

## **AGREEMENT BIBLIOGRAPHY**

Agreement With:	New Age Garden Grove, LLC
Agreement Type:	Reimbursement costs for the required environmental reporting for the proposed Nickelodeon Resort Project
Date Approved:	12 12 2017
Start Date:	01 17 2018
End Date:	Until completed
Contract Amount:	See agreement
Comments	File No. 108.1-2016 Community and Economic Dev.
Insurance Expiration:	N/A



## CITY OF GARDEN GROVE OFFICE OF THE CITY CLERK

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*Safeguard all official records of the City.  
Conduct municipal elections and oversee legislative administration.  
Provide reliable, accurate, and timely information to the  
City Council, staff, and the general public.*

January 26, 2018

New Age Garden Grove, LLC  
411 East Huntington Drive, Suite 305  
Arcadia, CA 91006

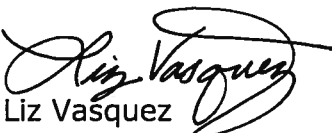
Attention: Ronnie Lam/Phil Wolfgramm/John Hicks

Enclosed is an original signed set of the Agreement for Reimbursement by and between the City of Garden Grove and New Age Garden Grove, LLC, to reimburse costs for the required environmental reporting for the proposed Nickelodeon Resort Project.

The agreement was approved by the City Council at their meeting held on December 12, 2017.

Sincerely,

Teresa Pomeroy, CMC  
City Clerk

By:   
Liz Vasquez  
Deputy City Clerk

Enclosure

c: Finance Department  
Finance Department/Purchasing  
Community and Economic Development

**AGREEMENT FOR REIMBURSEMENT  
FOR PREPARATION OF  
ENVIRONMENTAL CLEARANCE DOCUMENTS**

This Agreement is made and entered into as of the 17<sup>th</sup> day of January, 2017, by and between the **City of Garden Grove** ("City") and **New Age Garden Grove, LLC** ("Developer") (collectively referred to as the "parties").

**RECITALS**

- A. Developer seeks to construct a project in the City of Garden Grove; and
- B. Such project requires that environmental clearance and review be completed in compliance with the California Environmental Quality Act ("CEQA"); and
- C. Project requires that environmental clearance and review be completed in compliance with National Environmental Policy Act ("NEPA"); and
- D. City will hire a consultant(s) to complete the required environmental review; and
- E. Developer acknowledges and agrees that the costs associated with the preparation of environmental clearance and environmental review documents are project specific costs that are the responsibility of the Developer as part of the entitlement process.

**AGREEMENT**

- 1. Selection of Consultant. Developer acknowledges and agrees that there is a need to hire an independent third party consultant (s) to use his/her own professional judgment to conduct and prepare the environmental clearance and environmental review documents. City reserves the right to contract the most qualified consultant through the third party contract at the discretion of the Community and Economic Development Director ("Director").
- 2. Method of Payment. Developer shall deposit 100% of the estimated total cost of completing the environmental review, which includes the traffic impact study, and the parking analysis prior to commencement of the environmental review. **No work shall be performed by an environmental review consultant until Developer has deposited such money with the City.** City shall keep the money deposited to complete the environmental review in a separate non-interest bearing account and will use the money to pay for the consultant's services. When the City has depleted the funds in the account, City shall immediately notify Developer of the additional funds necessary to complete the environmental review. Further, City shall notify consultant that no work should continue on the environmental review process until Developer has deposited additional funds

with the City. If Developer fails to provide additional funds to the City, no further environmental review shall be completed. Developer shall be responsible for all costs incurred by the City for the consultant's services up until the point that the City notifies the consultant to stop work on the project.

3. Administration Costs. In addition to the cost of completing the environmental review, the amounts reimbursed by Developer shall include administrative the costs incurred by City, including, without limitation, staff time, fees and services, which shall be reimbursed on a time and materials basis based on current City reimbursement rates.
4. Examination of Bills. Developer shall have the right to examine all invoices of the environmental consultant that are submitted to the City. Once Developer has made the request to review the invoices from the consultant, City shall have 10 days to copy and produce such invoices for inspection by Developer.
5. Authority of City. Because City has the ultimate authority and responsibility to prepare and review the environmental documents prior to approval of a project, City shall guide the environmental consultant as to the appropriate considerations for the review. If additional environmental or technical studies are required as a result of comments received from internal and external agencies, Developer is solely responsible for the costs of such studies. Nothing in this Agreement is meant to be a guarantee that Developer's project will be approved or that the environmental clearance will be obtained. Further, nothing in this Agreement specifies or guarantees the timing of completion of the environmental clearance and review or other related documents. The City has discretion under its police powers to approve land development projects in accordance with pertinent laws and policies.
6. Indemnity. Developer agrees to defend, indemnify and hold harmless the City, its officers, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses in connection therein), arising out of the performance of this Agreement, except for any such claim arising out of the sole negligence or willful misconduct of the City, its officers, agents, employees or volunteers.
7. No Inducement. Developer declares and represents that no promise, inducement or agreement not herein expressed has been made to it and that this Agreement contains the entire agreement between and among the parties, and that the terms of this Agreement are contractual and not a mere recital. This Agreement is entered into knowingly, freely, intelligently, and voluntarily by the parties, without any duress, or coercion. The parties have had a full opportunity to review and consider the matter prior to executing

this Agreement. The parties fully acknowledge that they also have had a full opportunity to discuss its contents with their respective representatives.

