

AGENDA

OVERSIGHT BOARD MEETING

FONTANA REDEVELOPMENT SUCCESSOR AGENCY

FRIDAY, AUGUST 19, 2016
8:30 A.M.

Fontana City Hall
Executive Conference Room
8353 Sierra Avenue
Fontana, CA 92335

EVELYNE SSENKOLOTO, Chair
City of Fontana
Employee Appointment

ACQUANETTA WARREN, Vice-Chair
City of Fontana
Mayor Appointment

RANDAL S. BASSETT
Fontana Unified School District
County Superintendent of Education Appointment

DR. ERIC BISHOP
Chaffey College District
Chaffey College Appointment

LAURA A. MANCHA
County of San Bernardino
Board of Supervisors Appointment
Public Member Appointment

KATHRYN BRANN
County of San Bernardino
Board of Supervisors Appointment

JOHN B. ROBERTS
City of Fontana
Fontana Fire Protection District Appointment

In compliance with the Americans with Disabilities Act, the City of Fontana is wheelchair accessible. If other special Assistance is required, please contact the Fontana City Clerk's Office (909-350-7602) 48 hours prior to the scheduled meeting so the Oversight Board can make reasonable arrangements.

CITY OF FONTANA
OVERSIGHT BOARD MEETING/FONTANA SUCCESSOR AGENCY
August 19, 2016
City Hall - Executive Conference Room
8353 Sierra Avenue
Fontana, CA 92335
8:30 AM

Welcome to a meeting of the Fontana Oversight Board. A complete agenda packet is located in the binder on the table in the City Hall Executive Conference Room, 8353 Sierra Avenue, Fontana, CA 92335. To address the Board, please fill out a card located at the entrance to the left indicating your desire to speak on either a specific agenda item or under Public Communications and give it to the Board Secretary. Your name will be called when it is your turn to speak. In compliance with Americans with Disabilities Act, the Executive Conference Room, 8353 Sierra Avenue, Fontana, CA 92335 is wheel chair accessible and a portable microphone is available.

Traducion en Espanol disponible a peticion. Favor de notificar al Departamento "City Clerk". Para mayor informacion, favor de marcar el numero (909) 350-7602.

CALL TO ORDER/ROLL CALL:

A. 8:30 A.M Call the Meeting to Order

PUBLIC COMMUNICATIONS:

This is an opportunity for citizens to speak to the Oversight Board for up to 5 minutes on items not on the Agenda, but within the Board's jurisdiction. The Board is prohibited by law from discussing or taking immediate action on non-agendized items.

A. Public Communications

CONSENT CALENDAR:

All matters listed under CONSENT CALENDAR will be enacted by one motion in the form listed below - there will be no separate discussion on these items prior to the time the Board votes on them, unless a member of the Board requests a specific

item be removed from the Consent Calendar for discussion. **Does any member of the public wish to address the Board regarding any item on the Consent Calendar before the vote is taken?**

A. Approval of Minutes

Approve the minutes of the January 22, 2016 Oversight Board Meeting.

B. Assignment of Building Lease – 16897 Arrow Boulevard

Adopt **Resolution No. FOB 2016-_____** approving an Assignment of Building Lease (Charleys Tastee Shoppe) for 16867 Arrow Boulevard to the City of Fontana.

Approve Consent Calendar Item(s).

BOARD MEMBER REPORTS:

A. Board Member Reports

STAFF COMMUNICATIONS:

A. Staff Communications

ADJOURNMENT:

A. Adjournment

**MINUTES OF THE OVERSIGHT BOARD
FONTANA REDEVELOPMENT SUCCESSOR AGENCY
FRIDAY, JANUARY 22, 2016**

CALL TO ORDER/ROLL CALL:

The Meeting of the Oversight Board, Fontana Redevelopment Successor Agency, was called to order at 8:35 a.m., which was held on Friday, January 22, 2016, in the Fontana City Hall, Executive Conference Room, 8353 Sierra Avenue, Fontana, California.

OSB Members Present: Chair Evelyne Ssenkoloto, OSB Members John Roberts, Dr. Eric Bishop, Laura Mancha, and Kathryn Brann

OSB Members Absent: Vice-Chair Acquanetta Warren and OSB Member Randal S. Bassett

OSB Staff Present: Ken Hunt, City Manager; David Edgar, Deputy City Manager, Administrative Services; Cecilia Lopez-Henderson, Deputy City Clerk; Kim Solorio, Administrative Clerk

PUBLIC COMMUNICATIONS: There were no public communications received.

