

# ITEM NO. 6

## STAFF REPORT

## SUCCESSOR AGENCY CITY OF OCEANSIDE

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DATE: June 24, 2014

TO: The Oversight Board of the City of Oceanside Successor Agency

FROM: Property Management

SUBJECT: **ADOPTION OF A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH PELICAN PROPERTIES FOR A PARKING STRUCTURE ON LOT 23**

### **SYNOPSIS**

Staff recommends that the Oversight Board of the Oceanside Successor Agency adopt a resolution to approve a Professional Services Agreement with Pelican Properties for the design, entitlement and construction funding of a 350-400 space parking structure on Lot 23.

### **BACKGROUND**

In order to ensure adequate parking for the City's Downtown (former Redevelopment Area), the City has prioritized the construction of additional parking structures. The City's goal has been to construct an additional parking structure on Lot 23 in advance of the surface parking lots that exist on private properties being lost to development.

In 2005 the former Oceanside Redevelopment Agency issued a formal Request for Proposals for the development of a parking structure and mixed use project for the property. However, due to the amount of subsidy required at that time, the process was not completed. Staff solicited proposals from several developers in 2013 and four proposals were received with the top two being considered responsive. Following a formal review of the proposals, and considering the economic viability and development potential, the proposal by Pelican Properties ("Pelican") is the most reasonable development proposal that can be implemented in a timely manner.

### **ANALYSIS**

The project will be developed with the first phase being the design and construction of the parking structure. The proposed Professional Services Agreement ("Agreement") authorizes the expenditure of former redevelopment bond proceeds for the preparation of design plans and entitlement processing. If the permits are ultimately approved by the Community Development Commission, the Agreement also authorizes the expenditure of former redevelopment bond proceeds for the

construction of the parking structure. Other sources of funding for construction of the parking structure may include TransNet funds of up to \$2.5 million.

The Lot 23 property is owned by the Successor Agency to the Oceanside Redevelopment Agency ("Successor Agency"). The property is currently being used as City Parking Lot 23, improved as a surface parking lot with 181 parking spaces available to the public without cost. The approved Long Range Property Management Plan indicates that the subject property should be sold "for economic development purposes with a condition that future uses be consistent with the City's Local Coastal Plan and the Nine Block Master Plan. Future uses include a parking structure with a commercial and/or residential component."

The Agreement implements the Long Range Property Management Plan by requiring that Pelican Properties develop detailed building design plans and specifications ("Plans") for the construction of a public parking garage to accommodate up to 350 public spaces located at the 300 block of North Cleveland Street, ("Lot 23"). The Plans will include architectural plans; elevations and sections indicating principal areas, core design and location; location number and capacity of elevators; basic structural system; essential electrical capacity and distribution system; general type of plumbing systems; façade placement and orientation; and principal type of HVAC systems.

As part of the entitlement process, Pelican will prepare all documents required by the City of Oceanside ("City") Development Services Department for the consideration of all applicable discretionary permits for the construction of the parking garage, including an application for a development plan, regular coastal permit, and CEQA documentation.

Through a separate agreement, staff is recommending that the Oversight Board of the Successor Agency authorize the sale of Lot 23 to the City of Oceanside for the appraised value of \$800,000. The City will then negotiate a Disposition and Development Agreement (DDA) obligating Pelican to construct the parking structure and providing Pelican with the ability to pursue development entitlements for up to 40 residential units and approximately 10,000 square feet of commercial/office uses consistent with the Nine Block Master Plan. The mixed use portion of the project is referred to as Phase II. The parking structure is proposed to be developed as follows:

- Through the Agreement the Successor Agency would hire Pelican to prepare plans for the design, entitlement and construction of the parking structure. Pelican in turn will hire a construction firm on a "design build" contract to build the parking structure.
- Successor Agency bond proceeds in the amount of approximately \$6,000,000 are authorized to pay for the development and construction of the parking structure. Included in the costs of the parking structure are processing costs, permitting fees and an agreed upon management fee for the project. The City is considering an additional \$2.5 million in Transnet funds to provide additional parking to support the smart growth, mixed use project.

- Pelican will process an entitlement for the parking structure separate from Phase I so as to move that portion of the project along as expeditiously as possible. In the event Phase II never gets approved and/or built, the Phase I development includes cut outs, exterior materials, hardscape and landscaping so as to make the stand-alone parking structure aesthetically pleasing.
- In the future DDA between the City and Pelican, Pelican will have the ability to pursue the design, entitlement and construction of the mixed-use building that surrounds the parking structure.