8. **Validity.** If any provision of this Agreement, or part thereof, is held invalid, void or voidable as against the public policy or otherwise, the invalidity shall not affect other provisions or parts thereof, which may be given effect without the invalid provision or part. To this extent, the provisions, and parts thereof, of this Agreement are declared to be severable.
9. **Amendment.** This Agreement may be modified or amended only by a written document executed by both Developer and City and approved as to form by the City Attorney.
10. **Waiver.** No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.
11. **Controlling Law Venue.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Orange, California.
12. **Written Notification.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City:

City of Garden Grove  
Attn.: Community Economic Development Director  
11222 Acacia Parkway  
Garden Grove, CA 92840

If to Developer:

Ronnie Lam/Phil Wolfgramm/John Hicks/  
Kam Sang Company, Inc.  
411 East Huntington Drive, Suite 305  
Arcadia, CA 91006

13. **Entire Agreement.** This Agreement constitutes the complete and exclusive statement of Agreement between the City and Developer. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.
14. **Execution.** This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding

upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

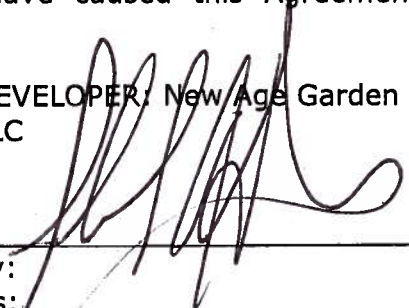
15. Termination. This Agreement may be terminated with thirty (30) days notice if Developer decides not to proceed with the proposed development project. Upon termination, Developer shall be responsible for compensation of the consultant's services performed up to the effective date of termination.
16. Insolvency; Receiver. Either the appointment of a receiver to take possession of all or substantially all of the assets of Developer, or a general assignment by Developer for the benefit of creditors, or any action taken or offered by Developer under any insolvency or bankruptcy action, will constitute a breach of this Agreement by Developer, and in such event this Agreement will automatically cease and terminate.
17. Developer Default. Should Developer fail to perform any of its obligations under this Agreement, then City may, at its option, pursue any one or more or all of the remedies available to it under this Agreement, at law or in equity. Without limiting any other remedy which may be available to it, if Developer fails to perform any of its obligations under this Agreement, City may cease performing its obligations under this Agreement and may bring an action to recover all costs and expenses incurred by the City in completing the Studies, together with interest thereon from the date incurred at the rate of 10% per annum.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.


CITY:

  
\_\_\_\_\_  
City Manager

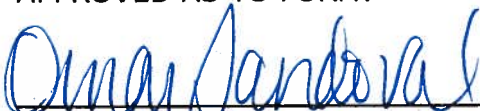
DEVELOPER: New Age Garden Grove, LLC

  
\_\_\_\_\_  
By:  
Its:

ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

APPROVAL OF AGREEMENTS WITH HELIX ENVIRONMENTAL PLANNING, INC., AND LORRAINE MENDEZ & ASSOCIATES TO PROVIDE ENVIRONMENTAL ANALYSIS SERVICES; AND APPROVAL OF A REIMBURSEMENT AGREEMENT WITH NEW AGE GARDEN GROVE LLC, TO REIMBURSE COSTS FOR ENVIRONMENTAL REPORTING  
(F: 55-Helix Environmental Planning, Inc.)(F: 55-Lorraine Mendez & Associates)  
(F: 108.1-2016 New Age Garden Grove, LLC)

Following Council Member Klopfenstein's clarification that this action does not have a financial impact to the City, it was moved by Council Member Klopfenstein, seconded by Council Member K. Nguyen that:

A Professional Services Agreement with HELIX Environmental Planning, Inc., to provide preparation and processing of the California Environmental Quality Act (CEQA) compliance report for an amount up to \$203,840, be approved;

A Professional Services Agreement with Lorraine Mendez & Associates for services associated with the National Environmental Policy Act (NEPA) report for an amount up to \$14,400, be approved;

A Reimbursement Agreement with New Age Garden Grove, LLC, for the cost of the environmental reports paid by the City, be approved; and

The City Manager be authorized to sign the agreements and make minor modifications to all three agreements as appropriate on behalf of the City.

