

MEMORANDUM

DEPARTMENT OF PUBLIC WORKS

County of Placer

TO: BOARD OF SUPERVISORS

DATE: March 22, 2011

FROM: ^{KD} KEN GREHM / PETER KRAATZ

SUBJECT: **APPROVAL OF INTERAGENCY IMPLEMENTATION AGREEMENT
BETWEEN PUBLIC WORKS DEPARTMENT AND REDEVELOPMENT
AGENCY FOR THE FOR KINGS BEACH COMMERCIAL CORE
IMPROVEMENT PROJECT**

ACTION REQUESTED / RECOMMENDATION

Adopt a Resolution to approve an Interagency Implementation Agreement between Placer County Department of Public Works (DPW) and Placer County Redevelopment Agency (Agency) for the Kings Beach Commercial Core Improvement Project in an amount not to exceed \$11,000,000; and authorizing the Director of the Department of Public Works or his designee to execute the agreement.

BACKGROUND / SUMMARY

A Cooperative Agreement between Placer County and the Agency for the Agency funding of projects and programs of benefit to the North Auburn, North Lake Tahoe, and Sunset Industrial Redevelopment project areas was approved on January 25, 2011 in the amount of \$18,865,318. This Agreement implements a portion of that cooperative agreement.

The Agency Board has authorized the Agency to commit previous funding toward the Kings Beach Commercial Core Improvement Project that benefits the North Lake Tahoe Redevelopment Project area. To date, two public parking facilities have been designed and constructed utilizing these committed monies; Brook Avenue Public Parking Facility and Minnow Avenue Public Parking Facility. Additionally, the Agency supported a storm water quality model which is used to track pollutants transported from the watershed and is a component of the attached interagency agreement.

DPW is seeking approval to enter into an agreement with the Agency to utilize funding that will total \$11,000,000 to support the pre-development, design, and construction work of various projects within the Kings Beach Commercial Core Improvement Project area. The agreement outlines the conditions of the funding and the responsibilities of both DPW and the Agency, and summarizes spent and future monies for the project.

ENVIRONMENTAL

This Interagency Agreement is exempt from CEQA, pursuant to CEQA Guidelines Section 15180. DPW has completed or will complete all required environmental documentation as related to projects where the funding will be committed, and that effort is supported by this agreement.

FISCAL IMPACT

The Kings Beach Commercial Core Improvement Project is estimated to cost over \$45,000,000 to plan, design and build. The Agency funding totaling \$11,000,000 through this agreement is a significant contribution to help fully fund the project. Proposed Agency funding is included in Department's the Fiscal Year 2010-11 and proposed 2011-12 Budgets.

Attachments:

- Resolution
- Copy of Agreement
- Location Map

**Before the Board of Supervisors
County of Placer, State of California**

In the matter of: A RESOLUTION APPROVING AN
AN INTERAGENCY IMPLEMENTATION
AGREEMENT BETWEEN PUBLIC WORKS AND
PLACER COUNTY REDEVELOPMENT AGENCY
FOR KINGS BEACH COMMERCIAL CORE
IMPROVEMENT PROJECT IN AN AMOUNT NOT
TO EXCEED \$11,000,000 AND AUTHORIZING
THE DIRECTOR OF PUBLIC WORKS OR HIS
DESIGNEE TO EXECUTE THE AGREEMENT

Resol. No:.....

Ord. No:.....

First Reading:.....

The following RESOLUTION was duly passed by the Board of Supervisors
of the County of Placer at a regular meeting held _____,

by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Attest:
Clerk of said Board

Chairman, Board of Supervisors

BE IT HEREBY RESOLVED by the Board of Supervisors of the County of Placer, State of California, that this Board approves An Interagency Implementation Agreement between Placer County Department of Public Works and Placer County Redevelopment Agency for the Kings Beach Commercial Core Improvement Project in an amount not to exceed \$11,000,000 and authorizing the Director of the Department of Public Works or his designee to execute the agreement.

