Agreement Between the City and the Redevelopment Agency to Facilitate Remittance Payments to the State of California Under the Provisions of ABx1 27 (the “Voluntary Redevelopment Program Act”) and Approval of Conditional Amendment to the Cooperation and Funding Agreement Between the City and Redevelopment Agency

[Staff Report](#)

[Attachment I City Resolution Approving Transfer Payment Agreement](#)

[Attachment II Agency Resolution Approving Transfer Payment Agreement](#)

[Attachment III City Resolution Amending Cooperation Agreement](#)

[Attachment IV Agency Resolution Amending Cooperation Agreement](#)

[Attachment V Remittance Payment Appeal Letter](#)

[Attachment VI Cooperation and Funding Agreement](#)

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, SEPTEMBER 27, 2011

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 and their address before speaking and are expected to honor the allotted time. A Speaker’s Card must be completed by each speaker and is 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.

www.hayward-ca.gov



DATE: September 20, 2011

TO: Mayor and City Council

FROM: City Clerk

SUBJECT: Appointments and Reappointments to Council's Appointed Bodies

RECOMMENDATION

That the City Council adopts the attached resolution confirming twelve appointments to the Downtown Business Improvement Area Advisory Board (2); the Keep Hayward Clean and Green Task Force (8); the Library Commission (1); and the Personnel Commission (1). The resolution also confirms seventeen reappointments to: the Downtown Business Improvement Area Advisory Board (2); the Keep Hayward Clean and Green Task Force (8); Library Commission (2); Personnel Commission (2); and Planning Commission (3).

BACKGROUND

Recruitment was conducted from May 31 through July 8, 2011 to fill vacancies on the Citizens Advisory Commission, Downtown Business Improvement Area Advisory Board, Human Services Commission, the Keep Hayward Clean and Green Task Force, Library Commission, and Personnel Commission. On July 19, 2011, the City Council conducted twenty-seven interviews resulting in the following recommended appointments and reappointments. Due to potential consolidation of the Human Services Commission and Citizens Advisory Commission, the City Council withheld reappointment of existing members and selection of new members.

At its Council meeting on September 13, 2011¹, the Council introduced an Ordinance which would repeal sections of the Hayward Municipal Code relating to the Human Services Commission and Citizen Advisory Commission and would add a new section establishing the Community Services Commission. This new Community Services Commission would be comprised of current members (22) of the former Human Services Commission and Citizen Advisory Commission, all of whose members would serve according to their current appointment. Adoption of the proposed Ordinance is scheduled for September 20, 2011, and if approved, this Ordinance would become effective thirty days from its adoption.

¹ The report for that meeting may be found at <http://www.hayward-ca.gov/citygov/meetings/cca/rp/2011/cca091311item10.pdf>.

APPOINTMENTS

Downtown Business Improvement Area Advisory Board

Dion Griffin	(replaces Beneba Thomas)	September 30, 2015
William Roberts	(replaces Chris Zaballos)	September 30, 2015

Keep Hayward Clean and Green Task Force

Heather Enders	(replaces Ryan Belden)	September 30, 2012
Suzanne Gayle	(replaces Douglas Grandt)	September 30, 2012
Braxton Banks	(replaces Saleacia Taylor)	September 30, 2015
Christopher Catlow	(replaces Rob Simpson)	September 30, 2015
David Haines	(replaces Werner Heisserer)	September 30, 2015
Desmond Henry	(replaces Frances Sagapolu)	September 30, 2015
Tawana Smith	(replaces William McGee)	September 30, 2015
Vishal Trivedi	(replaces Carole Bates Peck)	September 30, 2015

Library Commission

Isabel Sanchez	(replace Stephanie Ayala)	September 30, 2013
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Personnel Commission

Doris Yates	(replaces John Vukasin)	September 30, 2015
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REAPPOINTMENTS

Downtown Business Improvement Area Advisory Board

Elie Goldstein		September 30, 2015
Tina Martinez		September 30, 2015

Keep Hayward Clean and Green Task Force

Carolina Abatayo		September 30, 2015
Lloyd Clifton		September 30, 2015
Chuck Horner		September 30, 2015
Rich LaPlante		September 30, 2015
Doug Ligibel		September 30, 2015
Laura Oliva		September 30, 2015
Monica Ruiz		September 30, 2015
Kathy Super		September 30, 2015

Library Commission

Lisa Brunner		September 30, 2015
Kari McAllister		September 30, 2015

Personnel Commission

Steve Bristow		September 30, 2015
Gurjit Kaur		September 30, 2015

Planning Commission

Mary Lavelle
Rodney Loché
Dianne McDermott

September 30, 2015
September 30, 2015
September 30, 2015

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachments:

Attachment I Resolution Establishing Appointments and Reappointments

HAYWARD CITY COUNCIL

RESOLUTION NO. 11-

Introduced by Council Member _____

RESOLUTION CONFIRMING THE APPOINTMENT AND REAPPOINTMENT OF MEMBERS OF VARIOUS BOARD, COMMISSIONS, COMMITTEES AND TASK FORCES

BE IT RESOLVED that the City Council of the City of Hayward does hereby confirm the appointment and re-appointment of the following as members of the boards, commissions, committees and task forces so designated:

APPOINTMENTS

Downtown Business Improvement Area Advisory Board

Dion Griffin	(replaces Beneba Thomas)	September 30, 2015
William Roberts	(replaces Chris Zaballos)	September 30, 2015

Keep Hayward Clean and Green Task Force

Heather Enders	(replaces Ryan Belden)	September 30, 2012
Suzanne Gayle	(replaces Douglas Grandt)	September 30, 2012
Braxston Banks	(replaces Saleacia Taylor)	September 30, 2015
Christopher Catlow	(replaces Rob Simpson)	September 30, 2015
David Haines	(replaces Werner Heisserer)	September 30, 2015
Desmond Henry	(replaces Frances Sagapolu)	September 30, 2015
Tawana Smith	(replaces William McGee)	September 30, 2015
Vishal Trivedi	(replaces Carole Bates Peck)	September 30, 2015

Library Commission

Isabel Sanchez	(replaces Stephanie Ayala)	September 30, 2013
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Personnel Commission

Doris Yates (replaces John Vukasin) September 30, 2015

REAPPOINTMENTS

Downtown Business Improvement Area Advisory Board

Elie Goldstein September 30, 2015

Tina Martinez September 30, 2015

Keep Hayward Clean and Green Task Force

Carolina Abatayo September 30, 2015

Lloyd Clifton September 30, 2015

Chuck Horner September 30, 2015

Rich LaPlante September 30, 2015

Doug Ligibel September 30, 2015

Laura Oliva September 30, 2015

Monica Ruiz September 30, 2015

Kathy Super September 30, 2015

Library Commission

Lisa Brunner September 30, 2015

Kari McAllister September 30, 2015

Personnel Commission

Steve Bristow September 30, 2015

Gurjit Kaur September 30, 2015

Planning Commission

Mary Lavelle	September 30, 2015
Rodney Loché	September 30, 2015
Dianne McDermott	September 30, 2015

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2011.

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: September 20, 2011

TO: Mayor and City Council

FROM: City Clerk

SUBJECT: Adoption of an Ordinance of the City of Hayward Repealing Section 6.33 of the Hayward Traffic Code and Adopting a New Section 6.33 Prohibiting Certain Commercial Vehicles from Parking in Residence Districts

RECOMMENDATION

That the City Council adopts the Ordinance introduced on September 13, 2011.

BACKGROUND

The Ordinance was introduced by Council Member Halliday at the September 13, 2011, meeting of the City Council with the following vote:

AYES:	Council Members:	Zermeño, Halliday, Peixoto, Salinas, Henson Mayor Sweeney
NOES:	Council Members:	None
ABSENT:	Council Members:	Quirk
ABSTAIN:	Council Members:	None

The ordinance was published in the Hayward Daily Review on Saturday, September 17, 2011. Adoption at this time is therefore appropriate.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachments:

Attachment I Ordinance Published on September 13, 2011

**PUBLIC NOTICE OF AN INTRODUCTION OF AN ORDINANCE
BY THE CITY COUNCIL OF THE CITY OF HAYWARD**

AN ORDINANCE OF THE CITY OF HAYWARD REPEALING SECTION 6.33 OF THE HAYWARD TRAFFIC CODE AND ADOPTING A NEW SECTION 6.33 PROHIBITING CERTAIN COMMERCIAL VEHICLES FROM PARKING IN RESIDENCE DISTRICTS

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Amendment of Code. Upon adoption of this Ordinance, Section 6.33 of the Hayward Traffic Code is hereby repealed and, in substitution thereof, a new Section 6.33 of the Hayward Traffic Code is hereby enacted to read as follows:

Section 6.33 PARKING PROHIBITION – COMMERCIAL VEHICLES IN RESIDENCE DISTRICTS.

Section 2. Severance. Should any part of this ordinance be declared by a final decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. Effective Date. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

Introduced at the special meeting of the Hayward City Council held September 13, 2011, the above-entitled Ordinance was introduced by Council Member Halliday.

