

PLACER COUNTY

REDEVELOPMENT AGENCY

MEMORANDUM

TO: Honorable Members of the Redevelopment Agency Board
FROM: Rich Colwell, Chief Assistant CEO – Redevelopment Director *R.C. Colwell*
Rae James, Deputy Director, Redevelopment
DATE: June 13, 2006
SUBJECT: Recommendation to Approve a Sole Source Contract for Property Development Advisory Services in North Lake Tahoe with Economic Planning Systems in an Amount Not to Exceed \$65,000 and Authorize the Purchasing Manager to Sign the Contract.

ACTION REQUESTED:

Approve a sole source contract for property development advisory services in North Lake Tahoe with Economic Planning Systems (EPS) in an amount not to exceed \$65,000 and authorize the Purchasing Manager to sign the contract.

BACKGROUND:

On January 10, 2006 the Board awarded RFP No. 9489 to EPS for the preparation of a market demand land use study for Kings Beach and Tahoe City. Since that time EPS has progressed through its research, interviewed over 20 land-owners, community stakeholders and staff of the Tahoe Regional Planning Agency (TRPA). As a result of these responses, it became clear to Agency staff that professional assistance was needed in evaluating the feasibility and marketability of several projects under consideration that were identified as critical nodal centers for revitalization. EPS has established the relationships and has the expertise and resources to package project specific development in these areas for eventual funding.

FISCAL IMPACT:

There will be no impact on the County's General Fund. The Agency has sufficient budget to cover the contract expense.

RECOMMENDATION:

Approve a sole source contract for property development advisory services in North Lake Tahoe with EPS in an amount not to exceed \$65,000 and authorize the Purchasing Manager to sign the contract.

cc: Sabrina Thompson, Agency Counsel

Attachment

Project: Tahoe Basin Advisory Services

Administering Agency: Placer County Redevelopment Agency

Contract No.

Contract Description: Concept Evaluation and Market Structure for Agency Sponsored Agency Development Projects in the North Tahoe Redevelopment Area.

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made at Auburn, California, as of _____, by and between the Placer County Redevelopment Agency, ("Agency"), and Economic & Planning Systems, Inc. ("Consultant"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide the services described in Exhibit A. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A.
2. **Payment.** Agency shall pay Consultant for services rendered pursuant to this Agreement at the time and in the amount set forth in Exhibit A and B, up to a maximum of **Sixty-Five Thousand dollars (\$65,000)**. The payment specified in Exhibit A and B shall be the only payment made to Consultant for services rendered pursuant to this Agreement. This amount is the initial authorization, and additional expenditures, if any, may be authorized by the Agency when requested in advance and approved in writing. Consultant shall submit all billings for said services to Agency in the manner specified in Exhibit A and B; or, if no manner be specified in Exhibit A and B, then according to the usual and customary procedures which Consultant uses for billing clients similar to Agency.
3. **Facilities, Equipment and Other Materials, and Obligations of Agency.** Consultant shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement.
4. **Exhibits.** All exhibits referred to herein are attached hereto and by this reference incorporated herein.
5. **Time for Performance.** Time is of the essence, and, subject to Agency's compliance with the provisions of Paragraph 3 and 8 of this Agreement. Failure of Consultant to perform any services within the time limits set forth in Exhibit A shall constitute material breach of this contract. **Contract shall expire June 30, 2007.**

6. **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of the Agency. Agency shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement. Agency shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement.

7. **Licenses, Permits, Etc.** Consultant represents and warrants to Agency that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant represents and warrants to Agency that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for Consultant to practice its profession at the time the services are performed.

8. **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of Consultant's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

9. **Insurance.** Consultant shall file with Agency a Certificate of Insurance, with companies acceptable to Agency, with a Best's Rating of no less than A:VII showing the following coverage:
 - A. **Workers' Compensation and Employers' Liability Insurance**
 - 1) Workers' Compensation Insurance shall be provided, as required, by any applicable law or regulation. Employers' 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.
 - 2) If there is an exposure of injury to Consultant's employees under the U.S. Longshoremen and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.
 - 3) Each Workers' Compensation policy shall be endorsed with the following specific language:

Cancellation Notice "This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice to the Agency."
 - 4) Consultant shall require all subconsultants to maintain adequate Workers' Compensation Insurance. Certificates of Workers' Compensation shall be filed forthwith with the Agency upon demand.

B. General Liability Insurance

- 1) Comprehensive General Liability or Commercial General Liability insurance shall be provided covering all operations by, or on behalf of Consultant, covering bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for contractual liability insuring the obligations assumed by Consultant in this Agreement.
- 2) One of the following forms is required:
 - a) Comprehensive General Liability;
 - b) Commercial General Liability (Occurrence); or
 - c) Commercial General Liability (Claims Made).
- 3) 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:
 - a) One million dollars (\$1,000,000) each occurrence;
 - b) One million dollars (\$1,000,000) aggregate.
- 4) If Consultant carries a Commercial General Liability (Occurrence) policy:
 - a) The limits of liability shall not be less than:
 - i) One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage);
 - ii) One million dollars (\$1,000,000) for Products-Completed Operations;
 - iii) One million dollars (\$1,000,000) General Aggregate.
 - b) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately to this contract, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).
- 5) Special Claims Made Policy Form Provisions:

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

 - a) The limits of liability shall not be less than:
 - i) One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage);
 - ii) One million dollars (\$1,000,000) aggregate for Products-Completed Operations;

iii) One million dollars (\$1,000,000) General Aggregate.

