

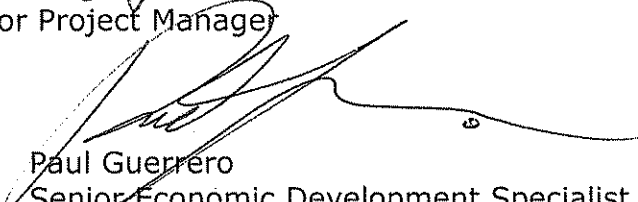
**CONSULTANT SERVICES AGREEMENT WITH RK ENGINEERING GROUP,
INC. FOR TRAFFIC IMPACT STUDY**

May 10, 2011

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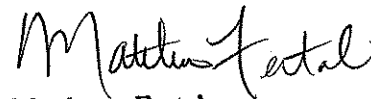
- Authorize the Director to execute the Consultant Services Agreement on behalf of the Agency.


Greg Blodgett
Senior Project Manager

By: 
Paul Guerrero
Senior Economic Development Specialist

Attachment 1: Consultant Services Agreement

Recommended for Approval



Matthew Fertal
Director

PROFESSIONAL SERVICES AGREEMENT

RK Engineering Group, Inc.

THIS AGREEMENT is made this th day of , 2011, by the **GARDEN GROVE AGENCY FOR COMMUNIITY DEVELOPMENT**, a municipal corporation, ("AGENCY") and **RK ENGINEERING GROUP, INC.**, here in after referred to as "CONTRACTOR".

RECITALS

The following recitals are a substantive part of this Agreement:

1. AGENCY desires to utilize the services of CONTRACTOR to provide a traffic impact study for the proposed Garden Grove Hotel Project detailed in the Proposal (Attachment 1). The proposed project is located at the northeast corner of Harbor Boulevard and Twintree Avenue in the City of Garden Grove.
2. CONTRACTOR is qualified by virtue of experience, training, education and expertise to accomplish services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term and Termination.** The term of the Agreement shall be effective as of the date first set forth above. This Agreement shall commence upon the effective date of this Agreement, and shall remain and continue in effect until tasks described herein are completed unless otherwise terminated prior to this date pursuant to the provisions of this Agreement.
2. **Services to be Provided.** The services to be performed by CONTRACTOR shall consist of tasks as set forth in the Proposal (Attachment 1). The Proposal is incorporated herein by reference. The Proposal (Attachment 1) and this Agreement do not guarantee any specific amount of work.
3. **Compensation.** CONTRACTOR shall be compensated as follows:

- 3.1 AMOUNT. Total Compensation under this agreement shall not exceed (NTE) amount of THIRTY ONE THOUSAND DOLLARS (\$31,000.00) payable in arrears and in accordance with proposal in Attachment 1.
- 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 AGENCY will be required, and payment shall be based on schedule included in Proposal (Attachment 1).
- 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 AGENCY.
- 3.4 Termination. 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 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/CONSULTANT shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the AGENCY and 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 AGENCY and 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, CONTRACTOR and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable.
- 4.3 INSURANCE AMOUNTS. CONTRACTOR/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 per occurrence. Insurance companies must be acceptable to the CITY and have a Best's Guide

Rating of "A" - Class VII or better, as approved by the CITY.

CONTRACTOR has executed the Request for Exemption from Providing Automobile Liability Coverage, attached hereto as Attachment 2 and incorporated herein by this reference, and represents that it does not drive to or from the City of Garden Grove, for any reason, as part of the fulfillment of the services to be provided under this contract.

- (c) Professional liability in an amount of \$1,000,000.00 per occurrence. 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. If the policy is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of the agreement, and for a period of three (3) years from the date of the completion of services provided. In the event of termination, cancellation, or material change in the policy, professional/consultant shall obtain continuing insurance coverage for the prior acts or omissions of professional/consultant during the course of performing services under the term of the agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

An Additional Insured Endorsement, **On-Going and Completed Operations** for the policy under section 4.3 (a) shall designate AGENCY, CITY, 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 the AGENCY and CITY proof of insurance and endorsement forms 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 AGENCY and CITY, their officers, officials, employees, agents, and volunteers as additional insureds for automobiles, owned, leased, hired, or borrowed by the CONTRACTOR. CONTRACTOR shall provide to AGENCY and 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, CONTRACTOR's insurance coverage shall be primary insurance as respects AGENCY and CITY, their officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the AGENCY and CITY, their officers, officials, employees, agents, and volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

