



**OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO  
THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**

**INTER-DEPARTMENT MEMORANDUM**

To:	Matthew Fertal	From:	Kingsley Okereke
Dept:	Director	Dept:	Finance
Subject:	Approval of Resolution Confirming the determination that the First Amended and Restated Disposition and Development Agreement between the former Agency and Garden Grove MXD, Inc., is an enforceable obligation and confirming the inclusion of the DDA on the ROPS III	Date:	July 25, 2012

**OBJECTIVE**

By separate action after consideration of this matter, the Oversight Board ("Oversight Board") to the Successor Agency to the Garden Grove Agency for Community Development ("Successor Agency") is anticipated to consider and adopt a Resolution approving the Recognized Obligation Payment Schedule for the period from January 1, 2013 to June 30, 2013 ("ROPS III") pursuant to Sections 34171(h), 34177(l) and 34180(g) of the Health & Safety Code, enacted by ABx1 26 (effective June 28, 2011) and amended by AB 1484 (effective June 27, 2012) (collectively, the "Dissolution Act").

The purpose of this report is for the Oversight Board to consider and confirm the enforceability of the First Amended and Restated Disposition and Development Agreement dated as of April 13, 2010 ("DDA"), between the former Garden Grove Agency for Community Development ("Former Agency") and Garden Grove MXD, LLC, which assigned its rights to Garden Grove MXD, Inc. ("Developer"), and the inclusion of a \$1,500,000 line item for certain obligations set forth in the DDA on the ROPS III being approved by the Oversight Board concurrently herewith.

**BACKGROUND/DISCUSSION**

The DDA concerns a project to be located on Harbor Boulevard in the City of Garden Grove for the construction of hotel, water park and retail project consisting of six hundred (600) hotel rooms, a water park, approximately 18,000 square feet of retail, including restaurants, and a parking structure (collectively, the "Project").

The DDA is an "enforceable obligation" under settled California contract law and pursuant to the definition of "enforceable obligation" set forth in Section 34171(d) of the Dissolution Act. Certain salient terms of the DDA are described below. Some of these obligations are included in the ROPS III, because these obligations require payments between January 1, 2013 and June 30, 2013; other obligations set forth in the DDA and described below will be included in future Recognized Obligation Payment Schedules.

1. The DDA states that, in consideration for the construction of the Project by the Developer and provided Developer is not in Breach and/or Default under the DDA, the Former Agency shall pay to the Developer the all cash sum of Forty-Seven Million Dollars (\$47,000,000) ("Covenant Consideration") as follows:

(a) Five Million Dollars (\$5,000,000) is to be paid concurrently with the "Commencement of Construction of the Parking Structure" as defined in the DDA which will be included in a future Recognized Obligation Payment Schedule.

(b) Forty-Two Million Dollars (\$42,000,000) is to be paid 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 is issued by the City. Pursuant to Section 408 of the DDA, the Successor Agency intends to issue bonds or other obligations to pay the net amount of Forty-Two Million Dollars (\$42,000,000) to the Developer as set forth in the DDA. If and to the extent such obligations are issued prior to completion of the Hotel, debt service on such obligations shall not be payable from the Trust Fund (as described below).

2. The Successor Agency will receive an allocation from the Redevelopment Property Tax Trust Fund ("Trust Fund") of approximately \$4,200,000 per year for 20 years to pay the debt service on the obligations. The debt service amount will be stated on a subsequent Recognized Obligation Payment Schedule once the obligation is incurred by the Successor Agency, and prior to the hotel opening.

3. The DDA requires the Successor Agency to convey the 12 acre Site to the Developer for the Project at no cost to the Developer.

4. The Successor Agency is required to incur certain "Agency Improvements Costs" as defined in the DDA in the amount of \$1,500,000. These are included on the ROPS III being presented to the Successor Agency for approval as a separate action. The "Agency Improvements" are defined in the DDA to include: Street improvements, relocation benefits to eligible occupants, demolition, all offsite infrastructure, roadway and traffic improvements, and traffic mitigation measures.