This ordinance will be considered for adoption at the regular meeting of the Hayward City Council, to be held on September 20, 2011, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. The full text of this ordinance is available for examination by the public in the Office of the City Clerk.

Dated: September 17, 2011
Miriam Lens, City Clerk
City of Hayward



DATE: September 20, 2011

TO: Mayor and City Council

FROM: City Clerk

SUBJECT: Adoption of an Ordinance of the City Council of the City of Hayward Repealing Sections 2-3.70 through 2-3.88 of the Hayward Municipal Code Relating to the Human Services Commission and Citizens Advisory Commission and Adding Sections 2-3.90 through 2-3.93 Establishing the Community Services Commission

RECOMMENDATION

That the City Council adopts the Ordinance introduced on September 13, 2011.

BACKGROUND

The Ordinance was introduced by Council Member Henson at the September 13, 2011, meeting of the City Council with the following vote:

AYES:	Council Members:	Zermeño, Peixoto, Salinas, Henson
	Mayor Pro Tempore	Halliday
NOES:	Council Members:	None
ABSENT:	Council Members:	Quirk
	Mayor	Sweeney
ABSTAIN:	Council Members:	None

The ordinance was published in the Hayward Daily Review on Saturday, September 17, 2011. Adoption at this time is therefore appropriate.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:

Fran David, City Manager

Attachments:

Attachment I Ordinance Published on September 13, 2011

**PUBLIC NOTICE OF AN INTRODUCTION OF AN ORDINANCE
BY THE CITY COUNCIL OF THE CITY OF HAYWARD**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAYWARD REPEALING SECTIONS 2-3.70 THROUGH 2-3.88 OF THE HAYWARD MUNICIPAL CODE RELATING TO THE HUMAN SERVICES COMMISSION AND CITIZENS ADVISORY COMMISSION AND ADDING SECTIONS 2-3.90 THROUGH 2-3.93 ESTABLISHING THE COMMUNITY SERVICES COMMISSION

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Sections 2-3.70 through 2-3.88 of the Hayward Municipal Code, relating to the Human Services Commission and the Citizens Advisory Commission, are hereby repealed.

Section 2. Sections 2-3.90 through 2-3.93, establishing the Community Services Commission, are hereby added to the Hayward Municipal Code to read as follows:

COMMUNITY SERVICES COMMISSION

SEC. 2-3.90 POLICY

SEC. 2-3.91 COMMUNITY SERVICES COMMISSION MEMBERS

SEC. 2-3.92 LIBRARY AND COMMUNITY SERVICES DEPARTMENT

SEC. 2-3.93 POWERS AND DUTIES

Section 3. Should any part of this ordinance be declared by a final decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 4. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

Introduced at the special meeting of the Hayward City Council held September 13, 2011, the above-entitled Ordinance was introduced by Council Member Henson.

This ordinance will be considered for adoption at the regular meeting of the Hayward City Council, to be held on September 20, 2011, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. The full text of this ordinance is available for examination by the public in the Office of the City Clerk.

Dated: September 17, 2011
Miriam Lens, City Clerk
City of Hayward

DATE: September 20, 2011

TO: Mayor and City Council
Agency Chair and Board Members

FROM: Assistant City Manager/Interim Redevelopment Agency Director

SUBJECT: Approval of a Transfer Payment Agreement Between the City and the Redevelopment Agency to Facilitate Remittance Payments to the State of California Under the Provisions of ABx1 27 (the “Voluntary Redevelopment Program Act”) and Approval of Conditional Amendment to the Cooperation and Funding Agreement Between the City and Redevelopment Agency

RECOMMENDATION

That the Council and Agency Board adopt the attached resolutions to: (1) approve a Transfer Payment Agreement between the City and the Agency to facilitate remittance payments to the State of California under the provisions of ABx1 27 (the “Voluntary Redevelopment Program Act”) (Attachments I and II); and (2) approve a conditional amendment to the Cooperation and Funding Agreement between the City and Redevelopment Agency that was originally approved on January 25, 2011 (Attachments III and IV).

SUMMARY

The Redevelopment Restructuring Acts, consisting of ABx1 26 (the “Dissolution Act”) and ABx1 27 (the “Voluntary Program Act”), enacted in late June 2011, fundamentally restructured California Redevelopment Law (Division 24 of the Health and Safety Code). The Dissolution Act immediately suspended all new redevelopment activities and incurrence of indebtedness, and purported to dissolve redevelopment agencies effective October 1, 2011. The Voluntary Program Act allowed redevelopment agencies to avoid dissolution if their sponsoring community opted in to an “alternative voluntary redevelopment program” (the “Voluntary Program”) that requires annual contributions to local schools and special districts.

On August 11, 2011, the California Supreme Court agreed to review the California Redevelopment Association (CRA) and League of California Cities’ petition challenging the constitutionality of the Redevelopment Restructuring Acts. The Court’s order (the “Stay”) also stays specified portions of the Redevelopment Restructuring Acts, indefinitely postponing certain provisions’ effectiveness, as modified on August 17, 2011.

On August 2, 2011, the City enacted an ordinance (the “Continuation Ordinance”) to participate in the Voluntary Program and to exempt the Redevelopment Agency of the City of Hayward (the “Agency”) from the requirements of the Dissolution Act. Under the Voluntary Program, the Agency must make a payment to the State of California via the County Auditor-Controller of \$4,040,772 in FY2012 and annual payments of approximately \$960,000 in each subsequent fiscal year. These subsequent year payments are subject to increase under a complicated formula to the extent the Agency incurs new non-Housing debt or other obligations on or after October 1, 2011, as identified on the Agency’s Statement of Indebtedness (SOI) due on this date.

The purpose of the SOI is to provide a mechanism for the Agency to receive its annual tax increment revenues from the County auditor. Under ABx1 27, this document gains even more significance in that, to the extent that obligations are not listed on the 2011 SOI, the annual remittance payment (estimated at \$958,382) in FY2013 and beyond will be subject to formulaic increases based on new obligations listed on future SOIs. Therefore, it is important to accurately capture all of the Agency’s obligations on this year’s SOI. The action recommended in this report would approve two important agreements that should be captured on the Agency’s SOI for 2011.

BACKGROUND

Between June 28 and June 30, 2011, the Governor approved the State Budget for FY 2011/12, and signed a number of implementing trailer bills. Two of these trailer bills significantly modified the California Community Redevelopment Law (“CRL”) and fundamentally altered the future of California redevelopment: ABx1 26 (the “Dissolution Act”) and ABx1 27 (the “Voluntary Program Act”) (together, the “Redevelopment Restructuring Acts”). The Dissolution Act first immediately suspends all new redevelopment activities and incurrence of indebtedness, and dissolves redevelopment agencies effective October 1, 2011. The Voluntary Program Act then allows redevelopment agencies to avoid dissolution under the Dissolution Act by opting in to an “alternative voluntary redevelopment program” (the “Voluntary Program”) that requires annual contributions to local schools and special districts through payment to the State of California.

The Voluntary Program is designed to generate \$1.7 billion for FY 2011/12 and \$400 million in new revenue for the State government in each subsequent year if every sponsoring community/redevelopment agency in the State agrees to participate. The formula for calculating each sponsoring community/redevelopment agency’s share is similar, but not identical, to the formula used to calculate each redevelopment agency’s share of the statewide \$1.7 billion and \$350 million Special Educational Revenue Augmentation Fund (SERAF) obligations in FYs 2009/10 and 2010/11, respectively. The State Department of Finance has calculated that the FY2012 opt-in remittance payment for Hayward totals \$4,040,772. CRA has estimated future year payments. In subsequent years, the opt-in amount is estimated to be roughly \$958,382 (subject to increase under a complicated formula to the extent the Agency incurs new non-Housing Fund debt or other obligations on or after October 1, 2011 (as identified on the Agency’s Statement of Indebtedness (SOI) due on this date)). On August 2, 2011, the City enacted an ordinance to participate in the Voluntary Program and exempt the Redevelopment

Agency of the City of Hayward (the “Agency”) from the requirements of the Dissolution Act (the “Continuation Ordinance”).

The Agency had until August 15 to appeal the calculation of the remittance payment on the basis that either: (1) the information in the Controller’s FY 2008-09 Annual Report was in error; or (2) the percentage of tax increment necessary to pay for tax allocation bonds and interest payments has increased by ten percent or more over the percentage calculated pursuant to the Controller’s Report. The Agency has experienced an increase of more than eighteen percent in the amount of tax increment necessary to pay for tax allocation bonds and interest as a result of drastic reductions in tax increment received by the Agency in all of its project areas, and therefore filed an appeal under the second criteria listed above. Attachment V is a copy of the letter sent to State Director of Finance Ana Matosantos outlining the Agency’s appeal of the remittance payment. Based on the Agency’s calculation, the FY2012 remittance payment should be reduced by \$341,399.

The Department of Finance (DOF) must respond to appeals by September 15, 2011 (or as late as October 15, 2011 if DOF extends the deadline for response). However, given the timing of the lawsuit discussed below, it is unclear whether staff will receive a response to the Agency’s appeal by this date; and there appears to be no penalty or negative action if the deadline is not met.

