

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

INTER-DEPARTMENT MEMORANDUM

| | | | | |
|----------|---------------------------------------------------------------------------------------------------------------------------------------|-------|-------------------|--------------------|
| To: | Matthew J. Fertal | From: | William E. Murray | |
| Dept: | Director | Dept: | Public Works | |
| Subject: | ADOPTION OF A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH TAIT & ASSOCIATES, INC., FOR SURVEYING AND MAPPING SERVICES | | Date: | September 25, 2013 |

OBJECTIVE

The purpose of this report is to request that the Oversight Board of the City of Garden Grove as Successor Agency to the Garden Grove Agency for Community Development ("Oversight Board") adopt a resolution approving a Professional Services Agreement with Tait & Associates, Inc., ("Consultant") for surveying and mapping services for the Waterpark Hotel Project ("Project").

BACKGROUND/DISCUSSION

On May 12, 2009, the Garden Grove Agency for Community Development ("Former Agency") and Garden Grove MXD, LLC, ("Developer") entered into a Disposition and Development Agreement and a subsequent First Amended and Restated Disposition and Development Agreement on April 13, 2010 (together, "DDA") establishing the terms and conditions for the disposition of property to the Developer for the development of a waterpark hotel. The Former Agency has since been dissolved and the Successor Agency is responsible with administering the enforceable obligations of the Former Agency. On February 6, 2013, the State of California Department of Finance ("DOF") provided written confirmation to the Successor Agency of its final and conclusive determination that the DDA is an enforceable obligation pursuant to Health and Safety Code Section 34177.5(i).

Pursuant to Exhibit C entitled "Scope of Development" of the DDA, the Successor Agency is obligated to pay for the preparation and processing of a Tentative Parcel Map and Final Parcel Map for the property. On October 2009, the Former Agency entered into a professional services agreement with the Consultant to initiate the obligations set forth in the DDA. The Parcel Map has been submitted by the Consultant to Orange County Public Works Department ("County") and the City's Engineering Division ("Engineering") for review and plan check. The Consultant is making revisions to the Parcel Map based on comments received from the County.

APPROVAL OF THE PROFESSIONAL SERVICES AGREEMENT WITH TAIT &
ASSOCIATES, INC., FOR SURVEYING AND MAPPING SERVICES

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The initial contract sum has been spent and a new agreement is required for the Consultant to complete revisions required by the County and Engineering.

On September 24, 2013, the Successor Agency Board approved the Professional Services Agreement with Tait & Associates, Inc., and transmitted the request to enter into the contract to the Oversight Board for approval.

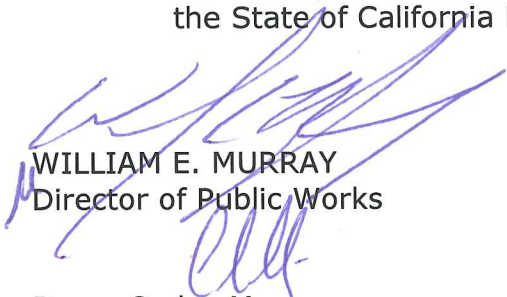
FINANCIAL IMPACT

Costs for surveying and mapping expenditures will be paid from Successor Agency funds.

RECOMMENDATION

Staff recommends that the Oversight Board:

- Adopt the attached resolution approving the Professional Services Agreement with Tait & Associates, Inc.; and
- Authorize the Director to transmit the Professional Services Agreement to the State of California Department of Finance.