Due to uncertainty created by the passage of the Dissolution Act, the Developer has endured a period of enforced delay and will therefore need to amend and extend the Schedule of Performance in the DDA to accommodate this delay.

On July 24, 2012, the Successor Agency to the Former Agency approved a Resolution confirming its determination that the DDA is an enforceable obligation properly included on the ROPS III, consistent with the proposed Oversight Board Resolution attached to this Report as Attachment No. 1.

RECOMMENDATION


Staff recommends the Oversight Board approve the attached Resolution confirming the determination that the DDA is an enforceable obligation properly included on the ROPS III.

  
KINGSLEY OKEREKE  
Finance Director

  
By: Greg Blodgett  
Senior Project Manager

Attachment 1: Oversight Board Resolution

**Recommended for Approval**

  
**Matthew Fertal**  
Director

## RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE OVERSIGHT BOARD TO THE CITY OF GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT CONFIRMING THE DETERMINATION THAT THE FIRST AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE FORMER AGENCY AND GARDEN GROVE MXD, INC., IS AN ENFORCEABLE OBLIGATION PROPERLY INCLUDED ON THE RECOGNIZED OBLIGATION PAYMENTS SCHEDULE**

**WHEREAS**, the City of Garden Grove, Acting as Successor Agency to the Garden Grove Agency for Community Development ("Successor Agency") is acting as Successor Agency to the Garden Grove Agency for Community Development ("Former Agency") pursuant to ABx1 26, which added Parts 1.8 and 1.85 to Division 24 of the Health & Safety Code ("Dissolution Act"); and

**WHEREAS**, the Former Agency entered into a First Amended and Restated Disposition and Development Agreement ("DDA") with Garden Grove MXD, LLC, which assigned its rights to Garden Grove MXD, Inc. ("Developer"), dated as of April 13, 2010 (prior to the effective date of the Dissolution Act); and

**WHEREAS**, the Former Agency and the Successor Agency included the DDA as an enforceable obligation on the Enforceable Obligation Payment Schedules and as a current obligation in the Recognized Obligation Payment Schedule for the period of January 1, 2012 to June 30, 2012 and for the period July 1, 2012 to December 31, 2012 prepared pursuant to the Dissolution Act; and

**WHEREAS**, the Successor Agency has submitted its Recognized Obligation Payment Schedule for the period of January 1, 2013 to June 30, 2013 ("ROPS III") to the Oversight Board for approval; and

**WHEREAS**, the ROPS III submitted by the Successor Agency includes the DDA as an enforceable obligation, as described below; and

**WHEREAS**, concurrently with submission of the ROPS III to the Oversight Board, the Successor Agency submitted the ROPS III to the County Administrative Officer, County Auditor-Controller, and the State Department of Finance, pursuant to Section 34177(l); and

**WHEREAS**, upon approval of the ROPS III by the Oversight Board, the Successor Agency will transmit the ROPS III to the County Auditor-Controller, State Controller's Office, and State Department of Finance, and shall post the ROPS III on the City's/Successor Agency's website, all pursuant to Section 34177(l) of the Health & Safety Code; and

**WHEREAS**, Health & Safety Code Section 34189(a), added by the Dissolution Act, provides that, "[c]ommencing on the effective date of [the Dissolution Act], all provisions of the Community Redevelopment Law that depend on the allocation of tax increment to redevelopment agencies, including, but not limited to, Sections 33445, 33640, 33641, 33645, and subdivision (b) of Section 33670, shall be inoperative"; and

**WHEREAS**, Health & Safety Code Section 34173(b), added by the Dissolution Act, provides that, “[e]xcept for those provisions of the Community Redevelopment Law that are repealed, restricted, or revised pursuant to [the Dissolution Act], *all authority, rights, powers, duties, and obligations previously vested with the former redevelopment agencies, under the Community Redevelopment Law, are hereby vested in the successor agencies.*” (emphasis added); and