On July 18, 2011, the California Redevelopment Association (CRA), the League of California Cities (League), the City of Union City, the City of San Jose, and John Shirey (as an individual taxpayer) filed a lawsuit challenging the validity and constitutionality of the Redevelopment Restructuring Acts. The lawsuit was filed directly with the California Supreme Court to accelerate the ultimate court decision, and includes a request that the Court issue a “stay” or injunction to prevent the Redevelopment Restructuring Acts from being operative pending the final court decision on the merits of the lawsuit.

If the lawsuit is successful, and both ABx1 26 and ABx1 27 are declared unconstitutional, adopted opt-in ordinances will be inoperative by operation of law or can be rescinded, and redevelopment agencies will return to normal operations under the law as it existed prior to June 28, 2011. In the unlikely event that the Supreme Court were to find ABx1 27 (the Alternative Voluntary Program Act) unconstitutional while finding ABx1 26 (the Dissolution Act) constitutional, all agencies will dissolve and any adopted opt-in ordinances will be inoperative by operation of law.

On August 11, 2011, the California Supreme Court agreed to review the California Redevelopment Association and League of California Cities’ petition challenging the constitutionality of the Redevelopment Restructuring Acts. The Court’s order (the “Stay”) also stays specified portions of the Redevelopment Restructuring Acts, indefinitely postponing certain provisions’ effectiveness, as modified on August 17, 2011.

Under the terms of the Stay and pursuant to Section 34167(h) of the Redevelopment Law, after August 29, 2011, the Agency can make payments only on bond obligations (and not on any other obligations) until the Agency adopts an enforceable obligation payment schedule (EOPS) listing

all of the obligations that are enforceable within definitions of the Dissolution Act. For all intents and purposes, the Stay has halted all redevelopment activities with the exception of actions related to enforceable obligations as identified on an adopted EOPS. The Agency Executive Director administratively approved the EOPS on August 30, 2011 and on September 13, the Agency Board adopted the EOPS, under protest and reserving the Agency's rights to recognize and perform any and all obligations listed therein without regard to the provisions of the Redevelopment Restructuring Acts.

As additional background on this item, on January 25, 2011, the City Council and Redevelopment Agency Board authorized the City Manager/Executive Director to execute Cooperation and Funding Agreements between the City and the Agency and also the Agency and the Housing Authority. These agreements were both executed in early March, 2011. Pursuant to California Redevelopment Law, Health & Safety Code Section 33220, certain public bodies, including the City, may aid and cooperate in the planning, undertaking, construction, and operation of redevelopment projects. The intent of the Agency/City agreement that was executed by the City Manager/Executive Director was to pledge current unencumbered resources and future net tax increment revenues to facilitate implementation of the activities outlined in the Five-Year Implementation Plan in an amount not to exceed \$30 million.

Although the Agency remains in a state of flux at the current time given the pending lawsuit, there are still certain required reports and documents that must be filed with various State and County agencies by certain deadlines each year. One of the most important of these is the annual Statement of Indebtedness (SOI). The purpose of the SOI is to provide a mechanism for the Agency to receive its annual tax increment revenues from the County auditor: it must be filed by October 1 in order for the Agency to receive tax increment for the upcoming year. All indebtedness listed on the SOI must be incurred or be associated with agreements executed prior to the October 1 deadline. Under ABx1 27, this document gains even more significance in that, to the extent that obligations are not listed on the 2011 SOI, the annual remittance payment in FY2013 (estimated at \$958,382) and those in future years will be subject to formulaic increases based on new obligations listed on future SOIs. Therefore, it is important to capture all of the Agency's obligations on this year's SOI.

DISCUSSION

Transfer Payment Agreement: One of the major new obligations that should appear on this year's SOI is the opt-in remittance payment to be made under ABx1 27. Under the legislation, the City is technically the legal entity required to make the payment to the State regardless of the source of the funds. Section 34194.2 of the California Redevelopment Law authorizes the Agency to enter into an agreement with the City whereby the Agency agrees to transfer a portion of its tax increment to the City, in an amount equal to the annual remittance required under Chapter 3 of Part 1.9 of the Redevelopment Law to the County Auditor-Controller. As such, staff recommends that the Agency and City authorize the City Manager/Executive Director to enter into a transfer payment agreement to allow for the use of Agency funds to make the required remittance payments.

At this point, the Council and Agency Board do not need to identify the precise source of the funds required to make the remittance payment as there are several outstanding issues needing resolution and the first half of the payment is not due until January 15, 2012. One outstanding issue is the pending appeal of the remittance payment with the State Department of Finance. Another is the close out of the FY2011 Agency financial records, which would enable staff to determine the cash balance available to make the remittance payment with Agency funds. A third is the pending CRA/League lawsuit, which might make the necessity of the remittance payment a moot point. When the Council adopted the opt-in ordinance in July, staff identified numerous potential sources of funding for the FY2012 remittance payment:

- Withhold FY2012 deposit to Low/Moderate Income Housing Fund (est. \$2.2 million)
- Estimated Agency non-housing cash balance (minimum available \$500,000)
- Proceeds from Sale of Residual Burbank Site (\$4 million)
- General Fund reserves.

The remittance payment required in FY2013 and beyond will be paid from current year Agency tax increment revenues. Staff anticipates returning to the Council and Agency Board later this fall for further discussion of options for making the remittance payment once there is additional clarity around some of the issues outlined above.

Cooperation and Funding Agreement Conditional Amendment: In crafting the agreement between the Agency and the City (Attachment VI) during the first rush to address changing conditions at the State level, specific dollar amounts were tied to specific projects outlined in the Five-Year Implementation Plan. This unintentionally limited the flexibility of the Agency and the City to utilize the \$30 million identified in the agreement in the most beneficial manner for the Redevelopment Project Area.

In preparing the more detailed and comprehensive SOI, it became apparent that it was advisable to increase flexibility for the City and the Agency, and that this could be accomplished while ensuring that the entire \$30 million was captured on this year's Statement of Indebtedness as pledged towards projects in the Project Area. Therefore, staff recommends that the Council and Agency Board authorize the City Manager/Executive Director to execute a conditional amendment to the Cooperation and Funding Agreement that pledges a maximum of \$30 million to projects within the Redevelopment Project Area and deletes the dollar specific allocations to certain projects, consistent with similar language used in the Housing Authority/Agency Cooperation and Funding Agreement.

The language in the Housing Authority/Agency Agreement is more general in that it states the Housing Authority shall use the maximum dollars available from the Agency grant for the "purposes of increasing, improving, and preserving the community's supply of housing available at affordable housing cost ... in accordance with all applicable laws and regulations ..." – it only assigns approximate dollar amounts to specific projects. In addition, while maintaining a cap on the total contract amount, the Housing Authority/Agency agreement permits the Housing Authority and Agency to modify the list of projects, as well as the project budgets, to reflect the changes to priorities and circumstances that may occur during the term of the contract.

The proposed conditional amendment to the Agency/City Agreement would utilize similar language as in the Housing Authority/Agency Agreement, but would target the funding for “redevelopment purposes.” It would expand the available uses of the \$30 million of tax increment revenues to broader redevelopment purposes instead of to the very specific projects identified in the original Agreement, and would allow the Agency and City to modify projects and project budgets in the future (subject to the total contract cap of \$30 million). This allows the \$30 million agreement to be recorded on the Statement of Indebtedness while providing the Council and Agency Board with future flexibility and the ability to shift funds to other priority projects within the Redevelopment Project Area and for redevelopment purposes.

While the Council and Agency Board would be approving this conditional amendment to the Agreement, no specific projects would be able to move forward without further action and specific funding allocations on the part of both entities. Because of the Stay, the amendment will be immediately binding but the operation of its terms will be contingent upon the Court’s determination that the Voluntary Program Act is constitutional (or that both the Redevelopment Dissolution Act and the Voluntary Program Act are unconstitutional).

Environmental Review: The actions recommended in this report are exempt under Section 15378(b)(4) of the California Environmental Quality Act (“CEQA”) in that the activities are not defined as a “project,” but instead are actions required to continue a governmental funding mechanism. The appropriate environmental review shall be completed in accordance with CEQA prior to the commencement of any future Agency-supported project or program. A Notice of Exemption may be filed with the Alameda County Clerk in accordance with the CEQA guidelines.

ECONOMIC AND FISCAL IMPACT

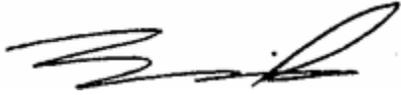
With the approval of the Transfer Payment Agreement and the Conditional Amendment to the City/Agency Cooperation and Funding Agreement, staff will be able to identify these agreements on this year’s Statement of Indebtedness. The intent of this action is to capture the total obligations and indebtedness of the Agency and to record these on the SOI, thereby limiting the future increases in the State remittance payments required under ABx1 27. By limiting these increases, the Agency will have additional tax increment dollars that can be reinvested locally in public improvements, blight elimination, and economic development activities.