Agreement No.: 2010/2011-01
Agreement Description: Interagency Implementation Agreement
for Kings Beach Commercial Core
Improvement Project

INTERAGENCY IMPLEMENTATION AGREEMENT

THIS INTERAGENCY IMPLEMENTATION AGREEMENT (this "**Agreement**") is entered into effective on the last date signed on the signature page ("**Effective Date**") by and between Placer County Redevelopment Agency, a public body corporate and politic ("**Agency**") and Placer County, a political subdivision of the State of California ("**County**") by and through its Department of Public Works ("**DPW**"). Agency and County are hereinafter referred to collectively as the "**Parties**."

RECITALS

- A. County desires to initiate road, water quality, streetscape, and parking lot projects within the North Lake Tahoe Redevelopment Project Area; specifically within Kings Beach.
- B. A Cooperative Agreement between the County and the Agency for the Agency funding of projects and programs of benefit to the North Auburn, North Lake Tahoe and Sunset Industrial Redevelopment Project Areas was approved on January 25, 2011 in the amount of \$18,865,318. This Agreement implements a portion of that Cooperative Agreement.
- C. The Agency Board has authorized the Agency to commit up to Eleven Million and No/100 Dollars (\$11,000,000) in funding ("Funding Commitment") toward the Commercial Core Improvement Project (CCIP) to support transportation improvement projects that benefit the North Lake Tahoe Redevelopment Project Area ("**Project Area**"). Funds already expended toward the CCIP total \$3,443,151 with an additional \$1,397,000 already committed under a separate agreement for the Rainbow Ave. Public Parking Lot. Available monies going forward total \$6,159,849 of which \$1,200,000 is being reserved by the Agency to develop the Everett public parking lot. Total funds to be allocated for use by DPW are \$4,959,849.
- D. The purpose of this Agreement is to establish the procedures by which money from that Funding Commitment may be transferred and allocated to eligible projects.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The recitals are hereby incorporated herein as if set forth in full.
2. Funding.

The Parties acknowledge and agree that the Agency's overall financial commitment to the CCIP shall be Eleven Million and No/100 Dollars (\$11,000,000).

The Parties also acknowledge and agree that the following projects have already been funded and are credited toward the Agency's \$11,000,000 funding commitment to the CCIP under separate agreements between the Parties. The amount credited for these projects set out below in the amount of \$3,443,151 of this Agreement.

Brook Avenue Public Parking Lot
Minnow Avenue Public Parking Lot
The Storm Water Management Model (SWMM)
Brockway Vista Avenue Land Purchase

In addition, the Rainbow Avenue Public Parking Lot project in the amount of \$1,397,000 is the subject of a separate agreement and will also be credited towards the Agency's \$11,000,000 commitment.

The Parties acknowledge and agree that payments of the Agency's Funding Commitment can only be made for projects that are described in Section 3 of this Agreement, as it may be amended in writing by the parties.

3. Use of Agency Funds.

(a) Future Eligible Projects

The County and Agency shall diligently pursue completion of projects identified within the Kings Beach CCIP set forth below. **Through this agreement the Agency is making available to DPW a total of \$4,959,849 in support of the general projects falling within the implementation plan for the CCIP as follows:**

- Water Quality Projects-storm water conveyance and treatment
- Neighborhood Traffic Management Plan-implementing traffic control devices, speed humps, traffic circles, and sidewalks to reduce traffic speeds and improve pedestrian safety in neighborhoods adjacent to Highway 28

- Acquisition of land & ROW-purchase land for parking lots and right-of-way to implement improvements along Highway 28
- Parking Lot Construction & Management-to replace lost parking along Hwy 28 and provide long term management of lots
- SR 28 Streetscape Amenities-benches, light standards, trash receptacles, bicycle racks, and decorative paving
- Acquisition Support-associated costs related to acquisition such as title reports, survey work, property investigation, and environmental analysis

The Agency will manage the design and construction of the Everett Property Parking Lot Project and \$1,200,000 of the total funds committed through this Agreement are allocated for the Agency's use for the implementation of this project. If Agency costs for implementing the Everett Property Parking Lot Project are less than the \$1,200,000 allocation for that project, the balance of the allocated funds will be made available to DPW for other projects included in this Agreement.

