

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew J. Fertal From: Economic Development
Dept: City Manager
Subject: PROFESSIONAL SERVICES AGREEMENT FOR ONGOING PLANNING AND ENVIRONMENTAL STUDIES FOR SITE "C" (NORTHWEST CORNER GARDEN GROVE BOULEVARD AND TWINTREE LANE) Date: December 13, 2011

OBJECTIVE

To request City Council approval of a Professional Services Agreement (Agreement) with AECOM, for ongoing planning and environmental studies for the Site "C" project area located on the northwest corner of Harbor Boulevard and Twintree Lane.

BACKGROUND

In February 2011, AECOM was hired to prepare and process environmental documentation for a hotel development for the Site "C" project area to satisfy the requirements of the California Environmental Quality Act.

DISCUSSION

During the process, additional project meetings and tasks were required that were unanticipated. The environmental documentation needs to be updated and finalized and additional visual simulations will be needed.

FINANCIAL IMPACT

The term of this Agreement extends through February 2012 with total compensation to AECOM not to exceed \$20,000. Funding for the project will be from the General Plan fee account. General Plan funds are revenue neutral, and are collected as part of the building permit process. These fees can be used for General Plan updates and associated implementation. There is no impact to the General Fund.

RECOMMENDATION

It is recommended that the City Council:

- Approve the transfer of \$20,000 from the General Plan Trust Account to Fund 111, General Purpose;
- Approve the allocation of \$20,000 to fund the Professional Services Agreement;
- Approve the Professional Services Agreement with AECOM; and
- Authorize the City Manager to execute the Agreement and make minor modifications if necessary.


GREG BLODGETT
Senior Project Manager


By: Paul Guerrero
Senior Economic Development Specialist

Attachment 1: Professional Services Agreement with AECOM
Attachment 2: AECOM Proposal

mm(Staff/GBI/AECOM Agr Environmental 121311v2.doc)

Recommended for Approval


Matthew Fental
City Manager

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2011, by the **CITY OF GARDEN GROVE**, a municipal corporation, ("CITY") and **AECOM**, here in after referred to as "CONTRACTOR".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove Council dated _____.
2. CITY desires to utilize the services of CONTRACTOR to satisfy the requirements of the California Environmental Quality Act by preparing and processing an Initial Study/Mitigated Negative Declaration (IS/MND) for the project area known as Site "C".
3. 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 for period of one (1) year from full execution of the agreement, with an option to extend said agreement for an additional four (4) years, for a total performance period of five (5) years. Option years shall be exercised one (1) year at a time, at the sole option of the CITY. This agreement may be terminated by the CITY without cause. In such event, the CITY will compensate CONTRACTOR for work performed to date in accordance with fee schedule (Attachment "A"). 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. The Proposal is incorporated herein by reference. The Proposal 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 Twenty Thousand Dollars (\$20,000) payable in arrears and in accordance with proposal in Attachment "A".

- 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 CITY will be required, and payment shall be based on schedule included in Proposal (Attachment A).
- 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 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. CONTRACTOR/CONSULTANT shall not commence work under this Agreement until all 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, 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 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 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.

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 CONTRACTOR. CONTRACTOR shall provide to 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 CITY, it's officers, officials, employees, agents, and volunteers as additional insureds for automobiles, owned, leased, hired, or borrowed by the CONTRACTOR. CONTRACTOR 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, CONTRACTOR'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 CONTRACTOR'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 CONTRACTOR in the event of any default or breach by CITY, 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 CITY, and shall obtain no rights to any benefits which accrue to 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.

a. (CONTRACTOR)
AECOM
2737 Campus Drive
Irvine, CA 92612
Attention: Jayna Morgan

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

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 CITY, it shall immediately inform CITY of this and shall not proceed, except at CONTRACTOR'S risk, until written instructions are received from CITY.

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 CITY to enter into this Agreement. CONTRACTOR 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 CONTRACTOR is permitted to subcontract any part of this Agreement, CONTRACTOR 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 CONTRACTOR. CITY 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.** CONTRACTOR 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 CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR. The only exception to CONTRACTOR'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 CONTRACTOR.

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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: _____

"CONTRACTOR"
AECOM

By: Don Smith

Name: DON SMITH

Title: SR. Vice President

Date: 12/8/2011

Tax ID No. 95-266-1922

If CONTRACTOR 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:

Garden Grove City Attorney

Date



AECOM
2737 Campus Drive
Irvine, CA 92612
www.aecom.com

949.660.8044 tel
949.660.1046 fax

December 8, 2011 (Revised)
October 24, 2011

Mr. Greg Blodgett
Senior Project Manager
Economic Development Department
City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840

Subject: Garden Grove Site C Hotel Project (60215333) – Add Service Request No. 1

Dear Greg,

This correspondence serves as a request for an additional services amendment to our original Professional Services Agreement, executed between Garden Grove Agency for Community Development and AECOM, dated May 5, 2011.

