

RESOLUTION NO. SA-16-

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION APPROVING THE LETTER AGREEMENT REGARDING THE FORMER SPECIFIC PLATING SITE LOCATED AT 1350 SOUTH EASTERN AVENUE, COMMERCE, CA 90040

WHEREAS, the Successor Agency is currently involved in litigation against Mayans Development, Inc. ("Mayans") and Los Jardines, a Nevada LLC ("Los Jardines"). The litigation revolves around an Owner Participation Agreement ("OPA") between the Successor Agency's predecessor – the Commerce Community Development Commission – and Mayans. Pursuant to the OPA, the Commission sought to transfer property to Mayans for purposes of developing low income housing. Mayans never took ownership of the property and never developed low income housing. The Successor Agency did not learn of these facts until much later; and

WHEREAS, in 2011, the Department of Toxic Substances Control ("DTSC") discovered contamination on the Former Specific Plating Site located at 1350 South Eastern Avenue, Commerce, CA 90040 ("the Site"). The Site was part of the property subject to the OPA; and

WHEREAS, following the discovery of contamination, the parties discussed responsibility for the clean-up, whereupon the Commission became aware of numerous concerning facts following the OPA. The parties could not reach an agreement for several reasons, and Mayans and Los Jardines sued the Commission and the Successor Agency. The Successor Agency filed a cross-complaint on several grounds, including breaches of the OPA; and

WHEREAS, the litigation has numerous aspects to it, one of which pertains to ownership of the Site, among other properties in the City. The Successor Agency claims that it owns the properties purportedly transferred pursuant to the OPA because the transfers were invalid at their inception; and

WHEREAS, the parties went to trial in the first phase of the case and the Successor Agency prevailed. In its decision, the Court agreed that Mayans breached the OPA and that neither it nor Los Jardines took ownership of the properties (including the Site). This ruling will be instrumental in the Successor Agency's effort to perfect its ownership claim through a cause of action for quiet title. Mayans and Los Jardines deny the Successor Agency's claims. Thus, there is a pending dispute regarding ownership of the underlying properties; and

WHEREAS, nevertheless, the contamination on the Site has not yet been investigated or remediated. The DTSC did not press the clean-up because of the

ongoing dispute. However, now that Successor Agency was successful in the first phase of the case, it has been willing to proceed with preliminary investigations and has cooperated with the DTSC in that effort. Proceeding with the investigation and remediation is complicated by the fact that Mayans and Los Jardines also claim that they own the property. Without an access agreement, Mayans or Los Jardines could allege that Successor Agency is trespassing or violating some other right; and

WHEREAS, in order to proceed with the environmental investigations in consideration of the ownership dispute, the Successor Agency has reached an agreement with Mayans and Los Jardines to allow the Successor Agency, its consultants, and the DTSC on the Site for purposes of investigation and remediation. The agreement contains provisions that the Successor Agency is not waiving any rights with regard to the litigation. The sole purpose of the agreement is to secure the Site and allow investigation and remediation to proceed despite the ongoing ownership dispute.

NOW, THEREFORE, THE SUCCESSION AGENCY DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The Letter Agreement regarding the Former Specific Plating Site located at 1350 South Eastern Avenue, Commerce, CA 90040, is hereby approved. The Successor Agency Chairperson is authorized to execute the Agreement for and on behalf of the Successor Agency.

Section 2. Successor Agency staff is directed to submit this Resolution to the Oversight Board for the Successor Agency for its review and consideration.

PASSED, APPROVED AND ADOPTED this 18th day of October 2016.

Ivan Altamirano, Chairperson

ATTEST:

Lena Shumway
Secretary