DPW may also request that CCIP projects not listed above be substituted for Agency funding. Such requests will be in writing and subject to Agency review and approval. Approval of the request will be in the form of a written Amendment to this Agreement. The parties acknowledge that adoption by the County Board of Supervisors and Agency Board of Directors of certain findings pursuant to California Community Redevelopment Law and the California Environmental Quality Act may be a condition precedent to the Agency approval of any project funding allocations under this Agreement.

(b) Interagency Budget Procedures

For the projects listed above that will be managed by DPW, the Agency will provide funds on a reimbursement basis for the implementation of those projects as specified herein. DPW may request the transfer of Agency funds from one project to another listed above. Such transfers will be in writing and will be subject to Agency review and approval.

(c) No Overhead, Operation or Maintenance Cost Funding

The Agency funds to be utilized for this Agreement are derived from tax increment funds and tax exempt bond proceeds generated from the North Lake Tahoe Redevelopment Project Area. Pursuant to California Community Redevelopment Law, the County acknowledges and agrees that Agency funds shall not be used for administrative overhead costs, including overhead on staff labor charges, nor for operation and maintenance costs of real property and project improvements. The

Agency will not reimburse DPW for any expenses related to the above mentioned items.

(d) Reimbursement Payments

County requests for Agency funding payments will be submitted in a format mutually agreed to by the Parties. Agency payments will be for reimbursement of eligible project costs and the requests will be accompanied by appropriate documentation to show detailed information on the project expenses incurred. The transfer of Agency funds to the County will be made monthly via journal vouchers.

4. Term.

The term of this Agreement shall commence on the Effective Date and unless terminated sooner pursuant to the terms hereof, shall expire five (5) years from the Effective Date of this Agreement.

5. Records; Audits.

The County will maintain throughout the term of this Agreement (as defined in Section 4), and for two (2) years thereafter, complete detailed records regarding all work and financial transactions on the Project and all work and financial transactions performed pursuant to this Agreement. Upon reasonable notice, Agency shall have the right to audit or inspect such records.

6. Insurance Requirements.

It is agreed that Agency and County shall each maintain at all times during the performance of this Agreement insurance coverage as set out in Exhibit A, or a program of self insurance to cover its operations.

In the event that either or both Parties discontinues its policy of insurance or self-insurance, that Party agrees to procure and continue in force and effect insurance coverage as set forth in Exhibit "A" of this Agreement.

7. Indemnity.

County shall indemnify, defend and hold harmless Agency and its elected and appointed officials, employees, agents and contractors (collectively, "**Indemnities**") from and against any and all loss, liability, cost, claim, cause of action, demand, judgment, expense, (including reasonable attorneys' fees) or damage (collectively "**Claims**") arising from or related to County's performance or failure to perform its obligations pursuant to this Agreement, except to the extent the same are attributable to the gross negligence or willful misconduct of the Indemnities.

Agency shall indemnify, defend and hold harmless County and its elected and appointed officials, employees, agents and contractors (collectively, **“County Indemnities”**) from and against any and all Claims arising from or related to Agency’s performance or failure to perform its obligations pursuant to this Agreement, except to the extent the same are attributable to the gross negligence or willful misconduct of County Indemnities.

To the maximum extent permitted by law, County shall require all consultants and contractors engaged in design, construction management, construction or other work on the Project to indemnify, defend and hold harmless the Indemnities and the County Indemnities from all Claims arising from or related to the design or construction of the Project.

This Section 7 shall survive the expiration or earlier termination of this Agreement.

