

**The City of Garden Grove /  
 The City of Garden Grove as Successor Agency to the  
 Garden Grove Agency for Community Development**

**INTER-DEPARTMENT MEMORANDUM**

|          |   |       |                  |
|----------|---|-------|------------------|
| To:      | Matthew J. Fertal   | From: | Kingsley Okereke |
| Dept:    | City Manager / Director   | Dept: | Finance          |
| Subject: | ADOPTION OF RESOLUTIONS<br>CONFIRMING THE RESCISSION AND<br>NULLIFICATION OF THAT CERTAIN<br>HEALTH & SAFETY CODE SECTION<br>33220 AGREEMENT PERTAINING TO<br>PROPERTY LOCATED AT 13501<br>HARBOR BOULEVARD AND<br>RATIFYING AND AUTHORIZING<br>ASSIGNMENT TO THE CITY OF THE<br>PROPERTY LEASE |       |                  |
|          |   | Date: | January 28, 2014 |

**OBJECTIVE**

It is requested that the City Council and the Successor Agency adopt concurrent Resolutions to (i) formally rescind prior Resolutions of the City Council ("City") and Garden Grove Agency for Community Development ("Former Agency") approving a Health & Safety Code Section 33220 Agreement ("Cooperative Agreement") between the City and the Former Agency pertaining to the property located at 13501 Harbor Boulevard as a result of the Redevelopment Dissolution Act, (ii) to formally acknowledge the rescission and nullification of the Cooperative Agreement, and (iii) to formally ratify and authorize assignment to, and assumption by, the City of the existing Lease with Galaxy Oil Company with respect to the Property.

**BACKGROUND/ANALYSIS**

In conjunction with the widening of Harbor Boulevard several years ago, the City acquired an approximately 13,000 square foot parcel located at 13501 Harbor Boulevard, at the intersection of Harbor Boulevard and Trask Avenue (the "Property"). On September 14, 2010, pursuant to Resolution Nos. 9012-10 and 689, respectively, the City and Former Agency approved a cooperation agreement pursuant to Health & Safety Code Section 33220 authorizing the City to convey the Property to the Former Agency, at no cost, for the potential future development of the resort district south of the Garden Grove Freeway. At the same meeting, in contemplation of conveyance of the Property from the City to the Former Agency pursuant to the Cooperative Agreement, the Former Agency also approved a five (5) year lease agreement with respect to the Property with Galaxy Oil Company

ADOPTION OF RESOLUTIONS CONFIRMING THE RESCISSION AND NULLIFICATION OF THAT CERTAIN HEALTH & SAFETY CODE SECTION 33220 AGREEMENT PERTAINING TO PROPERTY LOCATED AT 13501 HARBOR BOULEVARD AND RATIFYING AND AUTHORIZING ASSIGNMENT TO THE CITY OF THE PROPERTY LEASE

January 28, 2014

Page 2

(the "Lease"). Galaxy Oil Company has been operating a Chevron station on the Property pursuant to this Lease.

Due to the uncertainty surrounding the future of redevelopment in California, the Cooperative Agreement was not implemented and the Property was never conveyed to, or accepted by, the Former Agency. Fee title to the Property continues to be vested in the City and the City and the Successor Agency have each taken actions consistent with the City continuing to be the owner of the Property and the landlord under the Lease.

In June 2011, ABx1-26, the Dissolution Act, and ABx1-27, the Voluntary Redevelopment Program, were signed into law. The subsequent lawsuit by the California Redevelopment Association and the League of California Cities challenged the constitutionality of the laws. In December 2011, when the California Supreme Court ruling was released, ABx1-26 was upheld as constitutional and ABx1-27 was ruled unconstitutional, effectively dissolving redevelopment in California.

The Dissolution Act purports to render most existing and executory agreements between former redevelopment agencies and the government bodies that formed them to be invalid and to not constitute binding "enforceable obligations." Accordingly, following adoption of the Dissolution Act, staff has considered the unimplemented Cooperative Agreement to have been rendered effectively rescinded and nullified by the Dissolution Act. Notwithstanding the foregoing provisions of the Dissolution Act, to the extent the Cooperative Agreement remains executory, because it has not been implemented and because the redevelopment purposes that served as the basis of the Cooperative Agreement are no longer operative, it is necessary and appropriate that it be rescinded, either unilaterally by the City, and/or mutually by the City and the Successor Agency, for failure of consideration.

In order to resolve potential ambiguities concerning the Property title, the status of the Cooperative Agreement, and the Lease, Staff believes it is necessary and appropriate for the City and the Successor Agency to take formal action to confirm their mutual understanding that the City owns the Property; to rescind the Cooperative Agreement and the prior resolutions pertaining to conveyance of the Property; to acknowledge, confirm and ratify the rescission, nullification and invalidity of the Cooperative Agreement pursuant to the Dissolution Act; and to formally ratify and authorize assignment of the Lease to the City.

FINANCIAL IMPACT

There is no financial impact.