**FISCAL IMPACT**

The Successor Agency retains approximately \$6.0 million in former Redevelopment Bond proceeds that are allocated towards the parking structure. Staff is recommending that the City allocate an additional \$2.5 million in Transnet funds toward the project. Provided Pelican receives approvals for the mixed-use project, \$1.5 million would be reimbursed by Pelican to the Transnet account. The following table represents the costs for the parking structure:

• 405-space structure	\$7.5 million (325 public, 80 private)
• Land purchase	\$390,000 (City share of total \$800,000 cost)
• Entitlement	\$200,000 (Phase I cost only)
• Landscape and Hardscape	\$200,000
• Management and Oversight	\$180,000
<u>Total</u>	<u>\$8.5 Million</u>
Pelican Reimbursement of	
<u>Private Spaces</u>	<u>\$1.5 million</u>
<u>Net Cost</u>	<u>\$7.0 million</u>

Provided Pelican proceeds with and obtains permits to construct Phase II, Pelican would reimburse the City for the costs of 80 spaces to be allocated to the residential portion of the project. The reimbursement would be \$1.5 million. Although Pelican will be paying for its share of the required project parking, Pelican is unable to advance the necessary funds without the entitlement and permitting process being completed.

**INSURANCE REQUIREMENTS**

The City's standard insurance requirements will be met.

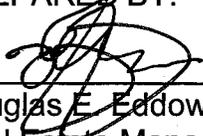
**CITY ATTORNEY'S ANALYSIS**

The reference documents have been reviewed by the City Attorney, acting as counsel to the Successor Agency, and approved as to form.

**RECOMMENDATION**

Staff recommends that the Oversight Board of the Oceanside Successor Agency adopt a resolution to approve a Professional Services Agreement with Pelican Properties for the design, entitlement and construction funding of a 350-400 space parking structure on Lot 23.

PREPARED BY:

  
\_\_\_\_\_  
Douglas E. Eddow  
Real Estate Manager

SUBMITTED BY:  
  
\_\_\_\_\_  
Steven R. Jepsen  
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

James Riley, Financial Services Director

\_\_\_\_\_  


ATTACHMENTS:

- 1) Resolution
- 2) Professional Services Agreement

1 RESOLUTION NO.

2 A RESOLUTION OF THE OVERSIGHT BOARD FOR THE  
3 SUCCESSOR AGENCY OF THE CITY OF OCEANSIDE  
4 APPROVING A PROFESSIONAL SERVICES AGREEMENT  
5 WITH PELICAN PROPERTIES TO FUND THE DESIGN,  
6 ENTITLEMENT AND CONSTRUCTION FUNDING USING  
7 FORMER REDEVELOPMENT AGENCY BOND PROCEEDS

8 WHEREAS, on February 1, 2012, in accordance with the provisions of California  
9 Health and Safety Code Section 34179(a)(1) the Oceanside Redevelopment Agency was  
10 dissolved; and

11 WHEREAS, the Oversight Board to the Successor Agency of the former Oceanside  
12 Redevelopment Agency (Successor Agency) has been appointed pursuant to the provisions of  
13 Health and Safety Code Section 34179; and

14 WHEREAS, on May 10, 2013 and May 15, 2013, the California Department of Finance  
15 issued to the Successor Agency a Finding of Completion pursuant to Health and Safety Code  
16 Section 34179.7; and

17 WHEREAS, staff for the Oceanside Successor Agency prepared a Long-Range Property  
18 Management Plan in accordance with Health and Safety Code Section 34191.5 and the  
19 Oversight Board approved the Long-Range Property Management Plan on June 11, 2013; and

20 WHEREAS, on October 30, 2013, the Department of Finance issued a letter to the City  
21 of Oceanside making certain findings concerning the Long-Range Property Management Plan  
(LRPMP) previously approved by the Oversight Board; and

22 WHEREAS, the Oversight Board approved a Revised LRPMP on November 19, 2013;  
23 and

24 WHEREAS, the Department of Finance approved the Revised LRPMP on November  
25 22, 2013; and

26 WHEREAS, consistent with the Revised LRPMP, staff has negotiated a Real Property  
27 Disposition and Acquisition Agreement (“Agreement”) to sell the Successor Agency-owned  
28 real property located in the 300 Block of Cleveland St. Street (APN 147-161-11) (“the  
Property”), to the City of Oceanside (Buyer) for the purchase price of \$800,000; and

1           WHEREAS, the purchase price is based upon an appraisal prepared for the Successor  
2 Agency; and

3           WHEREAS, the proposed sale implements the LRPMP which calls for the property to  
4 be sold “for economic development purposes with a condition that future uses be consistent  
5 with the City’s Local Coastal Plan and the Nine Block Master Plan. Future uses include a  
6 parking structure with a commercial and/or residential component.”

7           WHEREAS, the Oversight Board on June 24, 2014 approved the Agreement to sell the  
8 Property; and

9           WHEREAS, Health and Safety Code section 34191.4 (c) (1) allows a successor agency  
10 that has received a finding of completion to use bond proceeds issued on or before December  
11 31, 2010 to be used for the purposes for which they were sold and may be used in a manner  
12 consistent with the original bond covenants.

