

GARDEN GROVE CITY COUNCIL

RESOLUTION NO. 9173-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
IN SUPPORT OF A FINANCING CONCEPT FOR THE WATER PARK HOTEL PROJECT

WHEREAS, the Garden Grove Agency for Community Development and Garden Grove MXD, LLC (an affiliate of Developer), entered into that certain First Amended and Restated Disposition and Development Agreement dated April 13, 2010 ("DDA"), amending and restating in its entirety that certain Disposition and Development Agreement dated May 12, 2009;

WHEREAS, the development and operation of the Project is in the vital and best interest of the City and the welfare of its residents. The development and operation of the Project will result in substantial benefits to City, which includes (i) elimination of blight, (ii) job creation and enhanced revenues to City resulting from construction and operation of the Project, including property taxes, sales taxes, and transient occupancy taxes, and (iii) enhanced marketability that is likely to extend out-of-town leisure and convention visitors' lengths of stay in City as a result of additional attractions and high-quality retail shopping and dining opportunities;

WHEREAS, by virtue of California AB 1X 26 and AB 1484, various law suits throughout the State of California ("State"), State Department of Finance announcements and actions and certain other uncertainties, Developer's affiliate has been unable to proceed with the Project (as defined in the DDA) as a result of which several "force majeure" extensions to the timeline in the Scope of Development pursuant to Section 602 of the DDA are applicable;

WHEREAS, a comprehensive financing plan which takes into account all major issues, including funding availability, is necessary for the Project (the "Comprehensive Financing Plan"). City has worked carefully with Developer to ensure that sufficient funding can be obtained within the timeframe required. Attached as Exhibit A is a non-binding term sheet provided by Guggenheim outlining a portion of the financing structure for the Project among a joint powers authority to be formed by the City, the Developer and Guggenheim dated March 29, 2013 ("Term Sheet"); and

WHEREAS, the purpose of this Resolution is to affirm the City Council's support of the Comprehensive Financing Plan, including the aspect of the Comprehensive Financing Plan generally outlined in the Term Sheet, and give direction to staff with respect to the implementation of the City's potential participation in the Comprehensive Financing Plan.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Garden Grove that this Resolution reflects City's broad conceptual agreement to the general plan outlined in the Term Sheet and does not constitute a binding commitment to the terms contained in Term Sheet. Staff is hereby directed to implement the DDA

in accordance with its terms and to take steps to implement the Comprehensive Financing Plan as generally set forth in the Term Sheet.

Adopted this 9th day of April 2013.

ATTEST:

/s/ BRUCE A. BROADWATER
MAYOR

/s/ KATHLEEN BAILOR, CMC
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Resolution was duly adopted by the City Council of the City of Garden Grove, California, at a meeting held on the 9th day of April 2013, by the following vote:

AYES: COUNCIL MEMBERS: (5) BEARD, JONES, NGUYEN, PHAN, BROADWATER
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (0) NONE

/s/ KATHLEEN BAILOR, CMC
CITY CLERK

Exhibit A

Indicative Term Sheet

City of Garden Grove Great Wolf Resort Project ("Project") \$43,000,000* Bond Anticipation Notes

- Executive Summary**
- The Garden Grove Agency for Community Development (the "Redevelopment Agency") and Garden Grove MXD, LLC (the "Developer"), an entity created and controlled by McWhinney Holdings ("Sponsor") have entered into a Disposition and Development Agreement (the "DDA") related to a to be built 600-room hotel to be developed as a Great Wolf Resort Hotel (the "Project"). The City of Garden Grove (the "City") is wholly supportive of the Project and has also been working with the Developer to bring the Project to fruition.
 - The DDA, among other things, required a Project cost contribution from the Redevelopment Agency in an amount of \$47 million, \$42 million of which was to be delivered as set forth below.
 - Following the dissolution of redevelopment agencies pursuant to AB 1x26 and AB 1484 (the "Dissolution Acts"), the City, in its capacity as the Successor Agency to the Redevelopment Agency ("Successor Agency"), has sought and received a Final and Conclusive determination from the California Department of Finance ("DOF") that the DDA is an Enforceable Obligation, as that term is used in the Dissolution Acts.
 - The Sponsor has indicated that its various financing sources have required committed capital at the start of the construction of the Project. In order to achieve this objective, the City and the Sponsor have agreed to pursue a bond anticipation note transaction, as summarized below, that is intended to be taken out with the proceeds of a TAB, or, if and to extent proceeds are not available from the TAB, a Revenue Bond as described below.

The Bond Anticipation Notes

- Issuer**
- A JPA formed by the City (the "Issuer")
- Structure**
- Bond Anticipation Notes ("BANs")
 - [30] Month Term
 - Semi-annual interest payments
 - Principal due at maturity
 - Subject to the Issuer entering into an Agreement with Sponsor to fund the Issuer's capitalized interest obligation and assigning its rights under Sections 408, 408.1 and 408.2 of the DDA, capitalized interest shall be funded from the proceeds of the BANs, through the term of the BANs.

Indicative Term Sheet

City of Garden Grove – Great Wolf Resort Project

- BANs will not be subject to early optional redemption
- Tax-exempt, non-AMT
- Form of Offering**
 - Private placement by Guggenheim Securities LLC (“Guggenheim”) to affiliates of Guggenheim and/or investor clients of Guggenheim.
- Economic Terms**
 - Coupon and pricing structure would be determined at a time no earlier than 30 days from closing. An indicative rate in the current market is approximately 5%. The interest rate will be reflective on a non-investment grade credit issued as a private placement. The rate may also include an original issue discount.
 - Investor(s) shall retain the option, but not the obligation, to purchase a minimum of 50% of the Bonds, as defined below, at then market rates.
 - Guggenheim shall be obligated to acquire current Union Bank obligations on terms to be agreed upon.
- Uses of Funds**
 - Capitalized Interest in the full amount necessary to cover interest through BAN term
 - Costs of issuance including a private placement fee payable to Guggenheim of 1.5% of the par amount of the BANs
 - Balance of the proceeds going towards the project payment to be deposited into the Senior Lender construction fund (the “Construction Fund”).
- Issuance**
 - Issuance will occur concurrently with the funding of the balance of Sponsor’s construction loan.

