

THE JERDE PARTNERSHIP AGREEMENT

March 10, 2009

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The Brookhurst Triangle has been marketed for several of the past years. While various developers have shown interest in the site, a changing market has affected development plans. By acting proactively and establishing the pre-development concepts and potentials for the Brookhurst Triangle, the City will take advantage of the current market downturn and make the location more salable when a turn around begins.

FINANCIAL IMPACT

The financial cost of the pre-development services will be \$50,000.

COMMUNITY VISION IMPLEMENTATION

Neighborhoods Goal: "Seek to ensure quality housing opportunities in the community, without unduly burdening existing residents."

RECOMMENDATION

It is recommended that the City Council:

- Approve the attached agreement
- Authorize the City Manager and City Clerk to sign on behalf of the City Council.

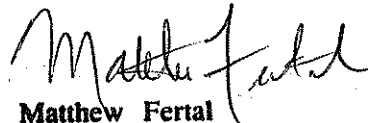


SUSAN EMERY
Community Development Director



By: Grant Raupp
Administrative Analyst

Recommended for Approval



Matthew Feral
City Manager

Attachment 1: Jerde Partnership, Inc. Agreement

CONSULTANT AGREEMENT

THIS AGREEMENT is made this 10th day of March, 2009, by the **CITY OF GARDEN GROVE**, a municipal corporation, ("CITY") and **THE JERDE PARTNERSHIP, INC.**, referred to as "CONSULTANT".

RECITAL

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove Council Resolution No. 8596-04 (July 27, 2004).
2. CITY desires to utilize the services of CONSULTANT to provide the agreed upon services as described below.
3. CONSULTANT is qualified by virtue of experience, training, education and expertise to accomplish services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term and Termination.** This Agreement shall cover services rendered **for the performance period of 60 calendar days** from full execution of the agreement. This agreement may be terminated by the CITY without cause. In such event, the CITY will compensate CONSULTANT for work performed to date in accordance with fee schedule (Attachment "A"). Consultant is required to present evidence to support performed work completion.
2. **Services to be Provided.** The services to be performed by CONSULTANT to perform Pre-Development Services for the Brookhurst Triangle, as described in Attachment "A", here to.
3. **Compensation.** CONSULTANT shall be compensated as follows:
 - 3.1 **AMOUNT.** Total Compensation under this agreement shall not exceed (NTE) **Fifty Thousand Dollars (\$50,000.00)** payable in arrears and in accordance with proposal in Attachment "A".
 - 3.2 **Payment.** For work under this Agreement, payment shall be made per monthly invoice for work completed. For extra work not a part of this Agreement, a written authorization by CITY will be required, and payment shall be based on standard hourly rates.

- 3.3 Records of Expenses. CONSULTANT 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 CITY.
- 3.4 Termination. CITY 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 CITY, then the provisions of paragraph 3 would apply to that portion of the work completed.

4. Insurance requirements.

- 4.1 COMMENCEMENT OF WORK. CONSULTANT shall not commence work under this Agreement until all insurance certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance.
- 4.2 WORKERS COMPENSATION INSURANCE. During the duration of this Agreement, CONSULTANT and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable.
- 4.3 INSURANCE AMOUNTS. CONSULTANT shall maintain the following insurance for the duration of this Agreement:
- (a) Commercial general liability in an amount of \$1,000,000.00 per occurrence: **claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
 - (b) Automobile liability in an amount of \$1,000,000.00 combined single limit. Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
 - (c) Professional liability in an amount of \$1,000,000.00. Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

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

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

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

5. **Non-Liability of Officials and Employees of the City.** No official or employee of CITY shall be personally liable to CONSULTANT in the event of any default or breach by CITY, or for any amount which may become due to CONSULTANT.
6. **Non-Discrimination.** CONSULTANT covenants there shall be no discrimination against any person or group due to 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 CONSULTANT shall act and be an independent contractor and not an agent or employee of the CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
8. **Compliance with Law.** CONSULTANT shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
9. **Disclosure of Documents.** All documents or other information developed or received by CONSULTANT are confidential and shall not be disclosed without authorization by the CITY.
10. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT shall be the property of the CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

11. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

12. **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.
 - a. (CONSULTANT)
The Jerde Partnership, Inc.
Attention: Mr. Rick Poulos
913 Ocean Front Walk
Venice, CA 90291

 - b. (Address of City Purchasing) (with a copy to):
 City of Garden Grove Garden Grove City Attorney
 11222 Acacia Parkway 11222 Acacia Parkway
 Garden Grove, CA 92840 Garden Grove, CA 92840

13. **CONSULTANT'S PROPOSAL.** This Agreement shall include CONSULTANT'S proposed scope of work per Attachment "A", 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.

14. **Licenses, Permits, and Fees.** At its sole expense, CONSULTANT shall obtain a **Garden Grove Business License**, all permits, and licenses as may be required by this Agreement.

15. **Familiarity with Work.** By executing this Agreement, CONSULTANT warrants that: (1) it has investigated 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 Consultant discover any latent or unknown conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

16. **Time of Essence.** Time is of the essence in the performance of this Agreement. Notwithstanding the foregoing, neither Consultant nor City shall be liable for delays in or including, but not limited to, acts of God, acts and/or omissions of federal, state, and local government authorities and regulatory agencies, strikes, riots, civil unrest, war, lockouts and accidents. For delays resulting from actions or inactions of City, Consultant shall be given an appropriate time extension and, where applicable, shall be compensated for all reasonable costs of labor, equipment, and other direct and indirect costs Consultant incurs during any such delay or interruption of services.

17. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability, and reputation of CONSULTANT, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONSULTANT shall not contract with any other entity to perform the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If CONSULTANT is permitted to subcontract any part of this Agreement, CONSULTANT shall be responsible to 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 CITY. All persons engaged in the work will be considered employees of CONSULTANT. CITY will deal directly with and will make all payments to CONSULTANT.
18. **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.
19. **Indemnification.** CONSULTANT agrees to protect, defend, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT. The only exception to CONSULTANT'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY, or any of its elective or appointive boards, officers, agents, 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 CONSULTANT.
20. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual agreements executed by the CITY and CONSULTANT.
21. **Waiver.** All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the CITY and CONSULTANT.
22. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Orange County Superior Court.

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(Agreement Signature Block On Next Page)

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

Date: _____

"CITY"
CITY OF GARDEN GROVE

By: _____
City Manager

ATTESTED:

City Clerk

Date: _____

"CONSULTANT"
THE JERDE PARTNERSHIP, INC.

By: _____

Name: RICHARD POULOS

Title: EX. V.P.

Date: 4 MARCH 09

Tax ID No. 95-3345812

If CONSULTANT is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY.

APPROVED AS TO FORM:

[Signature]
Garden Grove City Attorney

3/4/09
Date

ATTACHMENT "A"
Proposed Scope of Work

1.0 PROJECT DESCRIPTION

The project ("Project") is a mixed-use residential and commercial development on approximately 13.9 acres of net developable site area in Garden Grove, CA. The site is bounded by Brookhurst Street, Garden Grove Boulevard, and Brookhurst Way, with land use allowance for up to 800 dwelling units and between approximately 100,000 to 200,000 square feet of commercial uses (to be confirmed as part of the design and planning studies process).

2.0 SCOPE OF BASIC SERVICES

JERDE shall respond to the CITY OF GARDEN GROVE's ("CITY" existing program parameters and development intent to create pre-development vision potentials and design feasibilities of the site. All alternative options and pre-design concepts generated by JERDE shall be established as a framework for programming layout strategies and initial vision of the place for use by the CITY to attract potential developers, and as part of the submission for entitlements, which will be formalized and prepared by the CITY staff.