NEXT STEPS

If the Agency Board and Council approve this action tonight, staff will proceed to finalize the agreements and the Statement of Indebtedness for submission to the County auditor. Additionally, following the adoption of the “opt-in” ordinance on August 2, 2011, the Council asked staff to return with a more comprehensive analysis of the Redevelopment Agency budget and scenarios related to securing Agency assets at risk. Staff is currently working on this analysis and plans to return to the Council later this fall for a more comprehensive discussion of this topic. Staff is also monitoring actions at the State legislature as bills to “clean-up” the RDA legislation are introduced and will continue to forward relevant information to the Agency Board and Council as it arises.

Prepared and Recommended by: Kelly McAdoo Morariu, Assistant City Manager/Interim
Redevelopment Agency Director

Approved by:



Fran David, City Manager/Executive Director

Attachments:

- Attachment I: City Council Resolution Approving and Authorizing Execution of the Agency Transfer Payment Agreement with the Redevelopment Agency
- Attachment II: Agency Board Resolution Approving and Authorizing Execution of the Agency Transfer Payment Agreement with the City of Hayward
- Attachment III: City Council Resolution Approving a Conditional Amendment to the Cooperation and Funding Agreement with the Redevelopment Agency
- Attachment IV: Agency Board Resolution Approving a Conditional Amendment to the Cooperation and Funding Agreement with the City of Hayward
- Attachment V: Letter to State Department of Finance Appealing FY2011/12 opt-in remittance payment amount
- Attachment VI: Agency/City Cooperation and Funding Agreement

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced By Council Member _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD APPROVING AND AUTHORIZING THE EXECUTION OF THE AGENCY TRANSFER PAYMENT AGREEMENT WITH THE REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD PURSUANT TO PART 1.9 OF THE REDEVELOPMENT LAW

WHEREAS, pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*; the "Redevelopment Law"), the City Council (the "City Council") of the City of Hayward (the "City") adopted in accordance with the Redevelopment Law, a redevelopment plan for the Downtown Hayward Redevelopment Project (the "Project Area") by Ordinance No. 75-029 C.S. on December 30, 1975, as amended by Ordinance No. 86-041 on December 6, 1986, Ordinance No. 87-009 on April 21, 1987, Ordinance No. 92-21 on July 28, 1992, Ordinance No. 94-30 on December 20, 1994, Ordinance No. 98-16 on November 10, 1998, Ordinance No. 01-07 on June 25, 2001, Ordinance No. 04-03 on March 16, 2004, and Ordinance No. 06-10 on May 12, 2006 (collectively, the "Redevelopment Plan") as amended from time to time; and

WHEREAS, the Redevelopment Agency of the City of Hayward (the "Agency") is responsible for implementing the Redevelopment Plan pursuant to the Redevelopment Law; and

WHEREAS, ABx1 27 (the "Voluntary Program Act") through the addition of Part 1.9 to the Redevelopment Law ("Part 1.9"), establishes a voluntary alternative redevelopment program whereby the Agency is authorized to continue to exist upon the enactment of an ordinance by the City to comply with Part 1.9, including payment of an annual remittance to the County-Auditor Controller (the "Continuation Ordinance"); and

WHEREAS, the City has enacted the Continuation Ordinance prior to consideration of this Resolution; and

WHEREAS, Section 34194.2 of the California Redevelopment Law authorizes the Agency to enter into an agreement with the City whereby the Agency agrees to transfer a portion of its tax increment to the City, in an amount equal to the annual remittance required under Chapter 3 of Part 1.9 of the Redevelopment Law to the County Auditor-Controller; and

WHEREAS, for reasons further set forth in the staff report accompanying this Resolution (the "Staff Report"), the City and the Agency desire to enter into an agreement, whereby the Agency will transfer to the City sufficient funds to make the annual remittance required under Chapter 3 of Part 1.9 of the Redevelopment Law, and the City will make the annual remittances to the County Auditor-Controller in satisfaction of the requirements under Chapter 3 of Part 1.9 of the Redevelopment Law (the "Agency Transfer Payment Agreement"); and

WHEREAS, in accordance with Section 34194.2 and as further described in the Staff Report, the purpose of the transfers from the Agency to the City contemplated under the Agency Transfer Payment Agreement is to finance activities within the redevelopment areas that are related to accomplishing the Agency's project goals under the Redevelopment Plan; and

WHEREAS, under Title 14 of the California Code of Regulations, Section 15378(b)(4) the approval of the Agency Transfer Payment Agreement is exempt from the requirements of the California Environmental Quality Act ("CEQA"), in that it is not a project, but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The appropriate environmental review shall be completed in accordance with CEQA prior to the commencement of any future Agency-supported project or program; and

WHEREAS, the City Council has reviewed and duly considered the Staff Report, documents and other written evidence presented at the meeting.

NOW, THEREFORE, BE IT RESOLVED, that the City Council finds that the above Recitals are true and correct and have served, together with the supporting documents, as the basis for the findings and approvals set forth below.

BE IT FURTHER RESOLVED, that the City Council finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this resolution is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project, but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The appropriate environmental review shall be completed in accordance with CEQA prior to the commencement of any future Agency-supported project or program. The City Council therefore directs that a Notice of Exemption be filed with the County Clerk of the County of Alameda in accordance with the CEQA guidelines.

BE IT FURTHER RESOLVED, that the City Council hereby approves the Agency Transfer Payment Agreement and authorizes the City Manager to execute, on behalf of the City Council, the Agency Transfer Payment Agreement, in the form that is approved by the City Manager and City Attorney and consistent with this Resolution and the Staff Report.

BE IT FURTHER RESOLVED, that the City Council authorizes the City Manager to take such other actions and execute such other documents as are appropriate to effectuate the intent of this Resolution and to implement the Agency Transfer Payment Agreement on behalf of the City.

BE IT FURTHER RESOLVED, that this Resolution shall take immediate effect upon adoption.

The above and foregoing resolution was duly and regularly passed and adopted at a meeting by the City Council on the ____ day of September, 2011 by the following vote:

HAYWARD, CALIFORNIA

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

REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD

RESOLUTION NO. RA 11-_____

Introduced by Agency Member _____

RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD APPROVING AND AUTHORIZING THE EXECUTION OF THE AGENCY TRANSFER PAYMENT AGREEMENT WITH THE CITY OF HAYWARD PURSUANT TO PART 1.9 OF THE REDEVELOPMENT LAW

WHEREAS, pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*; the "Redevelopment Law"), the City Council (the "City Council") of the City of Hayward (the "City") adopted in accordance with the Redevelopment Law, a redevelopment plan for the Downtown Hayward Redevelopment Project (the "Project Area") by Ordinance No. 75-029 C.S. on December 30, 1975, as amended by Ordinance No. 86-041 on December 6, 1986, Ordinance No. 87-009 on April 21, 1987, Ordinance No. 92-21 on July 28, 1992, Ordinance No. 94-30 on December 20, 1994, Ordinance No. 98-16 on November 10, 1998, Ordinance No. 01-07 on June 25, 2001, Ordinance No. 04-03 on March 16, 2004, and Ordinance No. 06-10 on May 12, 2006 (collectively, the "Redevelopment Plan"), as amended from time to time; and

WHEREAS, the Redevelopment Agency of the City of Hayward (the "Agency") is responsible for implementing the Redevelopment Plan pursuant to the Redevelopment Law; and

WHEREAS, ABx1 27 (the "Voluntary Program Act") through the addition of Part 1.9 to the Redevelopment Law ("Part 1.9"), establishes a voluntary alternative redevelopment program whereby the Agency is authorized to continue to exist upon the enactment of an ordinance by the City to comply with Part 1.9, including payment of an annual remittance to the County-Auditor Controller (the "Continuation Ordinance"); and

WHEREAS, the City has enacted the Continuation Ordinance prior to consideration of this Resolution; and

WHEREAS, Section 34194.2 of the California Redevelopment Law authorizes the Agency to enter into an agreement with the City whereby the Agency agrees to transfer a portion of its tax increment to the City, in an amount equal to the annual remittance required under Chapter 3 of Part 1.9 of the Redevelopment Law to the County Auditor-Controller; and

WHEREAS, for reasons further set forth in the staff report accompanying this Resolution (the "Staff Report"), the City and the Agency desire to enter into an agreement, whereby the Agency will transfer to the City sufficient funds to make the annual remittance required under Chapter 3 of Part 1.9 of the Redevelopment Law, and the City will make the annual remittances to the County Auditor-Controller in satisfaction of the requirements under Chapter 3 of Part 1.9 of the Redevelopment Law (the "Agency Transfer Payment Agreement"); and

WHEREAS, in accordance with Section 34194.2 and as further described in the Staff Report, the purpose of the transfers from the Agency to the City contemplated under the Agency Transfer Payment Agreement is to finance activities within the redevelopment areas that are related to accomplishing the Agency's project goals under the Redevelopment Plan; and

WHEREAS, under Title 14 of the California Code of Regulations, Section 15378(b)(4), the approval of the Agency Transfer Payment Agreement is exempt from the requirements of the California Environmental Quality Act ("CEQA"), in that it is not a project, but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The appropriate environmental review shall be completed in accordance with CEQA prior to the commencement of any future Agency-supported project or program; and

WHEREAS, the Agency Board has reviewed and duly considered the Staff Report, documents and other written evidence presented at the meeting.