5. **Non-Liability of Officials and Employees of the City.** No official or employee of AGENCY and CITY shall be personally liable to CONTRACTOR in the event of any default or breach by AGENCY, or for any amount, which may become due to CONTRACTOR.
6. **Non-Discrimination.** CONTRACTOR 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 CONTRACTOR shall act and be an independent contractor and not an agent or employee of the AGENCY and CITY, and shall obtain no rights to any benefits which accrue to AGENCY'S and 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 AGENCY: Garden Grove Agency for Community Development
11222 Acacia Parkway, 3rd Floor
Garden Grove, CA 92840

Copy to: City of Garden Grove, City Attorney
11222 Acacia Parkway, 3rd Floor
Garden Grove, CA 92840

To CONTRACTOR: RK ENGINEERING GROUP, INC.
4000 Westerly Place, Suite 280
Newport Beach, CA 92660
Attention: Rogier Goedecke

Copy to: City of Garden Grove, Purchasing
11222 Acacia Parkway
Garden Grove, CA 92840

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 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 Contractor discover any latent or unknown conditions materially differing from those inherent in the work or as represented by AGENCY, it shall immediately inform AGENCY of this and shall not proceed, except at CONTRACTOR'S risk, until written instructions are received from AGENCY.
13. **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.
14. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability, and reputation of CONTRACTOR, its principals and employees were a substantial inducement for AGENCY to enter into this Agreement. CONTRACTOR shall not contract with any other entity to perform the services required without written approval of the AGENCY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of AGENCY. If CONTRACTOR is permitted to subcontract any part of this Agreement, CONTRACTOR shall be responsible to AGENCY 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 AGENCY. All persons engaged in the work will be considered employees of CONTRACTOR. 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.** To the fullest extent permitted by law, CONTRACTOR shall 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 damages of any nature, including interference with use of property, arising out of, or in any way connected with the negligence, recklessness and/or intentional wrongful conduct of CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR in the performance of the Agreement. The only exception to CONTRACTOR'S responsibility to protect, defend, and hold harmless CITY, is due to the negligence, recklessness and/or wrongful conduct 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 CONTRACTOR.

Signature appears on following page.

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

Date: _____

"AGENCY"
**GARDEN GROVE AGENCY FOR
COMMUNITY DEVELOPMENT,**
a public body, corporate and politic

By: _____
Director

ATTESTED:

Agency Secretary

Date: _____

APPROVED AS TO FORM:

~~_____
Garden Grove City Attorney~~
AGENCY GENERAL COUNSEL

Date: _____

"CONTRACTOR"
BK ENGINEERING GROUP, INC.

By:  _____

Name: Roger Goedecke

Title: V.P. OPERATIONS

Date: 4/6/11

Tax ID No. 33-0940774

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



transportation planning • traffic engineering
acoustical engineering • parking studies

March 24, 2011

Mr. Greg Blodgett
CITY OF GARDEN GROVE
11222 Acacia Parkway
Garden Grove, CA 92840

Subject: Garden Grove Hotel Traffic Impact Study, City of Garden Grove

Dear Mr. Blodgett:

Introduction

RK ENGINEERING GROUP, INC. (RK) is pleased to submit this proposed Agreement to provide a traffic impact study for the proposed Garden Grove Hotel Project. The proposed project is located at the northeast corner of Harbor Boulevard and Twintree Avenue in the City of Garden Grove. The project would consist of approximately two 11 to 14 story full-service hotels consisting of a total of 750 hotel rooms on a 5-acre site. The project will also include a multi-level parking structure for the hotels. The project will have two (2) access points on Harbor Boulevard and one (1) access point on Twintree Avenue.

RK has successfully completed many traffic impact studies in the City of Garden Grove including the Great Wolf Lodge Resort and Water Park project that was approved in January of 2011. RK's familiarity with the location and relationship with the City of Garden Grove Transportation Engineering Department Staff will be beneficial in completing this analysis efficiently.

The traffic study will be required to analyze the following nineteen (19) intersections in the study area:

North-South Street	East-West Street
Harbor Boulevard	Katella Avenue West Convention Way Orangewood Avenue Chapman Avenue Project Access Twin Tree Avenue Lampson Avenue Garden Grove Boulevard 22 Garden Grove Westbound Ramps 22 Garden Grove Eastbound Ramps Trask Avenue

West Street	Chapman Avenue Lampson Avenue
Haster Street	Chapman Avenue Lampson Avenue
Lewis Street	Chapman Avenue
State College Boulevard	Interstate 5 Northbound Ramp Interstate 5 Southbound Ramp Chapman Avenue

Prior to initiating the traffic impact study, a formal scoping agreement will be approved by the City of Garden Grove Traffic Engineer (Mr. Dan Candelaria PE, TE). The study area intersections will have to be analyzed for both AM/PM peak hour conditions.