8. Events of Default; Remedies.

An Event of Default under this Agreement shall occur if a Party fails to fulfill or perform any obligation required to be fulfilled or performed by such Party hereunder and the failure of such Party to cure such default within thirty (30) days after receipt of written notice thereof (or in the case of a default that cannot be reasonably cured within such period, the failure to commence to cure such default within thirty (30) days and thereafter to proceed with due diligence to cure such default). Upon the occurrence of an Event of Default hereunder, the non-breaching Party may initiate mediation of the controversy, claim, or dispute and the other Party shall participate in good faith. The Parties shall bear the cost of the mediation equally and each shall pay its own attorneys’ fees and expenses in such mediation. If the Parties are unable to mediate successfully, the non-breaching Party may take any action available to it in law or in equity, including without limitation, pursuit of an order for specific performance. The remedies afforded hereunder are cumulative. Failure to provide notice of any default shall not constitute a waiver of such default. It is expressly understood and agreed that no breach of this Agreement shall entitle either Party to cancel, rescind or otherwise terminate this Agreement. The foregoing limitation shall not affect, in any manner, any other right or remedy which either Party may have by reason of any breach of this Agreement.

9. Miscellaneous.

9.1. Principal Contacts. The principal contacts for the Parties shall be the following:

Agency: Steve Brown, Program Coordinator
3091 County Center Drive, Suite 260
Auburn, CA 95603
Phone: (530) 745-3150

DPW: Dan LaPlante, Associate Civil Engineer
P.O. Box 336
7717 North Lake Blvd.
Kings Beach, CA 96143
(530) 581-6231

9.2 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

(i) personal delivery, in which case notice is effective upon delivery;

(ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;

(iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

(iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

AGENCY:

Placer County Redevelopment Agency
3091 County Center Drive, Suite 260
Auburn, CA 95603
Attn: Jim LoBue, Deputy Director
Phone: (530) 745-3150
Fax: (530) 745-3152

COUNTY:

Placer County Department of Public Works
P.O. Box 336
7717 North Lake Blvd.
Kings Beach, CA 96143
Attn.: Peter Kraatz, Deputy Director
Phone: (530) 581-6230
Fax: (530) 581-6239

9.3 Governing Law; Venue. This Agreement is subject to the laws and jurisdiction of the State of California. In the event that any court action should be brought in conjunction with this Agreement, it shall be subject to interpretation under the laws of the State of California and any legal proceedings shall be brought under the jurisdiction of the Superior Court of Placer County, State of California. The parties hereby waive any federal court removal and/or original jurisdiction rights that they may have.

9.4 Severability. If any term, provision, covenant or condition contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall continue in full force and effect.

9.5 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, and all of which taken together shall constitute one and the same instrument.

9.6 Amendments. Unless otherwise stated herein, this Agreement may be modified or amended, in whole or in part, only by an instrument in writing, executed and acknowledged by the Parties.

9.7 Captions; Construction. The section headings used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

9.8 Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior oral and written agreements with respect thereto.

9.9 No Third Party Beneficiaries. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any rights in any person not a party hereto.

9.10 Further Assurances. The Parties agree to execute, acknowledge and deliver to the other such other documents and instruments, and to undertake such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

9.11 Due Authorization. Each Party represents and warrants that such Party's execution, performance and delivery of this Agreement has been duly authorized by all requisite actions on the part of such Party, and that the person(s) executing this Agreement on behalf of such Party have been duly authorized to do so.

9.12 No Assignment. This Agreement may not be assigned in whole or in part absent the prior written consent of the Parties.

9.13 No Waiver. No waiver of, acquiescence in or consent to any breach of any term, covenant or condition hereof shall be construed as, or constitute a waiver of, acquiescence in, or consent to, any other, further or succeeding breach of the same or any other term, covenant or condition.

9.14. Compliance with Laws. The Parties agree to comply with all applicable federal and state statutes and regulations and County ordinances.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date written below.

AGENCY:

PLACER COUNTY REDEVELOPMENT AGENCY

By: _____ Date _____
Thomas M. Miller
Redevelopment Director

COUNTY:

PLACER COUNTY, a political subdivision of the State of California
By and through its Department of Public Works

By: _____ Date _____
Ken Grehm
Director of Public Works

Approved As to Form

Scott Finley, County Counsel

Gerald Carden, Redevelopment Agency Counsel

Exhibit A

Insurance Requirements

In the event County or Agency discontinues its insurance policy or self-insurance, County and Agency agrees to procure and continue in force and effect insurance coverage as set forth below. DPW agrees to obtain from both the Contractors and/or subcontractors separate Certificates of Insurance showing.