13           WHEREAS, the Successor Agency proposes to spend \$6 million, all of its remaining  
14 unexpended bond proceeds issued prior to December 31, 2010, for the design, the preparation  
15 of environmental studies, entitlement processing and construction of a public parking garage  
16 pursuant to the PSA between the Agency and Pelican Properties, Inc.

17           NOW, THEREFORE, the Oversight Board to the Successor Agency of the City  
18 Oceanside does resolve as follows:

19           1.       The foregoing Oversight Board recitals are true and correct and are a substantive  
20 part of this Resolution.

21           2.       The Oversight Board hereby approves the Professional Services Agreement  
22 between the Successor Agency and Pelican Properties, a copy of which is attached to the staff  
23 report dated June 24, 2014.

24           3.       Staff is authorized to take all actions necessary to implement said Agreement.

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1 BE IT FURTHER RESOLVED that, a copy of this resolution will be transmitted to the  
2 California State Department of Finance.

3 PASSED AND ADOPTED by the Oversight Board to the Successor Agency of the City  
4 of Oceanside, California, this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the following  
5 vote:

6  
7 AYES:

8 NAYS:

9 ABSENT:

10 ABSTAIN:

11  
12 \_\_\_\_\_  
13 CHAIRMAN

14 ATTEST:

15 \_\_\_\_\_  
16 SECRETARY

# DRAFT

## PROFESSIONAL SERVICES AGREEMENT

### **PROJECT: (LOT 23 PUBLIC PARKING GARAGE DESIGN AND ENTITLEMENT AND CONSTRUCTION FUNDING AGREEMENT)**

THIS AGREEMENT, dated \_\_\_\_\_, 20\_\_ for identification purposes, is made and entered into by and between the Successor Agency of the City of Oceanside ("Agency"), and \_\_\_\_\_, hereinafter designated as "CONSULTANT." The Agency and the CONSULTANT are collectively referred to as the "Parties."

#### **NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

1. **SCOPE OF WORK.** The project is more particularly described as follows:

In order to implement the Long Range Property Management Plan approved by the Oversight Board of the Successor Agency of the City of Oceanside, CONSULTANT shall develop detailed building design plans and specifications ("Plans and Specifications") for the construction of a public parking garage ("Public Garage") to accommodate up to three hundred and twenty five (325) public parking spaces located at the three hundred block of North Cleveland Street, ("Lot 23"). The Plans and Specifications shall include architectural plans; elevations and sections indicating principal areas, core design and location; location number and capacity of elevators; basic structural system; essential electrical capacity and distribution system; general type of plumbing systems; façade placement and orientation; and principal type of HVAC systems.

In addition, CONSULTANT shall prepare and process to a final public hearing before the Oceanside Community Development Commission all permit applications and documents deemed necessary by the City of Oceanside ("CITY") Development Services Department for the consideration of all applicable discretionary permits for the construction of said public parking garage, including, but not necessarily limited to, an application for a development plan, regular coastal permit, and CEQA documentation.

CONSULTANT shall construct the Public Garage in accordance with the Public Parking Garage and Ancillary Mixed Use Disposition and Development Agreement (Parking Garage DDA) which shall be between the CITY and CONSULTANT and shall detail the obligations of the City and CONSULTANT relative to the construction of the Parking Garage and Ancillary Mixed Use Development. The Parking Garage DDA shall also provide all conditions for transfer of title to the CONSULTANT and the retention of the City of an easement for public parking. The Parking Garage DDA shall further define the total cost of construction of the

**[Lot 23 Public Parking Garage Design, Entitlement and Construction  
Funding Agreement]**

public parking garage and the financial contribution of the City above and beyond the funding to be provided by the Agency from the \$6 million in available redevelopment bond proceeds. Nothing in this Agreement is intended to modify the obligations of the CITY or CONSULTANT under the Parking Garage DDA.

2. **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the AGENCY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the AGENCY as an agent, or to bind the AGENCY to any obligation whatsoever, unless specifically authorized in writing by the City Engineer. The CONSULTANT shall not be authorized to communicate directly with, nor in any way direct the actions of, any bidder or the construction contractor for this project without the prior written authorization by the City Engineer. CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT shall report to the AGENCY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.

3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions, and provide certification of such compliance as a part of this Agreement.