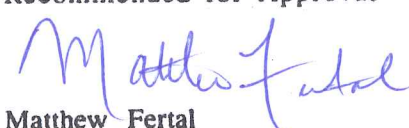

WILLIAM E. MURRAY
Director of Public Works

By: Carlos Marquez
Senior Real Property Agent

Attachment 1: Resolution

Attachment 2: Professional Services Agreement

Recommended for Approval


Matthew Feral
Director

OVERSIGHT BOARD

RESOLUTION NO. _____

A RESOLUTION OF THE OVERSIGHT BOARD OF THE CITY OF GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT APPROVING AND RATIFYING THE APPROVAL BY THE SUCCESSOR AGENCY OF A PROFESSIONAL SERVICES AGREEMENT WITH TAIT & ASSOCIATES FOR SURVEYING AND MAPPING SERVICES FOR THE WATERPARK PROJECT AND AUTHORIZING CERTAIN ACTIONS IN CONNECTION THEREWITH

WHEREAS, the Garden Grove Agency for Community Development, ("Agency") a redevelopment agency formerly existing under Chapter 2 of the Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*), acquired certain real property located at 12601 Leda Lane, 12602 Leda Lane, 12581 Harbor Boulevard, 12591 Harbor Boulevard, 12625 Harbor Boulevard, and 12721 Harbor Boulevard, located in the city of Garden Grove, (the "Property") for redevelopment purposes;

WHEREAS, the Agency and Garden Grove MXD, LLC, a Colorado corporation ("Developer"), entered into a Disposition and Development Agreement on May 12, 2009, and a subsequent First Amended and Restated Disposition and Development Agreement on April 13, 2010 (together, "DDA") establishing the terms and conditions for the disposition of the Property to the Developer and the development of a water park hotel project;

WHEREAS, pursuant to ABX1-26 and the State of California Supreme Court decision in *California Redevelopment Association vs. Matosantos*, redevelopment agencies in California, including the Agency, were dissolved as of February 1, 2012;

WHEREAS, pursuant to the provisions of ABX1-26, including but not limited to Health and Safety Code Section 34173, the City of Garden Grove as Successor Agency to the Garden Grove Agency for Community Development ("Successor Agency") is the successor entity to the Agency;

WHEREAS, on February 6, 2013, the State of California Department of Finance provided written confirmation to the Successor Agency of its final and conclusive determination that the DDA is an enforceable obligation pursuant to Health and Safety Code Section 34177.5(i);

WHEREAS, pursuant to the DDA (see Section I (E) of Exhibit C), the Successor Agency is obligated to pay for the preparation and processing of a tentative subdivision map and final subdivision map for the Property;

WHEREAS, the Successor Agency desires to utilize the services of Tait & Associates, Inc., to furnish all labor, materials, and equipment to prepare and process the final subdivision map for the Property pursuant to the DDA;

WHEREAS, the Successor Agency is authorized to enter into this Agreement pursuant to ABX1-26 and Successor Agency Resolution No. 1-12, adopted February 14, 2012.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF 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 re-affirms that the DDA is an "enforceable obligation" within the meaning of Health and Safety Code Sections 34167(d)(5) and 34171(d)(1)(E).

Section 3. The Oversight Board hereby approves the Professional Services Agreement with Tait & Associates, Inc., for surveying and mapping services for the Waterpark Project in furtherance of Section I (E) of Exhibit C of the DDA.

Section 4. This Resolution shall be effective immediately upon adoption.

Section 5. The Secretary on behalf of the Oversight Board shall certify to the adoption of this Resolution.

PROFESSIONAL SERVICES AGREEMENT
Tait & Associates, Inc.

THIS AGREEMENT is made this 18 day of JULY, 2013, by and between the **CITY OF GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a public body, corporate and politic (the "SUCCESSOR AGENCY"), and **TAIT & ASSOCIATES, INC.** here in after referred to as "CONTRACTOR".