- b) 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.

C. Endorsements:

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

- 1) "The Agency, its officers, agents, employees and volunteers, are to be covered as insureds for all liability arising out of operations, or on behalf of, the named insured in the performance of this Agreement."
- 2) "The insurance provided by the Consultant, including any excess liability or umbrella form coverage, is primary coverage to the Agency with respect to any insurance or self-insurance programs maintained by Agency, and no insurance held or owned by Agency shall be called upon to contribute to a loss."
- 3) "This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice to Agency."

D. Automobile Liability Insurance

- 1) Automobile Liability insurance shall be provided covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.
- 2) Covered vehicles should include owned, non-owned, and hired automobiles/trucks.

E. Professional Liability Insurance (Errors and Omissions)

- 1) Professional Liability Insurance for Errors and Omissions coverage shall be provided in the amount of not less than one million dollars (\$1,000,000) per occurrence and one million (\$1,000,000) in 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.

10. **Indemnity.** Consultant hereby agrees to protect, defend, indemnify, and hold the Agency free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by the Agency arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the Agency) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of consultant's

negligent performance or willful misconduct under this contract or agreement. Consultant agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the Consultant. Consultant also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against Consultant or the Agency or to enlarge, in any way, the Consultant's liability but is intended solely to provide for indemnification of the Agency from liability for damages or injuries to third persons or property arising from Consultant's performance pursuant to this contract or agreement.

As used above, the term "Agency" means Placer County Redevelopment Agency or its officers, agents, employees and volunteers.

11. **Consultant Not Agent.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
12. **Assignment Prohibited.** Consultant may assign its rights and obligations under this Agreement only upon the prior written approval of Agency, said approval to be in the sole discretion of Agency.
13. **Personnel.**
 - A. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by Consultant to perform services pursuant to this Agreement, including those members of the Project Team as explained below, Consultant shall remove any such person immediately upon receiving notice from Agency of the desire of Agency for removal of such person or persons.
 - B. Notwithstanding the foregoing, if specific persons are designated as the "Project Team" in Exhibit A or B, Scope of Services, Consultant agrees to perform the work under this agreement with those individuals identified. Reassignment or substitution of individuals or subconsultants named in the Project Team by Consultant without the prior written consent of Agency shall be grounds for cancellation of the agreement by Agency, and payment shall be made pursuant to Paragraph 15 Termination only for that work performed by Project Team members.
14. **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. All products of whatsoever nature which Consultant delivers to Agency pursuant to this Agreement shall be prepared in a

substantial first class and workmanlike manner and conform to the standards or quality normally observed by a person practicing in Consultant's profession.

15. **Termination.**

A. Agency shall have the right to terminate this Agreement at any time by giving notice in writing of such termination to Consultant. In the event Agency shall give notice of termination, Consultant shall immediately cease rendering service upon receipt of such written notice, pursuant to this Agreement. In the event Agency shall terminate this Agreement:

- 1) Consultant shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.
- 2) Agency shall have full ownership and control of all such writings delivered by Consultant pursuant to this Agreement.
- 3) Agency shall pay Consultant the reasonable value of services rendered by Consultant to the date of termination pursuant to this Agreement not to exceed the amount documented by Consultant and approved by Agency as work accomplished to date; provided, however, that in no event shall any payment hereunder exceed the amount of the agreement specified in Exhibit A, and further provided, however, Agency shall not in any manner be liable for lost profits which might have been made by Consultant had Consultant completed the services required by this Agreement. In this regard, Consultant shall furnish to Agency such financial information as in the judgment of the Agency is necessary to determine the reasonable value of the services rendered by Consultant. The foregoing is cumulative and does not affect any right or remedy which Agency may have in law or equity.

B. Consultant may terminate its services under this Agreement upon thirty (30) working days' advance written notice to the Agency.

16. **Non-Discrimination.** Consultant shall not discriminate in its employment practices because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex in contravention of the California Fair Employment and Housing Act, Government Code section 12900 *et seq.*

17. **Records.** Consultant shall maintain, at all times, complete detailed records with regard to work performed under this agreement in a form acceptable to Agency, and Agency shall

have the right to inspect such records at any reasonable time. Notwithstanding any other terms of this agreement, no payments shall be made to Consultant until Agency is satisfied that work of such value has been rendered pursuant to this agreement. However, Agency shall not unreasonably withhold payment and, if a dispute exists, the withheld payment shall be proportional only to the item in dispute.