ADOPTION OF RESOLUTIONS CONFIRMING THE RESCISSION AND NULLIFICATION OF THAT CERTAIN HEALTH & SAFETY CODE SECTION 33220 AGREEMENT PERTAINING TO PROPERTY LOCATED AT 13501 HARBOR BOULEVARD AND RATIFYING AND AUTHORIZING ASSIGNMENT TO THE CITY OF THE PROPERTY LEASE

January 28, 2014

Page 3

RECOMMENDATION

Staff recommends that the City Council:

- Adopt the attached Resolution rescinding Resolution No. 9012-10; deeming the Cooperative Agreement to be rescinded and nullified; approving and ratifying assumption of the Lease by the City; and authorizing the City Manager to execute the attached Confirmation of Assignment pertaining to the Lease on behalf of the City.

Staff recommends that the Successor Agency:

- Adopt the attached Resolution rescinding Garden Grove Agency for Community Development Resolution No. 689; deeming the Cooperative Agreement to be rescinded and nullified; approving and ratifying assignment of the Lease to the City; and authorizing the Successor Agency Director to execute the attached Confirmation of Assignment pertaining to the Lease on behalf of the Successor Agency.

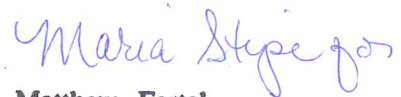
  
KINGSLEY OKEREKE  
Finance Director

  
By: Greg Blodgett  
Senior Project Manager

Attachment 1: City Resolution

Attachment 2: Successor Agency Resolution

**Recommended for Approval**

  
**Matthew Fertal**  
City Manager

## GARDEN GROVE CITY COUNCIL

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE RESCINDING RESOLUTION NO. 9012-10, CONFIRMING THE RESCISSION AND NULLIFICATION OF THAT CERTAIN HEALTH & SAFETY CODE SECTION 33220 AGREEMENT BETWEEN THE CITY OF GARDEN GROVE AND THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT PERTAINING TO PROPERTY LOCATED AT 13501 HARBOR BOULEVARD, AND RATIFYING AND AUTHORIZING ASSUMPTION THE LEASE WITH RESPECT TO THE PROPERTY

WHEREAS, prior to February 1, 2012, the Garden Grove Agency for Community Development (the "Former Agency") was a community redevelopment agency duly organized and existing under the California Community Redevelopment Law, Health and Safety Code Sections 33000, *et seq.* (the "CRL"), and was authorized to transact business and exercise the powers of a redevelopment agency pursuant to action of the City Council ("City Council") of the City of Garden Grove ("City"); and

WHEREAS, the Former Agency was previously responsible for the administration of redevelopment activities within the city, including implementation of the Redevelopment Plan as adopted for the Garden Grove Community Project (the "Redevelopment Plan"); and

WHEREAS, Section 33220 of the CRL provided for the conveyance of real property by a city to a redevelopment agency for the purpose of aiding and co-operating in the planning, undertaking, and construction and operation of a redevelopment project; and

WHEREAS, pursuant to Section 33220 of the CRL, on September 14, 2010, the City Council and Former Agency adopted Resolutions 9012-10 and 689, respectively, approving a Health & Safety Code Section 33220 Agreement between the City and the Former Agency (the "Health & Safety Code Section 33220 Agreement"), which authorized the City to convey certain property located at 13501 Harbor Boulevard (the "Property") to the Former Agency, without consideration, and the Former Agency to accept conveyance of the Property from the City, in order to aid the Former Agency in the implementation of the Redevelopment Plan; and

WHEREAS, in contemplation of conveyance of the Property from the City to the Former Agency pursuant to the Health & Safety Code Section 33220 Agreement, on September 14, 2010, the Former Agency also entered into a lease agreement with Galaxy Oil Company (the "Lease") with respect to the Property; and

WHEREAS, Assembly Bill x1 26, chaptered and effective June 27, 2011, added Parts 1.8 and 1.85 to Division 24 of the California Health & Safety Code, which caused the dissolution of all redevelopment agencies and winding down of the affairs of former redevelopment agencies, including as such laws were amended

by Assembly Bill 1484, chaptered and effective on June 27, 2012 (together, the "Dissolution Act"); and

WHEREAS, as of February 1, 2012, the Former Agency was dissolved pursuant to the Dissolution Act and as a separate legal entity the City serves as The Successor Agency to the Garden Grove Agency for Community Development (the "Successor Agency"); and

WHEREAS, the Successor Agency administers the enforceable obligations of the Former Agency and otherwise unwinds the Former Agency's affairs, all subject to the review and approval by a seven-member Oversight Board (the "Oversight Board"); and

WHEREAS, as a result of the pending and subsequent dissolution of redevelopment agencies pursuant to the Dissolution Act, the Health & Safety Code Section 33220 Agreement was not implemented by the City and the Former Agency and the Property was never conveyed to, or accepted by, the Former Agency;

WHEREAS, fee title to the Property continues to be vested in the City and the City and the Successor Agency have each taken actions consistent with the City continuing to be the owner of the Property and the landlord under the Lease; and