The motion carried by a 7-0 vote as follows:

Ayes: (7) Beard, O'Neill, T. Nguyen, Bui, Klopfenstein, K.  
Nguyen, Jones  
Noes: (0) None

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Scott C. Stiles From: Lisa L. Kim  
Dept.: City Manager Dept.: Community and Economic Development  
Subject: Approval of agreements with HELIX Environmental Planning, Inc., and Lorraine Mendez & Associates to provide environmental analysis services; and approval of a Reimbursement Agreement with New Age Garden Grove LLC, to reimburse costs for environmental reporting. (*Action Item*)

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OBJECTIVE

The purpose of this report is to request City Council approve agreements with HELIX Environmental Planning, Inc. to provide preparation and processing of the California Environmental Quality Act (CEQA) compliance documents, and Lorraine Mendez & Associates for services associated with the National Environmental Policy Act (NEPA); and to also approve a Reimbursement Agreement with New Age Garden Grove, LLC. ("Developer") to reimburse for the costs of the environmental reporting.

BACKGROUND

In May 2017, the City and Developer entered into an Amended and Restated Exclusive Negotiation Agreement (ENA) for the development of the Nickelodeon Resort Hotel located at the northwest corner of Harbor Boulevard and Twintree Avenue. The Developer has prepared a revised draft Final Development Concept Package pursuant to the ENA Schedule. The next step for the development is the preparation and processing of the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) compliance documents, which analyze the projects potential environmental impacts.

DISCUSSION

The Developer has submitted preliminary plans to the City to develop a 560-room Nickelodeon Resort Hotel. The proposed development is approximately 10-acres. The resort would be comprised of a mix of guestrooms, timeshares, resort amenities, landscape decks, and on-site parking. Specifically, two buildings between 14 and 18 stories tall would be developed to include 164,000 square feet (sf) of retail and resort amenities on the first two floors, followed by 500 guestrooms and 60 timeshare units comprising about 600,000 sf on the remaining floors. A total of 808 parking stalls are proposed in an underground and ground-level parking structure. The proposed development will require a general plan and zone amendment to facilitate the development. The City solicited the proposal for the preparation and processing of California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) compliance documents to analyze the development's potential environmental impacts.

HELIX Environmental Planning, Inc. (Consultant) was selected to prepare the necessary CEQA documents for the development. The proposed scope of work outlines anticipated tasks to prepare a Mitigated Negative Declaration and/or Environmental Impact Report subject to the determination of



the Initial Study. The estimated cost for HELIX Environmental Planning, Inc. shall not exceed \$203,841 (See attachment No. 1).

In addition, the project needs to comply with NEPA. Lorraine Mendez & Associates (Consultant) was selected to prepare the necessary NEPA documents for the Project. The City has received a bid from Lorraine Mendez & Associates to analyze the impacts of the development in accordance with NEPA in the amount of \$14,400 (See attachment 2).

The amount of both contracts and all related costs shall be reimbursed by the Developer pursuant to a Reimbursement Agreement (See attachment 3). Both CEQA and NEPA documents for the development will be considered by the Planning Commission and City Council. Due to the nature of the work required to produce the Environmental Reports, it is recommended that these services be contracted to consultants that specialize in analyzing development impacts related to CEQA and NEPA. As the local Land Use Agency, the City will oversee the work of the Consultants, but the cost of the Reports are to be paid by the Developer.

**FINANCIAL IMPACT**

Approval of the Professional Services Agreement with Helix Environmental Planning, Inc. and the Professional Services Agreement with Lorraine Mendez & Associates will have no cost to the City. The Developer will deposit funds in the amount of both contracts with the City. The funding will be administered through a Reimbursement Agreement between the City and Developer, which requires the Developer to pay for all cost associated with preparation of the Reports.

**RECOMMENDATION**

It is recommended that the City Council:

- Approve a Professional Services Agreement with HELIX Environmental Planning, Inc., to provide preparation and processing of the California Environmental Quality Act (CEQA) compliance report for an amount up to \$203,840;
- Approve a Professional Services Agreement with Lorraine Mendez & Associates for services associated with the National Environmental Policy Act (NEPA) report for an amount up to \$14,400;
- Approve a Reimbursement Agreement with New Age Garden Grove, LLC, for the cost of the environmental reports paid by the City; and
- Authorize the City Manager to sign the agreements and make minor modifications to all three Agreements as appropriate, on behalf of the City.

By: Monica Covarrubias, Sr. Economic Development Specialist

**ATTACHMENTS:**

Description	Upload Date	Type	File Name
Attachment 1: Professional Services Agreement with HELIX Environmental Planning, Inc.	12/5/2017	Cover Memo	GG_HELIX_Environmental_Planning_Consultant_Agreement-Nickelodeon_Project.docx
Attachment 2: Professional Services			

SERVICES

Agreement  
with Lorraine  
Mendez &  
Associates

12/5/2017

Cover  
Memo

GG\_LORRAINE\_MENDEZ\_NEPA\_CONSULTING\_AGREEMENT-NICKELODEON\_PROJECT.docx

Attachment 3:  
Reimbursement

Agreement  
with New Age  
Garden Grove,  
LLC

12/5/2017

Cover  
Memo

GG\_REIMBURSEMENT\_AGREEMENT\_withNE\_AGE\_GARDEN\_GROVE\_\_LLC\_for\_Environmental\_Work.docx