18. **Ownership of Information.** All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become the property of Agency, and Consultant agrees to deliver reproducible copies of such documents to Agency on completion of the services hereunder. The Agency agrees to indemnify and hold Consultant harmless from any claim arising out of reuse of the information for other than this project.
19. **Waiver.** One or more waivers by one party of any major or minor breach or default of any provision, term, condition, or covenant of this Agreement shall not operate as a waiver of any subsequent breach or default by the other party.
20. **Conflict of Interest.** Consultant certifies that no official or employee of the Agency, nor any business entity in which an official of the Agency has an interest, has been employed or retained to solicit or aid in the procuring of this agreement. In addition, Consultant agrees that no such person will be employed in the performance of this agreement without immediately notifying the Agency.
21. **Entirety of Agreement.** This Agreement contains the entire agreement of Agency and Consultant with respect to the subject matter hereof, and no other agreement, statement, or promise made by any party, or to any employee, officer or agent of any party which is not contained in this Agreement shall be binding or valid.
22. **Notification.** Any notice or demand desired or required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the mail, postage prepaid, and addressed to the parties as follows:

AGENCY: Placer County Redevelopment Agency
Attn: Rae James
3091 County Center Drive, Ste 260
Auburn, CA 95603
(530) 745-3150

CONSULTANT: Economic & Planning Systems, Inc.
Attn: David Zehnder, Principal
2150 River Plaza Drive, Suite 400
Sacramento, CA 95833
(916) 649-8010
Fx (916) 649-2070

Any notice so delivered personally shall be deemed to be received on the date of delivery, and any notice mailed shall be deemed to be received five (5) days after the date on which it was mailed.

23. **Governing Law.** This Agreement is executed and intended to be performed in the State of California, and the laws of that State shall govern its interpretation and effect. Any legal proceedings on this agreement shall be brought under the jurisdiction of the Superior Court of the County of Placer, State of California, and Consultant hereby expressly waives those provisions in California Code of Civil Procedure §394 that may have allowed it to transfer venue to another jurisdiction.

Executed as of the day first above stated:

PLACER COUNTY REDEVELOPMENT AGENCY

By: _____
David Seward, Purchasing Manager

Economic & Planning Systems, Inc.

By: _____
Name: Tim R. Youmans
Title: Managing Principal

By: _____
Name: _____
Title: Managing Principal

Approved As to Form

Sabrina Thompson, Agency Counsel

*Agreement must be signed by two corporate officers if a corporation; one must be the secretary of the corporation, and the other may be either the President or Vice President, unless an authenticated corporate resolution is attached delegating authority to a single officer to bind the corporation.

EXHIBIT A

SCOPE OF SERVICES

Project-Specific Feasibility and Support (Task 6)

County staff have asked EPS to perform project-specific feasibility analysis and support. Under this task, EPS would work with individual property owners/developers whose projects are likely to lead to increased economic revitalization in the Kings Beach or Tahoe City Redevelopment Areas. EPS would assist with development concept feasibility, public/private partnership structures, development team building, and other services as needed.

Of specific interest and critical to redevelopment is the role of the Tahoe Regional Planning Agency (TRPA). Any redevelopment strategy and feasible project will need to work within TRPA requirements to be successful. EPS team members will take a greater role in monitoring and participating in the TRPA planning and regulatory processes. Such participation will require attendance at several meetings with the TRPA and its consultants to insure that the implementation recommendations and project feasibility support provided to the County are viable given the regulatory requirements.

The amount of assistance required from EPS under this task is not fully defined because EPS will be providing its services on behalf of the County as projects are identified and at various stages of the development process. The amount to be charged by EPS may actually be less if the need for services is more limited than anticipated at this time. Every effort will be made to minimize the need for travel by making use of conference call systems, encouraging meetings within the offices of EPS when possible, and combining multiple activities within single trips. If additional resources are required because of increased participation in the development process or additional projects are added to those in need of feasibility analysis, the Agency and EPS will negotiate future work assignments.

EPS will charge for services on a direct cost (hourly billing rates and direct expenses) not-to-exceed basis; therefore, the Agency will be billed only for the work completed up to the authorized budget amount. EPS will request authorization for additional budget if the need arises with the understanding that terms would be negotiated in good faith. This contract will utilize EPS's 2006 Hourly Billing Rates.

EXHIBIT B

PAYMENT FOR SERVICES RENDERED

<u>Project Staff</u>	<u>Position Title</u>	<u>Hourly Rate</u>
David Zehnder	Principal	\$225
Susan Veazey	Senior Tech. Associate	\$160
	Research Analyst II	\$ 95
	Production & Admin.	\$ 60

The estimated budget to complete the work described is **\$60,000** and is inclusive of work done by subconsultant team members. Direct Expenses will include reproduction expenses, telephone calls, Courier service, Fed-Ex, travel and expenses related to meeting attendance in an amount not to exceed **\$5,000**. Study direct expenses shall not exceed \$5,000 without prior approval by Deputy Director – Redevelopment. **Total contract amount will not exceed \$65,000.**

Consultant shall provide billing on a monthly basis with a breakdown of tasks accomplished and hours incurred by each assigned Position Title.