WHEREAS, the Dissolution Act, at Health & Safety Code Section 34171(d)(2), provides that the definition "enforceable obligation" generally does not include any agreements, contracts, or arrangements between the city that created the redevelopment agency and the former redevelopment agency; and

WHEREAS, the Dissolution Act, at Health & Safety Code Section 34178, provides that agreements, contracts, or arrangements between the city that created the redevelopment agency and the former redevelopment agency generally are invalid and shall not be binding on the Successor Agency; and

WHEREAS, notwithstanding the foregoing provisions of the Dissolution Act, to the extent the Health & Safety Code Section 33220 Agreement remains executory, because it has not been implemented and because the redevelopment purposes that served as the basis of the Health & Safety Code Section 33220 Agreement are no longer operative, it is necessary and appropriate that it be rescinded, either unilaterally by the City, and/or mutually by the City and the Successor Agency, for failure of consideration; and

WHEREAS, the City and the Successor Agency mutually desire to resolve outstanding ambiguities concerning the status of the Property and the rights and obligations of the City and the Successor Agency pertaining to the Property; and

WHEREAS, by the concurrent adoption of Resolution No. \_\_\_\_ by the Successor Agency and adoption of this Resolution by the City Council, the City Council and the Successor Agency desire to formally confirm their mutual understanding that the City owns the Property; to rescind the Health & Safety Code Section 33220 Agreement and their prior resolutions pertaining to conveyance of the Property; to acknowledge, confirm and ratify the rescission, nullification and invalidity of the Health and Safety Code Section 33220 Agreement pertaining to the Property; and to formally ratify and authorize assignment to, and assumption by, the City of the Lease.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GARDEN GROVE:

Section 1. The foregoing recitals are incorporated into this Resolution by this reference, and constitute a material part hereof.

Section 2. Resolution No. 9012-10 is hereby rescinded and shall be deemed of no force and effect.

Section 3. That certain Health & Safety Code Section 33220 Agreement, dated September 14, 2010, by and between the City and the Former Agency authorizing the conveyance of real property located at 13501 Harbor Boulevard from the City to the Former Agency is hereby deemed rescinded and nullified and of no force and effect whatsoever.

Section 4. Assumption of the Lease by the City of Garden Grove is hereby approved and ratified, and the City Manager is hereby authorized to execute the Confirmation of Assignment and Assumption of Lease in the form attached to this Resolution as Exhibit "A" on behalf of the City.

Section 5. This Resolution shall be effective immediately upon adoption, subject to approval of the actions taken by the Successor Agency, pursuant to Resolution No. \_\_\_\_\_, concurrently adopted by the Successor Agency, by the Oversight Board and by the California Department of Finance, if applicable, pursuant to the Dissolution Act.

Section 6. The City Clerk shall certify to the adoption of this Resolution.

EXHIBIT A

CONFIRMATION OF ASSIGNMENT AND ASSUMPTION OF LEASE

This Confirmation of Assignment and Assumption of Lease ("Assignment") is intended to memorialize the mutual understanding of the City of Garden Grove as Successor Agency to the Garden Grove Agency for Community Development, a public body ("Successor Agency") and the City of Garden Grove, a municipal corporation ("City") with respect to that certain Service Station Lease, dated as of September 14, 2010 ("Lease"), between Garden Grove Agency for Community Development and Galaxy Oil Company, a California corporation ("Tenant"), for that certain parcel of real property commonly known as 13501 Harbor Boulevard, Garden Grove, CA 92843 (the "Property"). By execution of this Confirmation of Assignment, the Successor Agency and the City each acknowledge and agree as to the following facts:

1. Pursuant to Parts 1.8 and 1.85 of Division 24 of the California Health & Safety Code, added by Assembly Bill x1 26, chaptered and effective June 27, 2011, and amended by Assembly Bill 1484, chaptered and effective on June 27, 2012 (together, the "Dissolution Act"), as of February 1, 2012, the Garden Grove Agency for Community Development was dissolved and the City, as a separate legal entity and acting as the Successor Agency, serves as the legal successor to the Garden Grove Agency for Community Development.
2. The City owns fee title to the Property.
3. All rights and interests of the former Garden Grove Agency for Community Development and the Successor Agency in and to the Lease have been assigned to the City.
4. City has assumed all rights and obligations of "Landlord" under the Lease.
5. The foregoing was duly confirmed and ratified by the Successor Agency and the City pursuant to Successor Agency Resolution No. \_\_\_\_ and City Council Resolution No. \_\_\_\_, each adopted January 28, 2014.

*SIGNATURES ON FOLLOWING PAGE*

SUCCESSOR AGENCY

City of Garden Grove as Successor  
Agency to the Garden Grove  
Agency for Community  
Development, a public body

By: \_\_\_\_\_  
Name: Matthew J. Fertal  
Title: Director

Date:  
\_\_\_\_\_

CITY

City of Garden Grove, a municipal  
corporation

By: \_\_\_\_\_  
Name: Matthew J. Fertal  
Title: City Manager

Date:  
\_\_\_\_\_