4. **LIABILITY INSURANCE.**

4.1. CONSULTANT shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

4.2 CONSULTANT shall maintain liability insurance in the following minimum limits:

**Comprehensive General Liability Insurance**  
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

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Commercial General Liability Insurance  
(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific aggregate	\$ 2,000,000

<u>Automobile Liability Insurance</u>	\$ 1,000,000
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\*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

- 4.3** If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the AGENCY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the Successor Agency's Project Manager promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.
- 4.4** All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside and Successor Agency of the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City and Agency as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.
- 4.5** All insurance companies affording coverage to the CONSULTANT pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.
- 4.6** CONSULTANT shall provide thirty (30) days written notice to the AGENCY should any policy required by this Agreement be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7** CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing, at minimum, a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

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Funding Agreement]**

- 4.8 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary. Further, maintenance of insurance by CONSULTANT as specified in this Agreement shall not relieve CONSULTANT of complying with the insurance requirements of the Design Build Contract for construction of the parking garage.
5. **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this Agreement and four (4) years thereafter, the CONSULTANT shall maintain professional errors and omissions insurance for work performed in connection with this Agreement in the minimum amount of One Million Dollars (\$1,000,000.00).

CONSULTANT shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.

6. **CONSULTANT'S INDEMNIFICATION OF CITY.** To the greatest extent allowed by law (including, without limitation, California Civil Code section 2782.8), CONSULTANT shall indemnify and hold harmless the AGENCY and the CITY, and their officers, agents and employees against all claims for damages to persons or property arising out of CONSULTANT'S work, including the negligent acts, errors or omissions or wrongful acts or conduct of the CONSULTANT, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the AGENCY or CITY, its officers, agents, or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the AGENCY or CITY, their officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT at its own expense shall, upon written request by the AGENCY or CITY, defend any such suit or action brought against the AGENCY or CITY, their officers, agents, or employees founded upon, resulting or arising from the conduct, tortious acts or omissions of the CONSULTANT.

**[Lot 23 Public Parking Garage Design, Entitlement and Construction  
Funding Agreement]**

CONSULTANT'S indemnification of AGENCY or CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

7. **OWNERSHIP OF DOCUMENTS.** All plans and specifications, including details, computations and other documents, prepared or provided by the CONSULTANT under this Agreement shall be the property of the AGENCY. The AGENCY agrees to hold the CONSULTANT free and harmless from any claim arising from any use, other than the purpose intended, of the plans and specifications and all preliminary sketches, schematics, preliminary plans, architectural perspective renderings, working drawings, including details, computation and other documents, prepared or provided by the CONSULTANT. CONSULTANT may retain a copy of all material produced under this Agreement for the purpose of documenting CONSULTANT's participation in this project.
  
8. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$6,000,000.00 (six million dollars). AGENCY shall pay CONSULTANT in accordance with the Schedule of Deliverables and Fees attached as Exhibit A to this Agreement. (This will need to be mutually developed by CONSULTANT and the CITY, it needs to include schedule of work, when deliverables are required, and when payment is to be made, the more detailed the better as it could ensure that DOF has no basis to object).  
  
The Agency and City agree that all \$6 million in funding from the Agency shall be exclusively from available pre-2011 redevelopment bond proceeds that the Oversight Board has allocated to the Parking Garage. We should identify a specific fund to avoid confusion. The Agency will list the payments set forth in Exhibit A in the applicable Recognized Obligation Payment Schedule ("ROPS" )for approval of the Department of Finance.  
  
No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the City Engineer. CONSULTANT shall obtain approval by the City Engineer prior to performing any work resulting in incidental expenses to Agency.
  
9. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing. All work shall be completed in every detail to the satisfaction of the City Engineer within the time period established in Exhibit A.
  
10. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated under-

**[Lot 23 Public Parking Garage Design, Entitlement and Construction  
Funding Agreement]**

standing between AGENCY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

11. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

12. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.
13. **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement by providing thirty (30) days written notice to the other party. If any portion of the work is terminated or abandoned by the CITY, then the AGENCY shall pay CONSULTANT for any work completed up to and including the date of termination or abandonment of this Agreement. The AGENCY shall be required to compensate CONSULTANT only for work performed in accordance with the Agreement up to and including the date of termination.
14. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.
15. **EFFECTIVE DATE.** In accordance with Health and Safety Code 34179(h), this Agreement shall be effective if the DOF fails to request review of the Oversight Board's action within five business days of receipt of the Successor Agency's notice. If the DOF requests review of the approval of this Agreement, the DOF has forty (40) calendar days to approve the action or return it to the Oversight Board for reconsideration. If DOF timely requests review and approves the Oversight Board's action, the Agreement shall be effective on the date of the DOF's approval.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors,

**[Lot 23 Public Parking Garage Design, Entitlement and Construction  
Funding Agreement]**

administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures on the dates set forth below.

[NAME OF CONSULTANT]

SUCCESSOR AGENCY CITY OF  
OCEANSIDE

By: \_\_\_\_\_  
Name/Title

By: \_\_\_\_\_  
Chairman, Oversight Board of the  
Successor Agency, City of  
Oceanside

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name/Title

APPROVED AS TO FORM:

Date: \_\_\_\_\_

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

\_\_\_\_\_  
Employer ID No.

**NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.**