NOW, THEREFORE, BE IT RESOLVED, that the Agency Board finds that the above Recitals are true and correct and have served, together with the supporting documents, as the basis for the findings and approvals set forth below.

BE IT FURTHER RESOLVED, that the Agency Board finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this resolution is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project, but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The appropriate environmental review shall be completed in accordance with CEQA prior to the commencement of any future Agency-supported project or program. The Agency Board therefore directs that a Notice of Exemption be filed with the County Clerk of the County of Alameda in accordance with the CEQA guidelines.

BE IT FURTHER RESOLVED, that the Agency Board hereby approves the Agency Transfer Payment Agreement and authorizes the Agency Executive Director to execute, on behalf of the Agency, the Agency Transfer Payment Agreement, in the form that is approved by the Agency Executive Director and Agency Counsel and consistent with this Resolution and the Staff Report.

BE IT FURTHER RESOLVED, that the Agency Board authorizes the Agency's Executive Director to take such other actions and execute such other documents as are appropriate to effectuate the intent of this Resolution and to implement the Agency Transfer Payment Agreement on behalf of the Agency.

BE IT FURTHER RESOLVED, that this Resolution shall take immediate effect upon adoption.

The above and foregoing resolution was duly and regularly passed and adopted at a meeting by the Agency Board on the ____ day of September, 2011 by the following vote:

HAYWARD, CALIFORNIA

ADOPTED BY THE FOLLOWING VOTE:

AYES: AGENCY MEMBERS:
 CHAIR:

NOES: AGENCY MEMBERS:

ABSTAIN: AGENCY MEMBERS:

ABSENT: AGENCY MEMBERS:

ATTEST:

Secretary of the Redevelopment Agency of the City
of Hayward

APPROVED AS TO FORM:

General Counsel

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced By Council Member _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
HAYWARD APPROVING AND AUTHORIZING AMENDMENTS TO
THE COOPERATION AND FUNDING AGREEMENT WITH THE
REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD
PURSUANT TO PART 1.9 OF THE REDEVELOPMENT LAW

WHEREAS, pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*; the "Redevelopment Law"), the City Council (the "City Council") of the City of Hayward (the "City") adopted in accordance with the Redevelopment Law, a redevelopment plan for the Downtown Hayward Redevelopment Project (the "Project Area") by Ordinance No. 75-029 C.S. on December 30, 1975, as amended by Ordinance No. 86-041 on December 6, 1986, Ordinance No. 87-009 on April 21, 1987, Ordinance No. 92-21 on July 28, 1992, Ordinance No. 94-30 on December 20, 1994, Ordinance No. 98-16 on November 10, 1998, Ordinance No. 01-07 on June 25, 2001, Ordinance No. 04-03 on March 16, 2004, and Ordinance No. 06-10 on May 12, 2006 (collectively, the "Redevelopment Plan") as amended from time to time; and

WHEREAS, the Redevelopment Agency of the City of Hayward (the "Agency") is responsible for implementing the Redevelopment Plan pursuant to the Redevelopment Law; and

WHEREAS, on March 11, 2011, the City and Agency entered into that certain Cooperation Agreement between the Redevelopment Agency of the City of Hayward and the City of Hayward for the Funding of Certain Services and Projects in the Downtown Hayward Redevelopment Project Area (the "Cooperation Agreement"); and

WHEREAS, pursuant to the Cooperation Agreement, the Agency committed to the City \$30 million of tax increment funds for various redevelopment activities; and

WHEREAS, the City and Agency desire to amend the Cooperation Agreement to permit the City and Agency additional flexibility in prioritizing and funding eligible services and projects; and

WHEREAS, under Title 14 of the California Code of Regulations, Section 15378(b)(4) the approval of this amendment to the Cooperation and Funding Agreement is exempt from the requirements of the California Environmental Quality Act ("CEQA"), in that it is not a project, but instead consists of the creation and continuation of a governmental funding mechanism and does not commit funds to any specific project or program; and

WHEREAS, the City Council has reviewed and duly considered the staff report accompanying this Resolution (the "Staff Report"), documents and other written evidence presented at the meeting.

NOW, THEREFORE, BE IT RESOLVED, that the City Council finds that the above Recitals are true and correct and have served, together with the supporting documents, as the basis for the findings and approvals set forth below.

BE IT FURTHER RESOLVED, that the City Council finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this resolution is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project, but instead consists of the creation and continuation of a governmental funding mechanism and does not commit funds to any specific project or program. The City Council therefore authorizes a Notice of Exemption to be filed with the County Clerk of the County of Alameda in accordance with the CEQA guidelines.

BE IT FURTHER RESOLVED, that the City Council hereby approves a conditional amendment to the Cooperation Agreement (the "Amendment") that is consistent with the Staff Report and that will provide the Agency and City with the flexibility to prioritize services and projects during the term of the Cooperation Agreement.

BE IT FURTHER RESOLVED, that the City Council authorizes the City Manager to execute, on behalf of the City Council, the Amendment, in the form that is approved by the City Manager and City Attorney and consistent with this Resolution and the Staff Report.

BE IT FURTHER RESOLVED, that the City Council authorizes the City Manager to take such other actions and execute such other documents as are appropriate to effectuate the intent of this Resolution and to implement the Cooperation Agreement, as amended by the Amendment on behalf of the City.

BE IT FURTHER RESOLVED, the Amendment will be immediately binding upon the parties, but the operation of its terms will be conditioned upon the lifting of the Supreme Court's current stay of ABx1 26 (the "Redevelopment Dissolution Act") and ABx1 27 (the "Voluntary Program Act") and the Court's determination that the Voluntary Program Act is constitutional (or that both the Redevelopment Dissolution Act and the Voluntary Program Act are unconstitutional).

BE IT FURTHER RESOLVED, that this Resolution shall take immediate effect upon adoption.

The above and foregoing resolution was duly and regularly passed and adopted at a meeting by the City Council on the ____ day of September, 2011 by the following vote:

HAYWARD, CALIFORNIA

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

REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD

RESOLUTION NO. RA 11-_____

Introduced by Agency Member _____

RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD APPROVING AND AUTHORIZING AMENDMENTS TO THE COOPERATION AND FUNDING AGREEMENT WITH THE CITY OF HAYWARD

WHEREAS, pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*; the "Redevelopment Law"), the City Council (the "City Council") of the City of Hayward (the "City") adopted in accordance with the Redevelopment Law, a redevelopment plan for the Downtown Hayward Redevelopment Project (the "Project Area") by Ordinance No. 75-029 C.S. on December 30, 1975, as amended by Ordinance No. 86-041 on December 6, 1986, Ordinance No. 87-009 on April 21, 1987, Ordinance No. 92-21 on July 28, 1992, Ordinance No. 94-30 on December 20, 1994, Ordinance No. 98-16 on November 10, 1998, Ordinance No. 01-07 on June 25, 2001, Ordinance No. 04-03 on March 16, 2004, and Ordinance No. 06-10 on May 12, 2006 (collectively, the "Redevelopment Plan"), as amended from time to time; and

WHEREAS, the Redevelopment Agency of the City of Hayward (the "Agency") is responsible for implementing the Redevelopment Plan pursuant to the Redevelopment Law; and

WHEREAS, on March 11, 2011, the City and Agency entered into that certain Cooperation Agreement between the Redevelopment Agency of the City of Hayward and the City of Hayward for the Funding of Certain Services and Projects in the Downtown Hayward Redevelopment Project Area (the "Cooperation Agreement"); and

WHEREAS, pursuant to the Cooperation Agreement, the Agency committed to the City \$30 million of tax increment funds for various redevelopment activities; and

WHEREAS, the City and Agency desire to amend the Cooperation Agreement to permit the City and Agency additional flexibility in prioritizing and funding eligible services and projects; and

WHEREAS, under Title 14 of the California Code of Regulations, Section 15378(b)(4) the approval of this amendment to the Cooperation and Funding Agreement is exempt from the requirements of the California Environmental Quality Act ("CEQA"), in that it is not a project, but instead consists of the creation and continuation of a governmental funding mechanism and does not commit funds to any specific project or program; and

WHEREAS, the Agency Board has reviewed and duly considered the staff report accompanying this resolution (the "Staff Report"), documents and other written evidence presented at the meeting.

NOW, THEREFORE, BE IT RESOLVED, that the Agency Board finds that the above Recitals are true and correct and have served, together with the supporting documents, as the basis for the findings and approvals set forth below.

BE IT FURTHER RESOLVED, that the Agency Board finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this resolution is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project, but instead consists of the creation and continuation of a governmental funding mechanism and does not commit funds to any specific project or program. The Agency Board therefore authorizes a Notice of Exemption to be filed with the County Clerk of the County of Alameda in accordance with the CEQA guidelines.