CONSENT ITEMS (A-B):

A. APPROVAL OF MINUTES FOR SEPTEMBER 18, 2015, FONTANA OVERSIGHT BOARD MEETING

ACTION: Motion was made by OSB Member Bishop, and seconded by OSB Member Roberts to approve the September 18, 2015, Minutes of the Oversight Board Meeting, Fontana Redevelopment Successor Agency, and passed by a vote of 4-0-2-1 (AYES: OSB Members Ssenkoloto, Roberts, Bishop and Brann; NOES: 0; ABSENT: OSB Members Warren and Bassett; ABSTAIN: OSB Member Mancha).

B. RESOLUTION APPROVING RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS) 16-17 FROM JULY 1, 2016 THROUGH JUNE 30, 2016

1. Adopt **Resolution No. FOB 2016-001** by the Oversight Board for Successor Agency to the Fontana Redevelopment Agency approving a Recognized Obligation Payment Schedule pursuant to Health and Safety Code Sections 34177(l) and (o) for July 1, 2016, through June 30, 2017;

2. Determine that this action is exempt from the California Environmental Quality Act (CEQA), and direct staff to file a Notice of Exemption.

Lisa Strong, Management Services Director, presented a staff report on the Recognized Obligation Payment Schedule (ROPS 16-17), and outlined the items contained in the report. Ms. Strong noted it was required to submit an annual ROPS instead of a six months ROPS, and that no new items had been added.

ACTION: Motion was made by OSB Member Brann, and seconded by OSB Member Mancha and passed by a vote of 5-0-2-0 to approve Consent Calendar Item "CC-B" (AYES: OSB Members Ssenkoloto, Roberts, Bishop, Mancha and Brann; NOES: 0; ABSENT: OSB Members Warren and Bassett; ABSTAIN: 0).

STAFF/BOARD MEMBER COMMUNICATION:

OSB Member Brann inquired about the new redevelopment legislation. David Edgar, Deputy City Manager, noted that at the request of the City Manager the City had performed an analysis and determined the legislation did not benefit the City.

ADJOURNMENT:

Chair Ssenkoloto announced that the next Fontana Oversight Board Meeting would be held on a date to be determined in the Fontana City Hall, Executive Conference Room, located at 8353 Sierra Avenue, Fontana, CA 92335. The OSB Meeting was adjourned at 8:45 a.m.

John Roberts
Secretary

Evelyne Ssenkoloto
Chair

ACTION REPORT
August 19, 2016

FROM: Department of Administrative Services
SUBJECT: Assignment of Building Lease – 16897 Arrow Boulevard

RECOMMENDATION:

Adopt **Resolution No. FOB 2016-** _____ approving an Assignment of Building Lease (Charleys Tastee Shoppe) for 16867 Arrow Boulevard to the City of Fontana.

COMMITTEE GOALS:

- * To promote economic development by concentrating on job creation.
- * To promote economic development by pursuing business retention, expansion and attraction.
- * To promote economic development by establishing a quick, consistent development process.

DISCUSSION:

The City of Fontana currently owns the property and building located at 16867 Arrow Boulevard in Downtown Fontana. Since June, 2009 that property and building has been leased to Myeongae Han Joung, for the operation and management of Charley's Tastee Freeze.

The property and building lease agreement were, however, erroneously entered into by the former Fontana Redevelopment Agency. The Redevelopment Agency did not own the property/building at the time of execution of the Lease and has not at any time subsequently owned the property or building. Instead, the property has been continuously owned by the City for the entire term of the Lease, with the City serving as landlord for the Property.

Subsequent to dissolution of the Fontana Redevelopment Agency (on February 1, 2012) the Redevelopment Agency's interest in the Lease Agreement was automatically transferred to the Successor Agency to the Fontana Redevelopment Agency.

As part of their responsibilities to "wind-down" the former Fontana Redevelopment Agency, the Successor Agency must now resolve the error and correct the lease agreement. To that end, and by adoption of the proposed Assignment of Building Lease Resolution, the Successor Agency and City of Fontana would mutually agree to assign (i.e. transfer) the Lease Agreement with Charley's Tastee Freeze to the City of Fontana.