The traffic study will analyze the following conditions:

- Existing
- Project Buildout Year Without Project
- Project Buildout Year With Project

The level of service analysis should be performed based upon the ICU (Intersection Capacity Utilization) methodology. In addition, the traffic study will take into account other proposed projects in the area and with an ambient growth rate of one percent (1%) per year.

Scope of Work

The following Scope of Work is proposed by RK for this study effort:

1. Review the Site Plan for the project from a traffic circulation and access standpoint.
2. Discuss the project with AECOM project team in a kick off meeting.
3. Obtain an approved scope of work for the traffic impact study from the City of Garden Grove.
4. Coordinate with any adjacent jurisdictions within the project sphere of influence if needed.
5. Field review the site to determine Existing conditions.
6. Obtain AM/PM peak hour counts at the nineteen (19) study area intersections.

7. Obtain cumulative project information from the City of Garden Grove.
8. Review parking structure as it relates to circulation and number of stalls provided for the proposed uses.
9. Review public transit, bicycle and pedestrian in the vicinity of the proposed project.
10. Determine existing levels of service at the nineteen (19) study area intersections based upon the ICU methodology.
11. Perform CMP (Congestion Management Program) analysis at all CMP intersections.
12. Determine the project's trip generation, trip distribution and traffic assignment to the adjoining roadway system.
13. Determine Project Buildout Year traffic impacts and level of service without the project at the nineteen (19) study area intersections. This will include a 1% per year growth rate and any known cumulative projects in the study area.
14. Determine Project Buildout Year traffic impacts and level of service with the project at the nineteen (19) study area intersections. This will include a 1% per year growth rate and any known cumulative projects in the study area.
15. Determine project's traffic contribution to the nineteen (19) study area intersections.
16. Review project access and determine the need for any special turn lanes that may be required to serve the project.
17. Develop mitigation measures (i.e. traffic signals, additional traffic lanes, etc.) that may be required to accommodate the project.
18. Develop project recommendations.
19. Summarize the results of the study in a traffic impact report.

Professional Fees

The fee for the work outlined in this proposal is based upon personnel charges plus direct expenses as indicated in the attached Exhibit A. The fixed fee to accomplish the above Scope of Work is \$31,000. **This fee is based upon analysis of the Original Site Plan received by RK from the Client at the time RK initiates the work. Should the original Site Plan received by RK be modified (per the Client or their respective associates) after the work is initiated by RK, then RK will require a change Order and budget modification to accommodate changes before completing the work.** Any additional intersections required by the City above the nineteen (19) estimated in this scope of work will cost \$1,000 each. Attendance at public hearings is based on Billing Rates attached in Exhibit A.

Three copies (two bound and one original for the client's use) of the project report would be prepared. Monthly billings for RK will be based upon the attached Exhibit A - BILLING RATES FOR RK ENGINEERING GROUP, INC. Invoices that are more than 90 days past due are subject to interest at the maximum permitted by law.

Limitation of Liability

The Client agrees to limit the Design Professional's liability to the Client and to all construction Contractors and Subcontractors on the project, due to the Design Professional's negligent acts, errors, or omissions, such that the total aggregate liability of the Design Professional to all those named shall not exceed \$50,000 or the Design Professional's total fee for services rendered on this project, whichever is greater.

Ownership of Documents

All reports, plans, specifications, field data, notes and other documents, including all documents on electronic media, prepared by RK, as instruments of service shall remain the property of RK. The Client may use these documents to secure approval of his/her projects; however, they may not be modified or changed in any way. The items in this proposal/contract are to be considered **CONFIDENTIAL** and may not be shared with any other entity without the written permission of RK Engineering Group, Inc.

Dispute Resolution

In an effort to resolve any conflicts that arise during the Project or following the completion of the Project, the Client and RK agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

In the event that a lawsuit is brought for the enforcement of any of the terms of this agreement, the prevailing party should be entitled to attorney fees and costs in addition to any damages. This agreement can be terminated by either party based upon a written request to terminate the work. The client will pay RK for all work that is completed prior to the termination of the work.

Time Schedule

It is estimated that the traffic impact study will take approximately 25 working days to complete from the date of authorization, and date of receipt of data essential for the study. Additionally, any delays resulting from circumstances beyond our control, such as weather, shall extend the time schedule.

Qualifications

RK is located in Newport Beach, California and specializes in transportation planning and traffic/acoustical engineering for governmental agencies and the business community. The firm principals and associates have over 70 years of combined engineering and planning experience throughout Southern California at the regional, local and individual project levels. The experience of the firm's personnel in transportation planning and traffic/acoustical engineering provides the special skills necessary for determining practical and meaningful traffic solutions.

