

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

Garden Grove Agency for Community Development

To: Matthew Fertal
From: Economic Development
Dept: Director
Subject: DEVELOPMENT BOND INDUCEMENT
RESOLUTION FOR TAX EXEMPT
BONDS FOR THE WATER PARK HOTEL
PROJECT
Date: April 12, 2011

OBJECTIVE

The purpose of this report is to request the Garden Grove Agency for Community Development (the "Agency") to adopt an Inducement Resolution to initiate process allowing the Agency to issue \$47 million of bonds in relation to the construction of the Water Park Hotel.

BACKGROUND/DISCUSSION

On May 12, 2009, at a joint meeting of the City Council and the Agency, the Disposition and Development Agreement (the "DDA") between the Agency and Garden Grove MXD, Inc., a Colorado Corporation (the "Developer") was approved.

On April 13, 2010 at a joint meeting of the City Council and the Agency, the First Amended and Restated Disposition and Development Agreement between the Agency and the Developer was approved.

The DDA proposed the construction of approximately six hundred (600) rooms and a water park (the "Water Park Hotel" or "Hotel"), approximately 18,000 square feet of retail, including one or more restaurants, and a parking structure. The DDA has a Covenant Consideration for the Agency to provide the Developer an all cash sum of forty-seven million dollars (\$47,000,000). The Covenant consideration pursuant to the DDA is as follows: (a) five million dollars (\$5,000,000) concurrently with the commencement of construction of the parking structure, and (b) forty-two million dollars (\$42,000,000) thirty (30) days after the later of the date on which (i) the Hotel opens for business or (ii) the certificate of occupancy for the Hotel.

FINANCIAL IMPACT

The financial impact to the Agency is forty-seven million dollars (\$47,000,000).

RECOMMENDATION

It is recommended that the Agency take the following actions

- Adopt the attached Resolution authorizing the issuance of Agency debt not to exceed \$47 million in net funds;
- Authorize the Director to appoint Stradling, Yocca, Carlson, and Rauth as the Counsel for this assignment as described herein, for the amount not to exceed \$100,000; and
- Authorize the Director or his designee execute other necessary agreements to assemble the financing team including Underwriter, Trustee, Fiscal Agency, etc., to effectively ready the issuance of Agency Debt.



Greg Blodgett
Sr. Project Manager

Attachment 1: Resolution

Recommended for Approval



Matthew Ferial
Director

GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT

RESOLUTION NO.

A RESOLUTION OF THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT REGARDING ITS INTENTION TO ISSUE TAX-EXEMPT OBLIGATIONS AND TO REIMBURSE THE CITY FROM PROCEEDS OF SUCH OBLIGATIONS FOR COSTS INCURRED PRIOR TO ISSUANCE (GARDEN GROVE MXD, INC. WATER PARK HOTEL PROJECT GRANT)

WHEREAS, the Garden Grove Agency for Community Development (the "Issuer") desires to finance the costs associated with certain Covenant Consideration, as such term is defined in that certain First Amended and Restated Disposition and Development Agreement dated April 13, 2010 (the "DDA") between the Agency and Garden Grove MXD, LLC, (the "Project") an executed copy of which is on file with the City Clerk's Office;

WHEREAS, the Issuer intends to finance the acquisition of the Project or portions of the Project with the proceeds of the sale of obligations the interest upon which may be excluded from gross income for federal income tax purposes (the "Obligations"); and

WHEREAS, prior to the issuance of the Obligations the Issuer desires to incur certain expenditures with respect to the Project from available monies of the Issuer which expenditures are desired to be reimbursed by the Issuer from a portion of the proceeds of the sale of the Obligations.

NOW, THEREFORE, THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT DOES HEREBY RESOLVE, ORDER, AND DETERMINE AS FOLLOWS:

SECTION 1. The Issuer hereby states its intention and reasonably expects to reimburse Project costs incurred prior to the issuance of the Obligations with proceeds of the Obligations. The DDA describes either the general character, type, purpose, and function of the Project, or the fund or account from which Project costs are to be paid and the general functional purpose of the fund or account.

SECTION 2. The reasonably expected maximum principal amount of the Obligations is \$47,000,000, with respect to the Project.

SECTION 3. This Resolution is being adopted on or prior to the date (the "Expenditures Date or Dates") that the Issuer will expend monies for the portion of the Project costs to be reimbursed from proceeds of the Obligations.

SECTION 4. Except as described below, the expected date of issue of the Obligations will be within eighteen months of the later of the Expenditure Date or Dates and the date the Project is placed in service; provided, the reimbursement

may not be made more than three years after the original expenditure is paid. For Obligations subject to the small issuer exception of Section 148(f)(4)(D) of the Internal Revenue Code, the "eighteen-month limit" of the previous sentence is changed to "three years" and the limitation of the previous sentence beginning with "; provided," is not applicable.

SECTION 5. Proceeds of the Obligations to be used to reimburse for Project costs are not expected to be used, within one year of reimbursement, directly or indirectly to pay debt service with respect to any obligation (other than to pay current debt service coming due within the next succeeding one year period on any tax-exempt obligation of the Issuer (other than the Obligations)) or to be held as a reasonably required reserve or replacement fund with respect to an obligation of the Issuer or any entity related in any manner to the Issuer, or to reimburse any expenditure that was originally paid with the proceeds of any obligation, or to replace funds that are or will be used in such manner.

SECTION 6. This Resolution is consistent with the budgetary and financial circumstances of the Issuer, as of the date hereof. No monies from sources other than the Obligation issue are, or are reasonably expected to be reserved, allocated on a long-term basis, or otherwise set aside by the Issuer (or any related party) pursuant to their budget or financial policies with respect to the Project costs. To the best of our knowledge, the Garden Grove Agency for Community Development is not aware of the previous adoption of official intents that have been made as a matter of course for the purpose of reimbursing expenditures and for which tax-exempt obligations have not been issued.

SECTION 7. The limitations described in Section 3 and Section 4 of this Resolution do not apply to (a) costs of issuance of the Obligations, (b) an amount not in excess of the lesser of \$100,000 or five percent (5%) of the proceeds of the Obligations, or (c) any preliminary expenditures, such as architectural, engineering, surveying, soil testing, and similar costs other than land acquisition, site preparation, and similar costs incident to commencement of construction, not in excess of twenty percent (20%) of the aggregate issue price of the Obligations that finances the Project for which the preliminary expenditures were incurred.

SECTION 8. This Resolution is adopted as official action of the Issuer in order to comply with Treasury Regulation Section 1.150-2 and any other regulations of the Internal Revenue Service relating to the qualification for reimbursement of Issuer expenditures incurred prior to the date of issue of the Obligations, is part of the Issuer's official proceedings, and will be available for inspection by the general public at the Garden Grove City Hall, City Clerk's Office, 11222 Acacia Parkway, Garden Grove, CA 92842.

SECTION 9. All the recitals in this Resolution are true and correct and the Garden Grove Agency for Community Development so finds, determines, and represents.