1. INSURANCE:

CONSULTANT shall file with COUNTY concurrently herewith a Certificate of Insurance, in companies acceptable to COUNTY, with a Best's Rating of no less than A-VII showing.

2. WORKER'S COMPENSATION AND EMPLOYERS LIABILITY INSURANCE:

Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to CONSULTANT'S employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer."

CONTRACTOR shall require all SUBCONTRACTORS to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

3. GENERAL LIABILITY INSURANCE:

A. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of CONSULTANT, providing insurance for bodily injury liability and property damage

liability for the limits of liability indicated below and including coverage for:

- (1) Contractual liability insuring the obligations assumed by CONSULTANT in this Agreement.

B. One of the following forms is required:

- (1) Comprehensive General Liability;
- (2) Commercial General Liability (Occurrence); or
- (3) Commercial General Liability (Claims Made).

C. If CONSULTANT carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

- One million dollars (\$1,000,000) each occurrence
- Two million dollars (\$2,000,000) aggregate

D. If CONSULTANT carries a Commercial General Liability (Occurrence) policy:

- (1) The limits of liability shall not be less than:

- One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
- One million dollars (\$1,000,000) for Products-Completed Operations
- Two million dollars (\$2,000,000) General Aggregate

- (2) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).

E. Special Claims Made Policy Form Provisions:

CONSULTANT shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of COUNTY, which consent, if given, shall be subject to the following conditions:

- (1) The limits of liability shall not be less than:

- One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)

→One million dollars (\$1,000,000) aggregate for Products Completed Operations

→Two million dollars (\$2,000,000) General Aggregate

- (2) The insurance coverage provided by CONSULTANT shall contain language providing coverage up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

4. ENDORSEMENTS:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

- A. "The County of Placer, its officers, agents, employees, and volunteers are to be covered as insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."
- B. "The insurance provided by the Consultant, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."
- C. "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer."

5. AUTOMOBILE LIABILITY INSURANCE:

Automobile Liability insurance covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

Covered vehicles shall include owned, non-owned, and hired automobiles/trucks.

6. PROFESSIONAL LIABILITY INSURANCE (ERRORS & OMISSIONS):

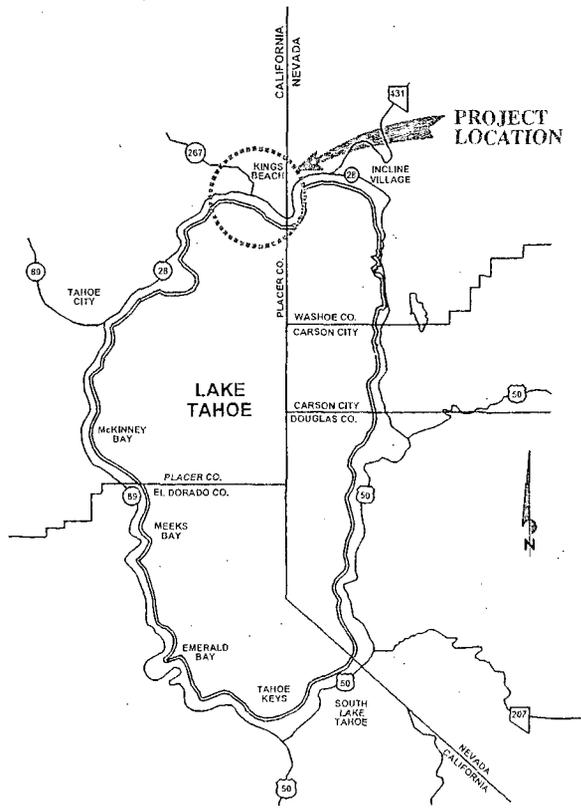
Professional Liability Insurance for Errors and Omissions coverage in the amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence and two million dollars (\$2,000,000) aggregate.