Limitation of Liability

The Client agrees to limit the Design Professional's liability to the Client and to all construction Contractors and Subcontractors on the project, due to the Design Professional's negligent acts, errors, or omissions, such that the total aggregate liability of the Design Professional to all those named shall not exceed \$50,000 or the Design Professional's total fee for services rendered on this project, whichever is greater.

This letter can serve as a Memorandum of Agreement and our authorization to proceed. Please sign one copy and return it to us for our files. We are looking forward to serving you on this project. **This proposal is valid for sixty days, if signed by the client.**

Mr. Greg Blodgett
CITY OF GARDEN GROVE
March 24, 2011
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RK is looking forward to the possibility of teaming with Aecom on this project. If you have any questions regarding this proposal, please call me at (949) 474-0809.

Respectfully submitted,
RK ENGINEERING GROUP, INC.



Rogier Goedecke
Vice President, Operations

Attachment

CONTRACT APPROVAL:

Approved by:

Title:

Firm:

_____ CITY OF GARDEN GROVE _____

Date:

Exhibit A

Billing Rates for RK ENGINEERING GROUP, INC.

Compensation for Services

The Consultants Billing rates for services are as follows:

<u>Position</u>	<u>Hourly Rate</u>
Principal	\$165.00
Associate Principal	\$150.00
Senior Associate	\$140.00
Associate	\$130.00
Principal Engineer/Principal Planner/Principal Designer	\$120.00
Senior Engineer/Senior Planner/Senior Designer	\$110.00
Engineer/Planner III	\$105.00
Engineer/Planner II	\$ 95.00
Engineer/Planner I	\$ 90.00
Assistant Engineer/Planner	\$ 80.00
Transportation Analyst	\$ 65.00
Senior Engineering Technician	\$ 75.00
Engineering Technician III	\$ 70.00
Engineering Technician II	\$ 60.00
Engineering Technician I	\$ 50.00
Engineering Aide	\$ 45.00
Executive Assistant	\$ 65.00
Administrative Assistant	\$ 50.00
Administrative Aide	\$ 40.00
Clerical Aide	\$ 35.00

General

- (1) Reimbursable direct costs, such as reproduction, supplies, messenger service, long-distance telephone calls, travel and traffic counts will be billed at cost plus ten (10) percent.
- (2) Hourly rates apply to work time, travel time and time spent at public hearings and meetings. For overtime work, the above rates may be increased 50 percent.
- (3) Client payment for professional services is not contingent upon the client receiving payment from other parties.
- (4) Billing statements for work will be submitted monthly. Statements are payable within thirty (30) days of the receipt by client of statement. Any statement unpaid after thirty (30) days shall be subject to interest at the maximum permitted by law.

ATTACHMENT 2

**REQUEST FOR EXEMPTION FROM PROVIDING AUTOMOBILE LIABILITY
COVERAGE**

RK Engineering Group, Inc.

Contractor/Consultant by the signature of its authorized representative hereunder represents that all work performed under this contract does not require the Contractor/Consultant, its employees, representatives, or agents, to drive to and from the City of Garden Grove or engage in any driving related to the contractual obligations. However, if, at any time during the performance of the Work contemplated by the Contract Documents, or arising out of the services provided, the Contractor/Consultant, its employees, representatives, or agents should need to drive to and from the City of Garden Grove or engage in any driving to meet the contractual obligations, the Contractor will be responsible for notifying and providing the City/Agency/Sanitary District with evidence satisfactory to the City/Agency/Sanitary District that it has secured automobile liability coverage satisfactory to the City/Agency/Sanitary District, prior to any such Consultant/Contractor, employee, representative or agent, performing any work under the Contract Documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true, complete, accurate and correct. I also certify that I am authorized to sign this form on behalf of and bind RK Engineering Group, Inc.

Company Name

SIGNATURE OF AUTHORIZED PERSON: 

PRINTED NAME OF AUTHORIZED PERSON: Roger Gooden

TITLE OR POSITION OF AUTHORIZED PERSON: V.P. OPERATIONS

COMPANY NAME: RK Engineering Group, Inc.

DATE: 4/5/11

NOTE: This form shall serve as a request for exemption from providing proof of Automobile Liability Insurance, unless the approval signature from the City of Garden Grove Risk Management Division is present below.

DO NOT FILL OUT THE BOTTOM PORTION OF THIS REQUEST
City/Agency/Sanitary District Use Only

Denied

Approved

RISK MANAGEMENT DIVISION SIGNATURE: 

DATE: 4-7-11