The terms of the Lease Agreement will remain virtually the same. The only proposed change is transferring the Lease Agreement from the Successor Agency to the City

Oversight Board Meeting/Fontana Successor Agency - August 19, 2016
of Fontana.

On Tuesday, July 26th the Successor Agency and City Council each adopted resolutions approving the Assignment to Building Lease Agreement. In order to become effective, however, the Assignment of Building Lease Assignment must also be considered and approved by the Fontana Oversight Board, following which it will be submitted to the State Department of Finance for their review, consideration and approval.

Adoption of the attached Resolution by the Fontana Oversight Board will facilitate the transfer of the building lease for the property located at 16867 Arrow Blvd. (Charley's Tastee Freeze) from the former Fontana Redevelopment Agency to the City of Fontana.

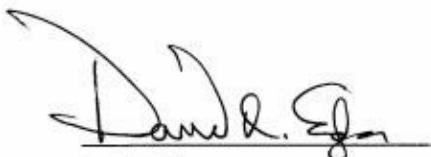
FISCAL IMPACT:

None.

MOTION:

Approve staff recommendation.

SUBMITTED BY:



David R. Edgar
Deputy City Manager

APPROVED BY:



Kenneth R. Hunt
City Manager

ATTACHMENTS:

Description:	Type:
Oversight Board Resolution	Resolution
Assignment of Building Lease	Backup Material

ITEM: CC-B

RESOLUTION NO. FOB 2016-

**A RESOLUTION OF THE OVERSIGHT BOARD TO THE
SUCCESSOR AGENCY TO THE FONTANA REDEVELOPMENT
AGENCY APPROVING AN ASSIGNMENT OF BUILDING
LEASE (CHARLEYS TASTEE SHOPPE) FOR 16867 ARROW
BOULEVARD**

WHEREAS, the City of Fontana, a California municipal corporation ("City"), is the owner of that certain real property, including a commercial building, located at 16867 Arrow Boulevard in the City of Fontana, California ("Property"); and

WHEREAS, Myeongae Han Joung, an individual ("Tenant") is presently occupying the Property pursuant to that certain Building Lease, dated June 16, 2009, by and between the former Fontana Redevelopment Agency ("Agency") and Tenant ("Lease"); and

WHEREAS, the Lease was erroneously entered into by the former Fontana Redevelopment Agency ("Redevelopment Agency"), as the Redevelopment Agency did not own the Property at the time of execution of the Lease and has not at any time subsequently owned the Property; and

WHEREAS, the Property has been continuously owned by the City for the entire term of the Lease and, for the entire term of the Lease, the City has served as the sole landlord to the Property, and has assumed all rights, liabilities and obligations of the Lease and the Property; and

WHEREAS, throughout the lease term all rent has been paid to and received by the City and all maintenance and other obligations of a landlord have been performed by the City; and

WHEREAS, the Redevelopment Agency was dissolved pursuant to Part 1.85 of Division 24 of the Health and Safety Code ("Dissolution Law") on February 1, 2012, and the Redevelopment Agency's interest in the Lease was automatically transferred to the Successor Agency to the Fontana Redevelopment Agency ("Successor Agency"); and

WHEREAS, the Successor Agency is responsible for the wind-down of the Redevelopment Agency and, upon the Redevelopment Agency's dissolution, the Successor Agency discovered that the Redevelopment Agency does not have any rights or interest in the Land or the Building, and had erroneously executed the Lease; and

WHEREAS, to facilitate the wind-down of the Redevelopment Agency, the Successor Agency and City agree for the Successor Agency to assign and the City to assume all rights and obligations of the Successor Agency as set forth in the Lease and, to this purpose, have prepared an Assignment of Building Lease (Charley's Tastee Shoppe) ("Assignment"), a copy of which is attached hereto as Exhibit A and incorporated herein by this reference.

WHEREAS, the Successor Agency Board approved the assignment at its meeting on July 26, 2016.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board to the Successor Agency to the Fontana Redevelopment Agency, as follows:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. CEQA. The approval of the Assignment through this Resolution does not commit the Successor Agency or the Oversight Board to any action that may have a significant effect on the environment. As a result, such action does not constitute a project subject to the requirements of the California Environmental Quality Act.

Section 3. Approval of Assignment of Building Lease. The Oversight Board to the Successor Agency approves the Assignment in substantially the form attached to this Resolution as Exhibit A.