As of October 14, 2011, \$19,603.76, out of the \$25,000.00 total budget, has been spent on the project environmental entitlement and a substantial portion of the amount spent has been on additional meeting attendance and additional coordination efforts/tasks with the project team (including the subconsultants) that were not included in the original scope of work (February 15, 2011, revised March 25, 2011). In addition to the additional meetings and coordination tasks with the project team, there has been a more than two month delay in the project schedule to address issues that were not anticipated in our original scope of work (i.e., site plan changes, the possibility of preparing an environmental impact report [EIR] instead of a mitigated negative declaration [MND], the possibility of preparing an addendum to an existing EIR, and additional visual simulation analysis to identify mitigation that would prevent EIR preparation). Thus, assuming the project will move forward with the agency's acquisition of the identified impacted homes, our remaining budget of \$ 5,396.24 will not be sufficient to cover the rest of the tasks (i.e., completion of the Initial Study, MND, and attendance at public hearings, project management and coordination with the team) that are listed in the original scope of work.

Please see the detailed explanation of tasks that were performed that were outside of the original March 25, 2011 scope of work.



Scope of Work

Task 1 – Additional Meeting Attendance

The original scope for this project included AECOM's attendance at up to two (2) project coordination meetings and it states that additional meetings will be attended on a time and material basis. As of October 19, 2011, AECOM staff has attended following meetings/teleconference meetings:

- July 7, 2011 – Teleconference meeting with City Redevelopment Department staff, City Water Department staff, and PSOMAS to discuss the Water Supply Assessment assumptions; confirm proposed development program; and discuss how casitas should be treated in the study
- July 14, 2011 – Meeting at AECOM with City Redevelopment Department staff, City Planning Department staff, RK Engineering Group staff, and project applicants to go over the technical studies and city comments; to receive/discuss the revised site plan; to discuss the use of development envelope plan as a "worst case"; to discuss shade and shadow significance criteria and how it will be applied to the project, accounting for existing wall and trees; and to discuss if PUD is possible
- July 29, 2011 – Teleconference meeting with the City staff and project applicant to discuss site C addendum and shade and shadow issue
- October 3, 2011 – Meeting at the City to review the shade and shadow issue and to discuss alternatives and possible mitigation measures

As there are currently remaining tasks to be completed for the project, we foresee that AECOM staff will need to attend additional project coordination meetings in the future.

AECOM's labor cost for accomplishment of the additional task above is \$ 2,500.00.

Task 2 – Additional Coordination with the Subconsultants

AECOM staff has had additional coordination with the project subconsultants (PSOMAS [for Water Supply Assessment] and RK Engineering Group [for air quality, noise, and traffic]) for reviewing their draft technical studies; coordinating with the City staff for their review of the technical studies; and addressing City's comments. In addition, due to design changes, the technical reports needed to be updated/revised and required additional review and coordination by the AECOM staff. While the subconsultants studies were originally included in our February 15, 2011 Scope of Work, the additional effort above was not budgeted for in our revised March 25, 2011 Scope of Work.

As there are currently remaining tasks to be completed, we foresee that AECOM staff will need to complete additional project coordination with the subconsultants in the future.

AECOM's labor cost for accomplishment of the above task is \$ 3,000.00.



Task 3 – Additional Coordination and Research Related to Visual Simulation

Based upon the results of the shade shadow analysis (using the criteria from the Water Park Hotel analysis), AECOM staff has been coordinating with City staff, the project applicant, and a CEQA attorney to address the potential significant unavoidable shade and shadow impact to the surrounding project area. Because of the site constraints and the fact that the applicant would prefer to have the maximum amount of development entitled, AECOM has spent additional effort exploring various options to achieve the City and applicant's goals in the most legally defensible manner from a CEQA standpoint. At planning staff's request, AECOM staff conducted research regarding the possibility of preparing an Addendum to the April 2002 Redevelopment Plan Amendment Program Environmental Impact Report. The City provided the related documents and AECOM staff reviewed the April 2002 Redevelopment Plan Amendment Program EIR and the Community Development Resolution No. 629; and had discussions with a CEQA attorney prior to reporting the findings to the City staff in an e-mail correspondence. Our visual simulation and design staff have also spent substantial additional time on analyzing various mitigation options to determine if the significant shade shadow impacts could be mitigated with design alternatives that would still keep the maximum development potential. Per staff's request, we also researched other City significance criteria for shade shadow impacts to determine if there were criteria available to eliminate the identified impacts.

As there are currently remaining tasks to be completed, we foresee that AECOM staff will need to complete additional project coordination and analysis related to visual simulation in the future.

AECOM's labor cost for accomplishment of this task is \$ 4,500.00

Budget

Tasks	Budget
1 – Additional Meeting Attendance	\$2,500.00
2 – Additional Coordination with the Subconsultants	\$3,000.00
3 – Additional Coordination and Research Related to Visual Simulation	\$4,500.00
2.1 – Prepare administrative Draft Initial Study/MND*	\$10,000.00
2.2 – Finalize and Circulate Initial Study/MND*	
4.0 – Project Management/Meetings/Hearings*	
Total	\$20,000.00

* Please note, due to the above described tasks along with the project schedule delay, (original schedule dated July 14, 2011 assumed submittal of the Administrative Draft IS/MND to the City in August, which is more than two months past due) the remaining budget is not sufficient to cover the cost of completion of these tasks from the March 25, 2011 proposal.



Please do not hesitate to give us a call at (949) 660-8044 if you have any questions related to this request. We look forward to the continued working relationships with you and City of Garden Grove on this and future projects.

Yours sincerely,

Jayna Morgan
Project Manager

AGREED:

CITY OF GARDEN GROVE

By: _____

Title: _____

Date: _____

cc: Vachara Soonthornwacharin; AECOM