If Consultant sub-contracts in support of Consultants work provided for in the agreement, Professional Liability Insurance for Errors shall be provided by

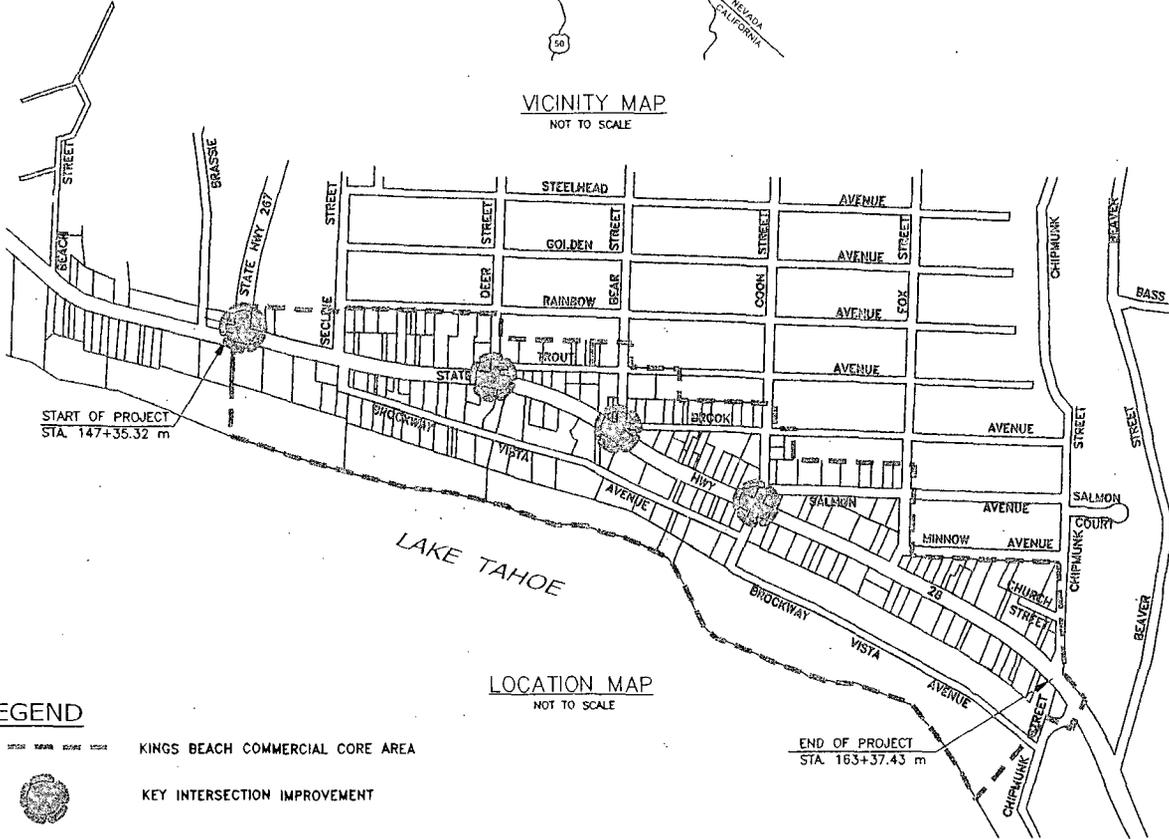
the sub contractor in an amount not less than one million dollars (\$1,000,000) in aggregate.

The insurance coverage provided by the consultant shall contain language providing coverage up to six (6) months following completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims made policy.

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VICINITY MAP
NOT TO SCALE



LOCATION MAP
NOT TO SCALE

LEGEND

- 
 KINGS BEACH COMMERCIAL CORE AREA
- 
 KEY INTERSECTION IMPROVEMENT

**KINGS BEACH COMMERCIAL CORE IMPROVEMENT PROJECT
VICINITY AND LOCATION MAP**

END OF PROJECT
STA. 163+37.43 m

START OF PROJECT
STA. 147+35.32 m