**WHEREAS**, Health & Safety Code Sections 34167(d)(5) and 34171(d)(1)(E), added by ABx1 26, define “enforceable obligation” to include “[a]ny legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy”; and

**WHEREAS**, Health & Safety Code Section 34177(c), added by ABx1 26, requires the Successor Agency to “[p]erform obligations required pursuant to any enforceable obligation”; and

**WHEREAS**, the DDA was duly approved and fully executed prior to the effective date of the Dissolution Act; and

**WHEREAS**, the DDA is a legally binding and enforceable agreement that does not violate the debt limit or public policy; and

**WHEREAS**, in order to meet its obligations under the DDA, the Successor Agency will be required to enter into future agreements, including an implementation agreement as contemplated under Section 408 of the DDA; and

**WHEREAS**, the Oversight Board acknowledges the provisions of the DDA which provides that, in consideration for the construction by the Developer of the Project (as defined in the DDA) and provided Developer is not in Breach and/or Default thereunder, the Successor Agency shall pay to the Developer the all cash sum of Forty-Seven Million Dollars (\$47,000,000) as follows:

1. Five Million Dollars (\$5,000,000) is to be paid concurrently with the “Commencement of Construction of the Parking Structure” as defined in the DDA. This cost will be included on a future Recognized Obligation Payment Schedule, consistent with the timing of the Successor Agency’s obligation to make this payment upon the Commencement of Construction of the Parking Structure.
2. Forty-Two Million Dollars (\$42,000,000) is to be paid 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 is issued by the City. Pursuant to Section 408 of the DDA, the Successor Agency intends to issue bonds or other obligations to pay the net amount of Forty-Two Million Dollars (\$42,000,000) to the Developer as set forth in the DDA. If and to the extent such obligations are issued prior to completion of the Hotel, debt service on such obligations shall not be payable from the Trust Fund (as described below).

**WHEREAS**, in order to meet the debt service on the obligations described above, the Successor Agency will receive an allocation from the Redevelopment Property Tax Trust Fund (“Trust Fund”) of approximately \$4,200,000 per year for 20 years. The Successor Agency is

anticipated to include this annual debt service amount on subsequent Recognized Obligation Payment Schedules beginning in the period prior to the Hotel opening; and

**WHEREAS**, the DDA requires the Successor Agency to convey the 12 acre Site to the Developer for the Project at no cost to the Developer; and

**WHEREAS**, the DDA requires the Successor Agency to pay certain Agency Improvements Costs in the amount of \$1,500,000. These Agency Improvements Costs are included on the ROPS III being considered by the Oversight Board concurrently herewith. The "Agency Improvements" are defined in the DDA to include: Street improvements, relocation benefits to eligible occupants, demolition, all offsite infrastructure, roadway and traffic improvements, and traffic mitigation measures; and

**WHEREAS**, due to uncertainty created by the passage of the Dissolution Act, the Developer has endured a period of enforced delay and will therefore need to amend and extend the Schedule of Performance in the DDA to accommodate this delay.

**WHEREAS**, by this Resolution, the Oversight Board desires to confirm its prior determination that the DDA is an enforceable obligation of the Former Agency and the Successor Agency and to further confirm its intent to include amounts due thereunder on the applicable ROPS.

**NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD TO THE CITY OF GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT:**

Section 1. The foregoing recitals are true and correct and constitute a substantive part of this Resolution.

Section 2. The Oversight Board hereby finds and determines that the DDA is an enforceable obligation pursuant to Health & Safety Code Sections 34167(d)(5) and 34171(d)(1)(E) and confirms that amounts required to be paid by the Successor Agency under the DDA between January 1, 2013 and June 30, 2013 are properly included on the ROPS III.

Section 3. This Resolution shall be effective immediately upon adoption.

Section 4. The Secretary on behalf of the Oversight Board shall certify to the adoption of this Resolution.