BE IT FURTHER RESOLVED, that the Agency Board hereby approves an amendment to the Cooperation Agreement (the "Amendment") that is consistent with the Staff Report and that will provide the Agency and City with the flexibility to prioritize services and projects during the term of the Cooperation Agreement.

BE IT FURTHER RESOLVED, that the Agency Board authorizes the Agency Executive Director to execute, on behalf of the Agency, the Amendment, in the form that is approved by the Agency Executive Director and Agency Counsel and consistent with this Resolution and the Staff Report.

BE IT FURTHER RESOLVED, that the Agency Board authorizes the Agency's Executive Director to take such other actions and execute such other documents as are appropriate to effectuate the intent of this Resolution and to implement the Cooperation Agreement, as amended by the Amendment on behalf of the Agency.

BE IT FURTHER RESOLVED, the Amendment will be immediately binding upon the parties, but the operation of its terms will be conditioned upon the lifting of the Supreme Court's current stay of ABx1 26 (the "Redevelopment Dissolution Act") and ABx1 27 (the "Voluntary Program Act") and the Court's determination that the Voluntary Program Act is constitutional (or that both the Redevelopment Dissolution Act and the Voluntary Program Act are unconstitutional).

BE IT FURTHER RESOLVED, that this Resolution shall take immediate effect upon adoption.

The above and foregoing resolution was duly and regularly passed and adopted at a meeting by the Agency Board on the ____ day of September, 2011 by the following vote:

HAYWARD, CALIFORNIA

ADOPTED BY THE FOLLOWING VOTE:

AYES: AGENCY MEMBERS:
 CHAIR:

NOES: AGENCY MEMBERS:

ABSTAIN: AGENCY MEMBERS:

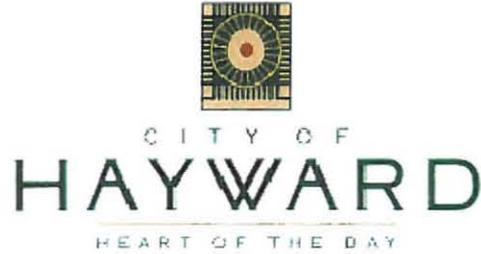
ABSENT: AGENCY MEMBERS:

ATTEST:

Secretary of the Redevelopment Agency of the City
of Hayward

APPROVED AS TO FORM:

General Counsel



August 15, 2011

via e-mail

Ana Matosantos, Director
Chris Hill
Department of Finance
915 L Street
Sacramento, CA 95814

Re: Appeal of Remittance Payment Amount under Health and Safety Code Section 34194(b)(2)(L)(i)

To whom it may concern:

On August 1, 2011, the Department issued the calculated remittance payments for each redevelopment agency under AB x1 27 (the "Voluntary Program Act"). The Hayward Redevelopment Agency's (the "Agency") remittance payment for FY 2011-12, as calculated by the Department, is \$4,040,772 (the "Remittance Amount"). The Agency and the City of Hayward (the "City") are submitting this appeal under Health and Safety Code Section 34194(b)(2)(L)(i) and respectfully request that the Department of Finance (the "Department") adjust the Agency's required Remittance Payment.

Under the Voluntary Program Act, agencies can file an appeal of their FY 2011-12 remittance payment on the basis that: (1) the information in the Controller's FY 2008-09 Annual Report (the "Controller's Report") was in error; or (2) the percentage of tax increment necessary to pay for tax allocation bonds and interest payments has increased by 10 percent or more over the percentage calculated pursuant to the Controller's Report.

The Agency and the City are appealing the calculation of the Remittance Amount because the percentage of tax increment necessary to pay for tax allocation bonds and interest payments has increased by more than 18 percent over the percentage of tax increment necessary to pay for tax allocation bonds and interest as shown in the Controller's Report, and thus meets the second criteria for filing an appeal of the Remittance Payment.

The Agency has experienced an increase of more than 18 percent in the amount of tax increment necessary to pay for tax allocation bonds and interest as a result of drastic reductions in tax increment received by the Agency in all of its project areas. These reductions are the result of decreases in assessed value reflecting the worldwide economic recession and the foreclosure crisis in California. The declines in the local property tax base lead to a \$2 million decrease in the City's total tax revenue for FY 2010-11 alone.

The Controller's Report accurately reflects that the Agency received \$12,630,213 in total gross tax increment in FY 2008-09 and that 34.6 percent of that amount was used to pay debt service on tax allocation bonds and interest. A 10 percent increase in tax increment required to pay debt service on tax allocation bonds and interest would be equal to a growth of 3.46 percent, implying that the Agency would have to be spending approximately 38 percent of the total tax increment to pay debt service on tax allocation bonds and interest to file and appeal. In fact, the percentage of tax increment used by the Agency to pay for tax allocation bonds and interest payments increased to 42.3%, a 22% increase from FY 2008-09.

In FY 2010-11¹, the Agency received \$10,351,053 in total tax increment, a decline of almost 18 percent from the total tax increment received in FY 2008-09. As a result of this decline, 42 percent of the total tax increment received by the Agency in FY 2010-11 was used to make required debt service payments on tax allocation bonds and interest. The decline in assessed valuations and Percent Increase in tax increment necessary to make required debt service payments on tax allocation bonds and interest merits a recalculation of the Agency's Remittance Amount. The Agency estimates that the Agency's Remittance Amount should be reduced by \$341,399 (the "Remittance Amount Reduction").

Attached please find the completed Appeal of ABx1 27 Remittance Amount Form (the "Appeal Form") which further outlines the claims on which this Appeal is based and evidences the need for the Remittance Amount Reduction. Also attached for your review are the following supporting documents:

1. Summary Chart of Agency Tax Increment and Percentage Change in Tax Increment used to pay bonded debt and interest supporting the calculations of the Remittance Amount Reduction;
2. Agency Revenue Ledgers supporting the estimated 2010-11 tax increment revenues;

¹ The Agency does not have final numbers for the projected tax increment in FY 2011-12 and will not have these numbers by August 15, 2011 so all numbers in this appeal are based on the actual FY 2010-11 tax increment receipts and actual debt service payments and interest. Preliminary projections for FY2011-12 indicate a minimal decrease in the amount total tax increment that will be needed to pay for tax allocation bond debt service and interest in FY 2011-12.

City of Hayward ABx1 27 Appeal Letter

August 15, 2011

Page 3 of 3

3. Summary Chart detailing the Debt Service Payments made for FY 2008-09 through estimated FY 2011-12 setting forth the total principal on bonded debt and interest payments made on the various Agency bonds;

The Department may direct any inquires on the Agency's Appeal to the Agency's designee: Kelly McAdoo Morariu, Assistant City Manager/Interim Redevelopment Director, 510-583-4305, kelly.morariu@hayward-ca.gov. Written correspondence should be sent to: Kelly McAdoo Morariu, City of Hayward, 777 B Street, Hayward, CA 94541.

Thank you in advance for your consideration and please also feel free to contact me at (510) 583-4010 or via email at tracy.vesely@hayward-ca.gov, should you have any questions on the attached.

Respectfully,

Tracy Vesely
Finance Director

Enclosures

Appeal of ABx1 27 Remittance Amount

Provide the requested information and remit the completed form to the following e-mail address: Redevelopment_Administration@dof.ca.gov

Submit one form for each redevelopment agency whose remittance amount is being appealed.

Include the name of the requesting city or county and the name of the redevelopment agency in the e-mail's subject line.

Forms must be received by the Department of Finance no later than August 15, 2011.

Name of city or county: City of Hayward

Name of redevelopment agency whose remittance amount is being appealed: Hayward Redevelopment Agency

Basis for appeal (check those that apply):

- 1. Information in the 2008-09 Controller's Report was in error: _____
- 2. Percentage of tax increment needed to pay tax allocation bonds and interest payments has increased by 10 percent or more over the percentage calculated in the 2008-09 Controller's Report:

If you checked Number One as the basis for appeal, provide the following information

What information in the Controller's Report was in error (check those that apply):

- Tax allocation bond amount: _____

If checking the above, provide the following information (use whole dollars):

Amount reported in 2008-09 Controller's Report: _____

Correct amount: _____

- Interest payment amount: _____

If checking the above, provide the following information (use whole dollars):

Amount reported in 2008-09 Controller's Report: _____

Correct amount: _____

If you checked Number Two as the basis for appeal, provide the following information (use whole dollars)

- Amount of tax increment reported as necessary to pay tax allocation bonds and interest in the 2008-09 Controller's Report: \$3,942,161
- Actual amount of tax increment used to pay tax allocation bonds and interest in 2010-11. Include a scanned copy of supporting fiscal document(s): \$3,939,158
- The actual amount of tax increment needed to make the minimum required tax allocation bond and interest payments in 2011-12: \$4,016,158
- Total tax increment in 2011-12. \$10,351,053
- Tax allocation bond debt reported in the 2008-09 Controller's Report: \$52,905,000
- Current tax allocation bond debt. Include a scanned copy of supporting fiscal document(s): \$50,170,000

Provide the name, title, phone number, and e-mail address of at least two people authorized to answer questions concerning your appeal:

First contact's name and title: Kelly McAdoo Morariu, Assistant City Manager/Interim Redevelopment Director

First contact's phone number and e-mail address: 510-583-4305, kelly.morariu@hayward-ca.gov

Second contact's name and title: Tracy Vesely, Finance Director

Second contact's phone number and e-mail address: 510-583-4040, tracy.vesely@hayward-ca.gov

ATTACHMENT 1

City of Hayward

	Gross Tax Increment	Tax Increment - Net of Pass-Throughs	Passthrough Payments	Total Interest Expense	Total Payments of Tax Allocation Bonds	Net Tax Increment (Less Passthrough, Interest, and T.A. Bond Payments)	Agency's Proportionate Share of Net Tax Increment Revenue	Agency's Proportionate Share of Gross Tax Increment Revenue	Agency's Payment Based on Net Tax Increment Revenue	Agency's Payment Based on Gross Tax Increment Revenue	Initial 2011-12 Remittance Amounts	2011-12 Remittance Amounts Adjusted to Remove Negatives	Adjustment Amount to net to \$1.7 Billion	Final 2011-12 Remittance Amounts
DOF Calculation (2008-09)	12,630,213	10,657,184	1,973,029	3,105,219	1,270,000	6,281,965	0.25595%	0.22258%	4,351,131	3,783,792	4,067,461	4,067,461	26,690	4,040,772
Agency Calculation	10,351,053	10,657,184	-306,131	3,105,219	1,270,000	6,281,965	0.25595%	0.18241%	4,351,131	3,100,995	3,726,063	3,726,063	26,690	3,699,373
Potential Reduction		341,399												

	DOF Calculations 2008-09	Agency Estimate 2010-11
Total Tax Increment	\$ 12,630,213	\$ 10,351,053
Less Pass throughs	\$ 1,973,029	\$ 1,973,029
Net Tax Increment	\$ 10,657,184	\$ 8,378,024
TAB Payments	\$ 1,270,000	\$ 1,270,000
Total Interest	\$ 3,105,219	\$ 3,105,219
Total TAB + Interest	\$ 4,375,219	\$ 4,375,219
Percent of TI used for TAB + Interest	34.6%	42.3%
Percent Increase		22.0%
Percent above 10%		12.0%
Potential Impact of Agency Payments	DOF	Agency Estimate
2011-12 Payment from Gross TI	\$ 3,783,792	\$ 3,783,792
2011-12 Payment from Net TI	\$ 4,351,131	\$ 4,351,131
Average	\$ 4,067,461	\$ 3,726,063
Less Reduction	\$ 26,690	\$ 26,690
Payment Amount	\$ 4,040,772	\$ 3,699,373
Potential Reduction		\$ 341,399

Duplicate Original

**COOPERATION AND FUNDING AGREEMENT BY AND BETWEEN THE
REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD AND THE CITY OF
HAYWARD FOR THE FUNDING OF SERVICES AND PROJECTS WITHIN THE
DOWNTOWN HAYWARD REDEVELOPMENT PROJECT AREA**

This COOPERATION AND FUNDING AGREEMENT ("Agreement") is dated as of March 11, 2011, and is entered into by and between the **REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD**, a public body, corporate and politic ("Agency"), and the **CITY OF HAYWARD**, a municipal corporation organized and existing under the laws of the State of California ("City"). Agency and City are sometimes referred to in this Agreement individually as "Party" and collectively as "Parties." This Agreement is entered into with reference to the following recitals of fact (each, a "Recital"):

RECITALS

A. The City Council of the City of Hayward approved and adopted the Redevelopment Plan ("**Redevelopment Plan**") for the Downtown Hayward Redevelopment Project (the "**Redevelopment Project**"). The Agency is vested with the responsibility to carry out the Redevelopment Plan within the Downtown Hayward Redevelopment Project Area (the "**Redevelopment Project Area**").

B. The Redevelopment Plan provides for the Agency to assist with the construction and installation of necessary public infrastructure and facilities, to facilitate the repair, restoration and/or replacement of existing infrastructure and facilities, to provide affordable housing, to perform specific actions necessary to promote the redevelopment and the economic revitalization of the Redevelopment Project Area, and to take all other necessary actions to implement the Redevelopment Plan.

C. The Agency has adopted a Five-Year Implementation Plan for the Redevelopment Project Area (the "**Implementation Plan**") which establishes goals, among other things, to support affordable housing, economic development, community revitalization, and commercial revitalization. To implement the programs and activities associated with each goal, the Agency has made redevelopment fund commitments based on estimated available tax increment revenue, bond proceeds and debt financing structures.

D. Pursuant to Section 33220 of the California Community Redevelopment Law (Health & Safety Code Section 33000 *et seq.*) ("**CRL**"), certain public bodies, including the City, may aid and cooperate in the planning, undertaking, construction, or operation of redevelopment activities, programs and projects in furtherance of and in accordance with the Redevelopment Plan (the "**Projects**").

E. To carry out the Projects in accordance with the objectives and purposes of the Redevelopment Plan and Implementation Plan, the Agency desires further assistance and cooperation in the completion of the Projects. The City agrees to aid the Agency and cooperate with the Agency to expeditiously implement the Projects, and to undertake and complete all

actions necessary or appropriate to ensure that the objectives of the Redevelopment Plan and Implementation Plan are fulfilled within the time effectiveness of the Redevelopment Project Area.

F. In consideration of the Agency's desire to ensure timely implementation and completion of the Projects, the Agency wishes to enter into this Agreement with the City to formalize the pledge of Agency Funds, as defined in Section 5, to pay for the Services, as defined in Section 2.1, and to pay for costs relating to the Projects, as described in Section 3.1.

NOW, THEREFORE, in consideration of the foregoing, Agency and City hereto mutually agree as follows:

TERMS

1. Incorporation of Recitals. The Recitals set forth above are true and correct and are incorporated into this Agreement by this reference.

2. Administrative Services.

2.1 The City agrees to provide for the Agency such staff assistance, supplies, technical services and other services and facilities of the City as the Agency may require in carrying out its functions under the CRL and the Redevelopment Plan, and to assist with the completion of the Projects (collectively, the "Services"). Such Services may include, but are not limited to, the services of officers, employees, and special consultants, as well as staff time and other services required by the Agency from time to time.

3. Advance of Funds; Project Costs.

3.1 The City agrees to advance funds as may be required by the Agency in order to undertake and complete its Projects, or if necessary the City shall itself undertake and complete such Projects in exchange for the pledge of Agency Funds as set forth in this Agreement, to benefit the Redevelopment Project Area, including without limitation those Projects and activities identified in the attached Exhibit A, including funds that may be required by the Agency to undertake any of the following:

3.1.1 Acquisition, assemblage and disposition of real property;

3.1.2 permitting, site testing, environmental and/or remediation requirements, and bidding of the Projects;

3.1.3 the planning, construction, development or installation, or any management-related costs thereof, required for the completion of the Projects;

3.1.4 financial analysis and financing-related costs associated with the Projects;

3.1.5 any payments that might legally be provided or obligated to

developers, owners, tenants, business owners, any public agency, or any other third parties by the Agency in order to accomplish the completion of the Projects including, but not limited to, any loan, subsidy, fee-offset or other similar assistance;

3.1.6 development of design criteria and design of the Projects;

3.1.7 insuring any and all Projects sites or any portion thereof; and

3.1.8 initiating or defending any litigation or administrative proceeding regarding the Projects.

4. Project Priority; Recurring Project Costs. The Projects shall be funded in the priority as set forth in the attached Exhibit A under the Priority Project List set forth therein. Such priority listing shall not preclude the Agency Funds from being made available in whole or in part for a lower priority Project prior to the complete funding of a higher priority Project in the event that the City and Agency agree that funding for the lower priority Project is available and will not compromise the ability of the Agency to complete the higher priority listed Project or Projects. Exhibit A further describes certain recurring annual Project costs, which shall be funded from the Agency Funds on an annual basis, in the amounts set forth in Exhibit A.

5. Payment of Obligations.

5.1 The Agency agrees to pay Agency Funds to repay the City for any amounts of funding that may be advanced by the City for the Services and costs associated with the Projects, and any direct costs incurred by the City for providing the Services and implementing the Projects in accordance with Section 3. Payments to the City shall be payable from the following funds (collectively, "Agency Funds"):

5.1.1 Agency pledges Bond Proceeds for all costs associated with the Projects. "Bond Proceeds" is defined as any existing or future proceeds of any public or private bonds issued by, under or on behalf of the Agency for financing of any redevelopment purpose or obligation pursuant to the Redevelopment Plan.

5.1.2 Agency pledges Net Available Tax Increment for all costs associated with the Projects. "Net Available Tax Increment" is defined as any tax increment, net of existing debt service payments, and existing contractual obligations as of the date of this Agreement received by the Agency or any lawful successor of the Agency and/or to any of the powers and rights of the Agency pursuant to any applicable constitutional provision, statute or other provision of law now existing or adopted in the future, levied by or for the benefit of taxing agencies in the Redevelopment Project Area, and allocated to the Agency and/or any lawful successor of the Agency and/or any entity established by law to carry out the Redevelopment Plan and/or expend tax increment or pay indebtedness of the Agency to be repaid with tax increment, pursuant to Section 33670 et seq. of the CRL or any applicable constitutional provision, statute or other provision of law now existing or adopted in the future.