Section 4. Implementation; Transmittal to Oversight Board. The City Manager, on behalf of the Successor Agency, is authorized to execute the Assignment and to take any other actions reasonably necessary or desirable to carry out the purposes of this Resolution and the Assignment including, without limitation, transmittal of the Assignment to the California Department of Finance.

Section 5. Severability. If any provision of this Resolution is held invalid, the remainder of this Resolution shall not be affected by such invalidity, and the provisions of this Resolution are severable.

Section 6. Certification. The City Clerk, on behalf of the Successor Agency, shall certify to the adoption of this Resolution.

Section 7. Effective Date. This Resolution shall become effective 5 days following submission to the Department of Finance or upon the running of the time pursuant to statute for the Department of Finance to review this Oversight Board action.

APPROVED and ADOPTED this 19th day of August, 2016.

Evelyne Ssenkoloto, Chairperson
Oversight Board of the Successor Agency to the
Fontana Redevelopment Agency

ATTEST:

John Roberts, Secretary
Oversight Board of the Successor Agency to the
Fontana Redevelopment Agency

I, John Roberts, acting as the Secretary of the Oversight Board of the Successor Agency to the Fontana Redevelopment Agency, do hereby certify that the foregoing Resolution is the actual Resolution duly and regularly adopted by the Oversight Board of the Successor Agency to the Fontana Redevelopment Agency at a regular meeting on the 19th day of August, 2016, by the following vote to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

John Roberts, Oversight Board Secretary

EXHIBIT A

ASSIGNMENT OF BUILDING LEASE
(Charley's Tastee Shoppe)

[Attached behind this cover page]

ASSIGNMENT OF BUILDING LEASE
(Charleys Tastee Shoppe)

THIS ASSIGNMENT AGREEMENT (Charleys Tastee Shoppe) (“Assignment”), is entered into as of July, 2016, for reference purposes only, by and between SUCCESSOR AGENCY TO THE FONTANA REDEVELOPMENT AGENCY, a public entity (“Assignor”), and CITY OF FONTANA, a California municipal corporation (“Assignee”).

RECITALS

A. Assignee is the owner of that certain real property in the City of Fontana, County of San Bernardino, State of California, as further described or depicted in Exhibit A attached to this Assignment (“Land”), which is currently improved with a commercial building commonly known as 16867 Arrow Boulevard, Fontana, California (“Building”).

B. Myeongae Han Joung, an individual (“Tenant”) is presently occupying the Building pursuant to that certain Building Lease, dated June 16, 2009, by and between the former Fontana Redevelopment Agency (“Agency”) and Tenant (“Lease”).

C. The Lease was erroneously entered into by Agency, as Agency did not own the Land or the Building at the time of execution of the Lease and has not subsequently owned the Land or the Building.

D. The Land and the Building have been continuously owned by Assignee for the entire term of the Lease. For the entire term of the Lease, Assignee has served as the sole landlord to the Land and Building, and has assumed all rights, liabilities and obligations of the Lease, the Land and the Building.

E. The Agency was dissolved pursuant to Part 1.85 of Division 24 of the Health and Safety Code (“Dissolution Law”) on February 1, 2012, and Agency’s interest in the Lease was transferred to the Assignor, as the successor entity to the Agency. However, upon Agency’s dissolution, Assignor discovered that Agency does not have any rights or interest in the Land or the Building, and had erroneously executed the Lease.

F. Assignor now wishes to assign and Assignee wishes to assume all of Assignor’s rights, duties, obligations and liabilities under the Lease upon the terms and conditions stated herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

TERMS

1. Incorporation of Recitals. The recitals of fact set forth above are true and correct and are incorporated into this Assignment, in their entirety, by this reference.

2. **Effective Date.** The “**Effective Date**” shall be the first date on which all of the following have occurred: (i) this Assignment is approved by Assignor’s governing body; (ii) this Assignment is approved by Assignee’s governing body; (iii) this Assignment is approved by the Oversight Board to Assignor; and (iv) the action of the Oversight Board has been approved by the California Department of Finance or the time for the Department of Finance to object to the action of the Oversight Board has passed.

3. **Assignment.** As of the Effective Date, Assignor assigns to Assignee all of Assignor’s rights and obligations under the Lease.

4. **Assumption.** As of the Effective Date, Assignee assumes from Assignor all of Assignor’s rights and obligations under the Lease, and agrees to perform the entirety of Assignor’s covenants, agreements, obligations and duties under the Lease, as if Assignee were the original Landlord to the Lease, as such term is defined in the Lease.