JERDE's Services shall include Base Data Review, an initial Briefing Session, programming and pre-design studies and a final presentation and package for use by the CITY at ICSC. There are three CITY reviews included in the Services.

2.1 Base Data Review

JERDE shall review all documents and drawings of the Project forwarded by the CITY. This Base Data shall include, but not be limited to the following items:

- Statistical data;
- Property boundary drawings;
- Description of overall concept and programming idea;
- Market research;
- Historical information;
- Program breakdown;

2.2 Kick-off Meeting / Site Visit / Briefing Session

JERDE shall visit the site with the CITY to conduct a visual survey of the property and surrounding area. JERDE will review the CITY's planning objectives, current proposed program and market research for the Project with CLIENT in a briefing session at the CITY's office in Garden Grove. The CITY shall address relevant development requirements and standards, particularly related to the entitlement process. Items for discussion will include the following:

- Development goals;
- Project identity, branding and positioning;
- Design objectives including site visitor/resident experience, activities and special features;
- Alternative program components;
- Coordination and process with CITY staff

2.3 Feasibility Study Options and Review Meeting

Using the Base Data and input received at the briefing session as a basis for design, JERDE shall identify optional design layouts and programming distribution alternatives of the Project. JERDE shall generate comparative scale and framework diagrams, comparative program analysis, context studies, program area distribution summaries, and character reference images of key zones and design ideas, as perceived by JERDE.

JERDE will review these options with the CITY in a review meeting in the CITY's office in Garden Grove.

2.4 Final Pre-design Study Presentation & ICSC Material

Based on the comments provided by the CITY during the workshop review meeting, JERDE shall develop the programming options into a single desired development study and presentation package. JERDE will depict the overall development program and recommendations for the Project in simple diagrammatic format as listed below:

- Site location map showing relationship to local and regional context;
- Single line diagrammatic site plan;
- Two (2) simple eye-level character sketches of key areas;
- Area tabulations and parking summary
- Land Use Spatial Map

The final development study package will be reviewed with the CITY in Garden Grove. A digital copy of the materials (in both high and low resolution) and one (1) full size hard copy suitable for display will be provided as a conclusive summary at the final review presentation for the CITY's use at ICSC and the entitlements submission.

3.0 TIME SCHEDULE

Upon receipt of a signed Agreement and the initial mobilization fee, JERDE shall provide its services generally in accordance with the following schedule. The schedule illustrates typical time frames and shall be adjusted to the specific requirements of the Project. The time frames are for JERDE's work only, and do not reflect time that may be required for the CITY to schedule meetings and/or render decisions. The final study package will be delivered to the City on or before April 30, 2009.

3.1	Base Data Review	2 days
3.2	Kick-Off Meeting / Briefing Session	1 day
3.3	Programming Options / Workshop Review Meeting	2 weeks 1 day
3.4	Final Study Package	2 weeks
	Final Review Presentation	1 day

4.0 FEES & PAYMENT

4.1 Fees

The Fees shall be paid as follows:

- A. Kick-Off Meeting / Briefing Session.....\$10,000
- B. Programming Options / Workshop Review Meeting.....\$15,000
- C. Final Study Package &

Final Review Presentation.....\$25,000

Payment for the Services described herein is not contingent on CLIENT's ability to gain entitlement or development for the site. Payment is due upon receipt of the invoice and is considered overdue 14 calendar days after the date of the invoice.

Payments shall be made by wire transfer to the following bank account:

THE JERDE PARTNERSHIP, INC.
COMERICA BANK - CALIFORNIA
21535 Hawthorne Boulevard
Torrance, California 90503
ABA - 121137522
Account Number 18910-59196

4.2 Reimbursable Expenses

Reimbursable expenses shall include those expenses pre-approved by the CLIENT, costs such as expense of transportation when traveling outside of Los Angeles in connection with project; special delivery and messenger service; renderings and/or models not part of the agreement; and expenses of other consultants when authorized.