5.1.3 Agency additionally pledges any and all existing or future sources of funds available to Agency, including, without limitation, available revenue from land

proceeds, which may be used for the purpose of paying all or a portion of the costs associated with the Projects and the Services.

5.2 Agency Funds shall be used to pay for Services and the Projects including, but not limited to, as follows:

5.2.1 reimburse the City for any of the City's actual costs and expenses;

5.2.2 direct payment to the City for costs and expenses, which funds may either be immediately used or held in a special account of the City and expended only for purposes of or related to the City's obligations under this Agreement;

5.2.3 direct payment to the City to pay debt service on bonds or other indebtedness or obligations that the City has or will incur for purposes of or related to this Agreement; and

5.2.4 direct payment to third parties on behalf of the City for any costs and expenses incurred pursuant to the City's obligations under this Agreement.

6. Indebtedness.

6.1 The Agency's obligations under this Agreement, including without limitation the Agency's obligation to make the payments to the City required by this Agreement, shall constitute an indebtedness of the Agency for the purpose of carrying out the redevelopment of the Redevelopment Project Area and are obligations to make payments authorized and incurred pursuant to CRL and other applicable statutes including, but not limited to, Section 33445 of the CRL. The obligations of the Agency set forth in this Agreement are contractual obligations that, if breached, will subject the Agency to damages and other liabilities or remedies.

6.2 Notwithstanding the provisions of Section 6.1, the obligations of Agency under this Agreement shall be subordinate to the rights of the holder or holders of any existing bonds, notes or other instruments of indebtedness of the Agency incurred or issued to finance the redevelopment of the Redevelopment Project Area including without limitation any pledge of Agency Funds to pay any portion of the principal (and otherwise comply with the obligations and covenants) of any bond or bonds issued or sold by Agency with respect to the Redevelopment Project Area.

7. Method of Payment.

7.1 Provided the City is not in default under this Agreement, the Agency shall pay to the City Agency Funds equal to the City's cost of providing the Services and costs associated with the Projects, on an annual basis. Each annual payment shall be due July 31 of each year, and shall include repayment for all amounts advanced by the City or otherwise owed by the Agency to the City for the immediately prior fiscal year. Any amounts that remain due and owing each year shall be carried over to the following year, and such unpaid amounts shall accrue interest at the rate of three percent (3%) per annum, simple interest, commencing on the date due, and continuing thereafter until such amount(s) are repaid in full. Payments shall be

applied first to any interest then due, and then to the outstanding principal sum then owing.

7.2 In addition to any payments made pursuant to Section 7.1, from time to time as deemed necessary or convenient by the City in its reasonable discretion, the City may submit a written request for payment to the Agency requesting payment of any or all costs or expenses permitted to be paid or reimbursed pursuant to this Agreement. The Agency shall review the written request and pay such costs and expenses as requested by the City.

7.3 The Agency's obligation to tender the payments hereunder shall be contingent upon the Agency's receipt and approval, which shall not be unreasonably withheld or delayed, of the following:

7.3.1 A written request for payment, which shall include a description of the work performed or to be performed, material supplied or to be supplied or the cost incurred or due;

7.3.2 Any bills, invoices, vouchers, statements, contracts and any other documents, which shall be attached to the written requests, evidencing the amount due to be paid hereunder;

7.3.3 Conditional waivers and releases of mechanics' liens, stop notice claims or other lien claim rights; and

7.3.4 Any other document, requirement, evidence or information in the City's possession or under the City's control that Agency may reasonably request.

7.4 The City acknowledges that this approval process may result in a delay of payment and the City consents to such reasonable delay. The Agency shall exercise due diligence in reviewing any such materials and approving payment of Agency Funds pursuant to this Agreement. The Agency may, at its sole cost, cause an inspection of the Projects and a verification of the work completed.

8. Liability and Indemnification. In contemplation of the provisions of California Government Code Section 895.2 imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by Government Code Section 895, the parties hereto, as between themselves, pursuant to the authorization contained in Government Code Sections 895.4 and 895.6, shall each assume the full liability imposed upon it, or any of its officers, agents or employees, by law for injury caused by negligent or wrongful acts or omissions occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of Government Code Section 895.2. To achieve the above-stated purpose, each party agrees to indemnify, defend and hold harmless the other party for any liability, losses, cost or expenses that may be incurred by such other party solely by reason of Government Code Section 895.2.

9. Entire Agreement: Waivers and Amendments.

9.1 This Agreement may be executed in counterparts, each of which will be

deemed an original but all of which together will constitute one and the same instrument. This Agreement constitutes the entire understanding and agreement of the Parties.

9.2 This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter of this Agreement.

9.3 This Agreement is intended solely for the benefit of the City and the Agency. Notwithstanding any reference in this Agreement to persons or entities other than the City and the Agency, there shall be no third party beneficiaries under this Agreement.

9.4 All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representatives of the Parties.

10. Severability. If any term, provisions, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

11. Default. If either party fails to perform or adequately perform an obligation required by this Agreement within thirty (30) calendar days of receiving written notice from the non-defaulting party, the party failing to perform shall be in default hereunder. In the event of default, the non-defaulting party will have all the rights and remedies available to it at law or in equity to enforce the provisions of this contract, including without limitation the right to sue for damages for breach of contract. The rights and remedies of the non-defaulting party enumerated in this paragraph are cumulative and shall not limit the non-defaulting party's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of the Agreement or hereinafter enacted or established, that may be available to the non-defaulting party against the defaulting party.

12. Binding on Successors. This Agreement shall be binding on and shall inure to the benefit of all successors and assigns of the parties, whether by agreement or operation of law.

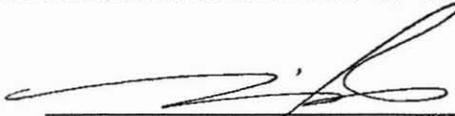
13. Term. This Agreement shall remain in effect until terminated by written notice by either Party or upon the expiration of the Redevelopment Plan, whichever occurs first.

IN WITNESS WHEREOF, Agency and City have executed this Agreement on the dates indicated next to each of the signatures of their authorized representatives, as it appears on the following page.

[Signatures on Following Page]

COOPERATION AND FUNDING AGREEMENT BY AND BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD AND THE CITY OF HAYWARD FOR THE FUNDING OF SERVICES AND PROJECTS WITHIN THE DOWNTOWN HAYWARD REDEVELOPMENT PROJECT AREA

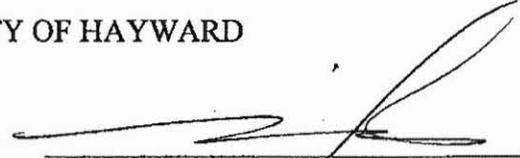
REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD

By: 
FRANCES DAVID

Title: Executive Director

Date: 3/11/2011

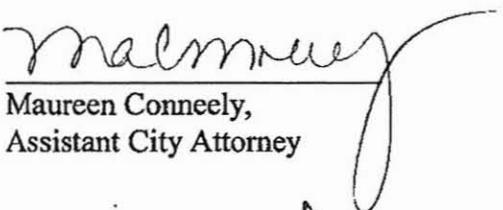
CITY OF HAYWARD

By: 
FRANCES DAVID

Title: City Manager

Date: 3/11/2011

Approved as to form:
MICHAEL S. LAWSON
CITY ATTORNEY
AGENCY COUNSEL


Maureen Conneely,
Assistant City Attorney

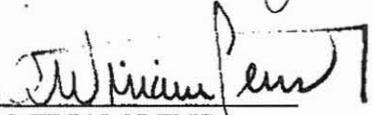
Attest: 
MIRIAM LENS,
City Clerk

EXHIBIT A

Hayward Redevelopment Agency Projects and Activities 2010-2011

<u>Priority Project Listing</u>	<u>Amount of Agency Funds</u>
1. Mission/South Hayward BART Public Improvements	\$12,700,000
2. Facilitate Redevelopment of City Center Campus	\$4,500,000
3. Reevaluate and update Downtown Plan	\$500,000
4. Complete Downtown Gateways Project	\$200,000
5. Acquiring Mission Boulevard Properties	\$5,500,000
6. Implementation of Downtown Retail Attraction Program	\$2,500,000
7. Implementation of Neighborhood Revitalization Programs	\$250,000
8. Remediation of Residual Burbank Site	\$250,000
<u>Continuing Annual Project Costs</u>	<u>Amount of Agency Funds Annually</u>
1. Cinema Place Garage Maintenance	\$66,600
2. Business Improvement District Funding	\$55,000
3. Management of Agency Owned Properties	\$20,000
4. Community Promotions	\$75,000
5. Public Art	\$90,000
6. Ongoing environmental monitoring at Burbank School	\$7,000