RECITALS

- A. The Garden Grove Agency for Community Development, ("Agency") a redevelopment agency formerly existing under Chapter 2 of the Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*), acquired certain real property located at 12601 Leda Lane, 12602 Leda Lane, 12581 Harbor Boulevard, 12591 Harbor Boulevard, 12625 Harbor Boulevard, and 12721 Harbor Boulevard, located in the City of Garden Grove, (the "Property") for redevelopment purposes.
- B. The Agency and Garden Grove MXD, LLC, a Colorado corporation ("Developer"), entered into a Disposition and Development Agreement on May 12, 2009 and a subsequent First Amended and Restated Disposition and Development Agreement on April 13, 2010 (together, "DDA") establishing the terms and conditions for the disposition of the Property to the Developer and the development of a water park hotel project.
- C. Pursuant to ABX1-26 and the State of California Supreme Court decision in *California Redevelopment Association vs. Matosantos*, redevelopment agencies in California, including the Agency, were dissolved as of February 1, 2012.
- D. Pursuant to the provisions of ABX1-26, including but not limited to Health and Safety Code Section 34173, the SUCCESSOR AGENCY is the successor entity to the Agency.
- E. On or about February 6, 2013, the State of California Department of Finance provided written confirmation to the Successor Agency of its final and conclusive determination that the DDA is an enforceable obligation pursuant to Health and Safety Code Section 34177.5(i).
- F. Pursuant to the DDA (*see* Section I (E) of Exhibit C), the SUCCESSOR AGENCY is obligated to pay for the preparation and processing of a tentative subdivision map and final subdivision map for the Property.
- G. SUCCESSOR AGENCY desires to utilize the services of CONTRACTOR to furnish all labor, materials, and equipment to prepare and process the final subdivision map for the Property pursuant to the DDA.
- H. SUCCESSOR AGENCY is authorized to enter into this Agreement pursuant to ABX1-26 and SUCCESSOR AGENCY Board Resolution No. 1-12, adopted February 14, 2012.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term and Termination.** The term of the agreement shall be for a period of one (1) year from full execution of the agreement. SUCCESSOR AGENCY will compensate CONTRACTOR for work performed to date in accordance with the fee schedule ("Fee Schedule") as set forth in

Attachment "A", attached hereto and incorporated herein by reference. Contractor is required to present evidence to support performed work completion.

2. **Services to be Provided.** The services to be performed by CONTRACTOR shall consist of tasks as set forth in the Proposal as set forth in Attachment "B," attached hereto and incorporated herein by reference. The Proposal and this Agreement do not guarantee any specific amount of work. CONTRACTOR shall not commence any work until it receives a written notice to proceed from SUCCESSOR AGENCY.
3. **Compensation.** CONTRACTOR shall be compensated as follows:
 - 3.1 **Amount.** Total Compensation under this agreement shall not exceed the amount of Twenty-Five Thousand Dollars (\$25,000), payable in arrears and in accordance with the Proposal.
 - 3.2 **Payment.** For work under this Agreement, payment shall be made per invoice for work completed. For extra work not a part of this Agreement, a written authorization by the SUCCESSOR AGENCY will be required, and payment shall be based on the attached Fee Schedule.
 - 3.3 **Records of Expenses.** CONTRACTOR shall keep complete and accurate records of all costs and expenses incidental to services covered by this Agreement. These records will be made available at reasonable times to SUCCESSOR AGENCY. Compensation may include reimbursement for actual and necessary expenditures for application/permit fees, reports (soils, traffic, title, environmental, etc.) and associated out-of-pocket expenses when and if specified in the Fee Schedule.
 - 3.4 **Termination.** SUCCESSOR AGENCY shall have the right to terminate this Agreement, without cause, by giving thirty (30) days written notice of termination. If the Agreement is terminated by the SUCCESSOR AGENCY, then the provisions of paragraph 3 would apply to that portion of the work completed.
4. **Insurance requirements.**
 - 4.1 **Commencement of Work.** CONTRACTOR shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the SUCCESSOR AGENCY and the City of Garden Grove ("CITY"). All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the SUCCESSOR AGENCY and CITY of any material change, cancellation, or termination at least thirty (30) days in advance.
 - 4.2 **Workers Compensation Insurance.** For the duration of this Agreement, CONTRACTOR and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable. If workers compensation is applicable, a waiver of subrogation endorsement in favor of SUCCESSOR AGENCY, CITY, and their officers, officials, employees, agents, and volunteers shall be obtained.
 - 4.3 **Insurance Amounts.** CONTRACTOR shall maintain the following insurance for the duration of this Agreement:

- (a) Commercial general liability in the amount of \$1,000,000 per occurrence; **(claims made and modified occurrence policies are not acceptable)**; Insurance companies must be acceptable to SUCCESSOR AGENCY and CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the SUCCESSOR AGENCY and CITY.
- (b) Automobile liability in the amount of \$1,000,000 combined single limit; Insurance companies must be acceptable to SUCCESSOR AGENCY and CITY and have a Best's Guide Rating of A-, Class VII or better as approved by the SUCCESSOR AGENCY and CITY.
- (c) Professional liability in the amount of \$1,000,000 per occurrence; Insurance companies must be acceptable to SUCCESSOR AGENCY and CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the SUCCESSOR AGENCY and CITY.

An **On-Going and Completed Operations Additional Insured** Endorsement for the policy under section 4.3 (a) shall designate SUCCESSOR AGENCY, CITY, and their officers, officials, employees, agents and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONTRACTOR. CONTRACTOR shall provide to SUCCESSOR AGENCY and CITY proof of insurance and endorsement forms that conform to SUCCESSOR AGENCY's and CITY's requirements, as approved by the SUCCESSOR AGENCY and CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate SUCCESSOR AGENCY, CITY, and their officers, officials, employees, agents and volunteers as additional insureds for automobiles owned, leased hired, or borrowed by the CONTRACTOR. CONTRACTOR shall provide to SUCCESSOR AGENCY and CITY proof of Insurance and endorsement forms that conform to SUCCESSOR AGENCY's and CITY's requirements, as approved by the SUCCESSOR AGENCY and CITY.

For any claims related to this Agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects SUCCESSOR AGENCY, CITY, and their officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the SUCCESSOR AGENCY, CITY, or their officers, officials, employees, agents or volunteers shall be by excess of the CONTRACTOR's insurance and shall not contribute with it.

5. **Non-Liability of Officials and Employees of the Successor Agency.** No official or employee of the SUCCESSOR AGENCY or CITY shall be personally liable to the CONTRACTOR, or any successor in interest, in the event of any default or breach by the SUCCESSOR AGENCY or for any amount which may become due to the CONTRACTOR or to its successor, or for breach of any obligation of the terms of this Agreement. No officer or employee of the CONTRACTOR shall be personally liable to the SUCCESSOR AGENCY or CITY, or any successor in interest, in the event of any default or breach by the CONTRACTOR or for any amount which may become due to the SUCCESSOR AGENCY or CITY or to their successors, or for breach of any obligation of the terms of this Agreement.
6. **Non-Discrimination.** CONTRACTOR covenants there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry in any activity pursuant to this Agreement.

7. **Independent Contractor.** It is agreed to that CONTRACTOR shall act and be an independent contractor and not an agent or employee of the SUCCESSOR AGENCY or CITY, and shall obtain no rights to any benefits which accrue to SUCCESSOR AGENCY's or CITY's employees.
8. **Compliance with Law.** CONTRACTOR shall comply with all applicable laws, ordinances, codes and regulations of the federal, state, and local government.
9. **Notices.** All notices shall be personally delivered or mailed to the below listed address, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.

To SUCCESSOR AGENCY:

CITY OF GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN GROVE
AGENCY FOR COMMUNITY DEVELOPMENT
11222 Acacia Parkway
Garden Grove, California 92840
Attention: Greg Blodgett

To CONTRACTOR:

TAIT & ASSOCIATES, INC.
701 N. Parkcenter Drive
Santa Ana, CA 92705

10. **Contractor's Proposal.** This Agreement shall include CONTRACTOR's proposal or bid which shall be incorporated herein by reference. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
11. **Licenses, Permits, and Fees.** At its sole expense, CONTRACTOR shall obtain a Garden Grove Business License, all permits, and licenses as may be required by this agreement.
12. **Familiarity with Work.** By executing this Agreement, CONTRACTOR warrants that: (1) it has thoroughly investigated and considered the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the facilities, difficulties and restrictions of the work under this Agreement. Should the CONTRACTOR discover any latent or unknown conditions materially differing from those inherent in the work or as represented by the SUCCESSOR AGENCY, it shall immediately inform SUCCESSOR AGENCY of such fact and shall not proceed except at CONTRACTOR's risk until written instructions are received from the SUCCESSOR AGENCY.
13. **Time of Essence.** Time is of the essence in the performance of this Agreement.
14. **Limitations upon Subcontracting and Assignment.** The experience, knowledge, capability, and reputation of CONTRACTOR, its principals and employees were a substantial inducement for the SUCCESSOR AGENCY to enter into this Agreement. CONTRACTOR shall not contract with any other entity to perform the services required without written approval of the SUCCESSOR AGENCY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of the SUCCESSOR AGENCY. If CONTRACTOR is permitted to subcontract any part of this Agreement, CONTRACTOR shall be responsible to the CITY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any

subcontractor and the SUCCESSOR AGENCY. All persons engaged in the work will be considered employees of CONTRACTOR. The SUCCESSOR AGENCY will deal directly with and will make all payments to CONTRACTOR.

15. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.

16. **Indemnification.** The CONTRACTOR shall defend, and hold harmless the SUCCESSOR AGENCY, the CITY, and their respective elective or appointive boards, councils, officers, agents and employees, from and against any and all actions, suits, proceedings, claims, demands, losses, costs, and expenses, including legal costs and attorneys' fees, for injury to or death of person(s), for damage to property (including property owned by the SUCCESSOR AGENCY or the CITY) and for errors and omissions committed by CONTRACTOR, its officers, anyone directly or indirectly employed by CONTRACTOR, any subcontractor and agents or anyone for whose acts any of them may be liable, arising directly or indirectly out of or related to CONTRACTOR's negligence in the performance of this Agreement, except to the extent of such loss as may be caused by SUCCESSOR AGENCY's own active negligence, sole negligence or willful misconduct, or that of its officers or employees.

This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR.

17. **Agreement Limitations.** CONTRACTOR understands and agrees that the implementation and effectiveness of this Agreement shall be subject to approval by the SUCCESSOR AGENCY Oversight Board and all provisions of ABX1-26 and AB 1484. CONTRACTOR further understands and agrees that any and all liability under this Agreement shall be solely that of the SUCCESSOR AGENCY, and not that of the City of Garden Grove, and, in accordance with Health and Safety Code Section 34173(e), shall be limited in scope and amount to the actual property tax revenues received by, and the value of assets transferred to, the SUCCESSOR AGENCY pursuant ABX1-26 and AB 1484.

(Agreement Signature Block on Next Page)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth above.

SUCCESSOR AGENCY:

**CITY OF GARDEN GROVE AS SUCCESSOR
AGENCY TO THE GARDEN GROVE AGENCY
FOR COMMUNITY DEVELOPMENT**, a public
body, corporate and politic

By: _____
Director

ATTEST:

Secretary

Date: _____

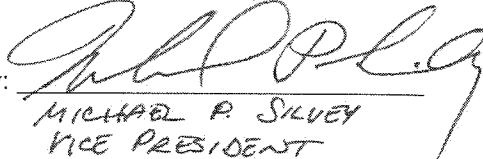
APPROVED AS TO FORM:

City Attorney

Date: _____

CONTRACTOR:

TAIT & ASSOCIATES, INC.

By: 
MICHAEL P. SILVEY
VICE PRESIDENT

Date: 7/18/13

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, a Statement of Partnership must be submitted to SUCCESSOR AGENCY. If not this, then signatures by both the Corporation President and Secretary are required.

ATTACHMENT "A"

Fee Schedule

ATTACHMENT "B"

Scope of Services