5. **Releases of Liability.**

5.1 Assignee, on behalf of itself, its successors and assigns, releases, discharges and holds harmless Assignor and its officials, officers, employees and agents from any and all debts, claims, demands, liabilities, obligations or causes of action, whether known or unknown, incurred in connection with the Lease.

5.2 The releases contained in this Section 5 extends to any and all claims, whether or not claimed or suspected by either Assignor or Assignee, and constitute a waiver of the application of each and all of the provisions of California Civil Code Section 1542, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Assignee’s Representative Initials

5.3 Assignee expressly understands and acknowledges that the facts with respect to which the releases contained in this Section 5 are given may subsequently turn out to be other than or different from the facts in that connection now known or believed to be true by either Party and Assignee expressly assumes the risk of the facts turning out to be so different, and agrees that the releases contained in this Section 5 shall be in all respects effective and not subject to termination or rescission by reason of any such difference in facts. Assignee further understands and acknowledges the significance and the consequence of such a specific waiver of unknown claims and Assignee assumes full responsibility for any injuries, damages, losses or liabilities that it may incur in the future as a result of the releases contained in this Section 5 of said unknown claims.

6. **Notice of Assignment.** Assignor shall notify Tenant of this Assignment within five (5) days of the Effective Date.

7. Consent of Leasehold Mortgagees. In accordance with Section 8.6 of the Lease, Assignor shall obtain the written consent of any Leasehold Mortgagees, if any, as such term is defined in Section 8.1 of the Lease. Such consent shall be in substantially the form of the Leasehold Mortgagee Consent Form attached hereto as Exhibit B and incorporated herein by this reference. This Assignment shall not be binding on any Leasehold Mortgagee or its successors or assigns unless and until Assignor has obtained the written consent of that Leasehold Mortgagee.

8. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, together, shall constitute one and the same instrument.

9. Binding on Successors and Assigns. This Assignment shall be binding on and inure to the benefit of the Parties and their respective successors and assigns.

10. Severability. If any term or provision or portion of any term or provision of this Assignment or the application of any such term or provision or portion of such term or provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Assignment, or the application of such term or provision or portion of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Assignment shall be valid and enforced to the fullest extent permitted by law.

11. No Intended Third Party Beneficiaries. The Parties do not intend to create any rights for, in favor of or on behalf of any person or entity by entering into this Assignment, other than the Parties themselves.

12. Entire Agreement. This Assignment contains the entire agreement of the Assignor and Assignee concerning the subject matter of this Assignment, and supersedes any prior written or oral agreements between the Assignor and Assignee concerning the subject matter of this Assignment. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties concerning the subject matter of this Assignment that are not fully expressed in this Assignment.

13. Amendment. This Assignment may not be amended or altered, except by a written instrument executed by both of the parties.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the day and year first written above.

ASSIGNOR

SUCCESSOR AGENCY TO FONTANA
REDEVELOPMENT AGENCY, a public entity

By: _____
Executive Director

Attest:

By: _____
City Clerk

Approved as to form:

By: _____
General Counsel

ASSIGNEE

CITY OF FONTANA, a California municipal corporation

By: _____
City Manager

Attest:

By: _____
City Clerk

Approved as to form:

By: _____
City Attorney

EXHIBIT A
TO
ASSIGNMENT OF GROUND LEASE
(Charleys Tastee Shoppe)

LEGAL DESCRIPTION

EXHIBIT B
TO
ASSIGNMENT OF GROUND LEASE
(Charleys Tastee Shoppe)

LEASEHOLD MORTGAGEE CONSENT FORM

[Attached behind this cover page]

LEASEHOLD MORTGAGEE CONSENT FORM

The undersigned, on behalf of [INSERT LEASEHOLD MORTGAGEE], a [INSERT TYPE OF ENTITY], as a Leasehold Mortgagee to that certain Building Lease (Charleys Tastee Shoppe) ("Lease"), hereby consents to the assignment of the Successor Agency to the Fontana Redevelopment Agency's ("Agency") interest as Landlord under the Lease to the City of Fontana ("City"). We acknowledge and agree that we have received a copy of the Assignment of the Lease, executed by and between Agency and City, which releases Agency from all obligations under the Lease. As of the date set forth below, we acknowledge and agree that any reference to the "Landlord" in the Lease shall hereinafter mean and refer to City.

Date: _____

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____