Security for the BANs

- Security Provisions**
 - BANs will be secured by all funds on deposit with the Trustee, and the portion of the BAN proceeds deposited with the Senior Lender, both held for the benefit of the BANs
 - The “Project Conditions” as defined below
 - The “Issuer Commitments” as defined below
 - The “City Commitments”, as defined below
 - The “Sponsor Commitments” as defined below
 - The “Developer Commitments” as defined below
- The Project Conditions**
 - Moneys on deposit in the BANs construction fund will be held in trust until the tests for release have been met (the “Release Tests”) which would include the following:
 - The Developer is not in default under any of its other agreements, as certified by the Developer and its counsel
 - No mechanic liens exist on the property

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- The Project is compliance with all permits and other City and/or other governmental permits and conditions, as certified by the Developer and its counsel
 - An independent engineer, with obligations to the Issuer and/or the Senior Lender, certifies that the Construction Fund deposit amount represent the remaining funds required to complete the Project pursuant to plans and specifications. If the remaining Project costs are higher than the funds on deposit in the Construction Fund, the Developer will be required to deposit the short fall into the Construction Fund necessary to rebalance the Project funding. The additional deposit will be required to be used first in its entirety before the Construction Fund would be released.
 - The Project will have Guaranteed Maximum Price contract(s) by experienced and credit worthy, bonded contractor(s) before construction commences
 - At closing, the Developer and Sponsor will evidence the fully committed capital necessary to complete the Project which would include the amounts on deposit in the Construction Fund
- Successor Agency and City Commitments**
- If legally possible and marketable, thirty (30) days after the Developer and Sponsor receive a certificate of occupancy for the Project (the “**DDA Trigger**”), the Successor Agency will issue tax allocation bonds (the “**TABS**”) secured by Tax Increment/Trust Fund Payments in an amount (including customary reserves and costs) necessary to redeem the BANs.
- Issuer Commitment**
- If TABs are sold, the Issuer will use such proceeds to discharge the obligation under the BANs. If and to the extent the TABs are insufficient to fully discharge the BANs, the City will, subject to validation and marketability, issue revenue bonds (the “**Bonds**”) at market rates at the time of issuance in an amount sufficient to repay the BANs, when due, pursuant to their terms. The Bonds will be secured by the Measured General Fund Payments, as defined and described below.
 - The proceeds of the TABs will be delivered to the Issuer who, in turn, will use the proceeds to repay the BANs.
 - In the event Bonds are issued, the City will pay, subject to annual appropriation from the City’s General Fund, an amount each year equal to the lesser of (i) annual debt service on the Bonds less the annual amount received in debt service payments on the TABs and (ii) the amount of taxes levied on the Project and collected by the City (such amounts include hotel and occupancy taxes). Above amounts are defined as “**Measured General Fund Payments.**” This transaction will require an opinion of counsel which opinion will be based on a validation judgment if such judgment is achieved. In such event, the Issuer will assign its right under Sections 408, 408.1, and 408.2 of the DDA to the City.

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Developer Commitments

- Developer pledges all of its rights under the DDA to the Trustee as security for the BANS. Such pledge is released when the BANS have been redeemed in their entirety, pursuant to their terms.
- The Developer acknowledges that it will not seek to receive any of the proceeds of the TABS or the Bonds and that such proceeds by the Issuer to the City when received will be used to redeem the BANS or pledged to the City.

Sponsor Commitments

- The Sponsor will enter into a contractual agreement with the BAN owner(s) committing itself to purchase the BANS from the owner(s) in an amount necessary to redeem the BANS in their entirety, pursuant to their terms, in the event the Developer has failed to achieve the DDA Trigger prior to the maturity date of the BANS. The Issuer and City will expressly be made Third Party Beneficiaries of such agreement.
- The Sponsor will provide evidence of its continued ability to make such a purchase to the owner(s), City and Issuer.

Default

- If the BANS are not redeemed in their entirety pursuant to their terms at maturity, it is a default.
- If a default is declared, a default rate will apply at a level TBD on the unpaid balance and continue to accrue at such rate until paid. The obligor in such event is TBD.
- Trustee would seek to pursue all other remedies under the BAN indenture.

Conditions Precedent

- Legal documentation
- Validation and unqualified legal opinion from Bond Counsel on the transaction including its exemption from state and federal taxes and exemption from the alternative minimum tax
- Other customary closing certificates and documents
- Agreement as to the Economic Terms and "TBD" terms

IMPORTANT INFORMATION

This Term Sheet is for discussion purposes only. This Term Sheet is not meant to be a commitment, nor shall it be construed as an offer or commitment of Guggenheim Securities or any of its affiliates to enter into a transaction or an acceptance of such offer by the City, Successor Agency, Issuer, Sponsor or Developer. Moreover, it does not attempt to describe all terms and conditions of a transaction, nor does it suggest the phrasing of document clauses. Instead, it is intended to outline certain basic business terms around which a transaction could be structured. Any subsequent commitment of Guggenheim Securities or any of its affiliates will be subject to further discussion, full due diligence and delivery of all documentation, legal opinions, certifications and warranties and other materials usual and customary for like transactions and market conditions at the time.