

PLACER COUNTY
REDEVELOPMENT AGENCY

MEMORANDUM

TO: Honorable Members of the Redevelopment Agency Board
FROM: Rich Colwell, Chief Assistant CEO – Redevelopment Director *RC Colwell*
DATE: October 24, 2006
SUBJECT: Approve a Services Agreement between the Placer County Redevelopment Agency and the Tahoe City Downtown Association in the Amount of \$60,000 and Authorize the Chief Assistant CEO–Redevelopment Director or Designee to Execute the Contract Subject to the Review of Agency Counsel

ACTION REQUESTED: Approve a services agreement between the Placer County Redevelopment Agency (Agency) and the Tahoe City Downtown Association (TCDA) in the amount of \$60,000 and authorize the Chief Assistant CEO – Redevelopment Director or Designee to execute the contract subject to the review of Agency Counsel.

BACKGROUND: The original intent of the TCDA was to provide support for local business marketing. However, the Agency, residents, and businesses encouraged the TCDA to expand its role and work closely with the County in support of the Tahoe City Business Expansion/Attraction Strategy. As the business strategy has gained momentum, the TCDA has taken on a larger role in motivating the community to participate in the creation of a Main Street Program and support the regional expansion of visitor services. The TCDA has made strides in aggressively moving forward with the revitalization process of Tahoe City, utilizing the National Main Street Program approach. As is critical to such an approach, the TCDA has organized itself and formed a stable membership, establishing a viable organizational structure to provide for the local business community.

In 2005, your Board approved services agreements with the TCDA in the amount of \$60,000. As the TCDA continues toward its goals, the Agency would like to continue its grant of \$60,000. A copy of the services agreement is attached in its substantial form.

The TCDA has also made progress in developing a series of successful local events that promote downtown Tahoe City. Today the four key committees of the Main Street Program are active within the community. Recently, the TCDA organized an Economic Restructuring Committee. This committee constitutes a key element in the formation and implementation of the Main Street Program.

FISCAL IMPACT: The Agency has sufficient North Lake Tahoe Tax Increment Funds budgeted for this action. There will be no impact on the County's General Fund.

RECOMMENDATION: Approve a services agreement between the Agency and the TCDA in the amount of \$60,000 and authorize the Chief Assistant CEO – Redevelopment Director or designee to execute the contract subject to review by Agency Counsel.

Attachment

Cc: Sabrina Thompson, Agency Counsel

Administering Agency: Placer County Redevelopment Agency

Contract No.

Contract Description: **A Services Agreement between the Tahoe City Downtown Association to develop a Main Street Program and the Placer County Redevelopment Agency**

SERVICES AGREEMENT

THIS AGREEMENT is made at Auburn, California, as of **October 31, 2006**, by and between the Placer County Redevelopment Agency, ("Agency"), and the Tahoe City Downtown Association ("Association"), who agrees as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, Association shall provide the services described in Exhibit A. Association shall provide said services at the time, place, and in the manner specified in Exhibit A, also referred to as Scope of Work.
2. **Payment.** Agency shall pay Association for services rendered pursuant to this Agreement at the time and in the amount set forth in Exhibit A, up to a maximum of **\$60,000**. The payment specified in Exhibit A shall be the only payment made to Association for services rendered pursuant to this Agreement. Association shall submit all billings for said services to Agency in the manner specified in Exhibit A.
3. **Exhibits.** All exhibits referred to herein are attached hereto and by this reference incorporated herein.
4. **Time for Performance.** Time is of the essence, and, subject to Agency's compliance with Exhibit A and to the provisions of Paragraph 8 of this Agreement. Failure of Association to perform any services within the time limits set forth in Exhibit A shall constitute material breach of this contract. Contract shall expire **October 31, 2007**. This contract has annual option to renew for three years ending October 31, 2008. Upon expiration of subject contract, Association will have thirty (30) days to submit their final report and invoice.
5. **Independent Association.** At all times during the term of this Agreement, Association shall be an independent Association and shall not be an employee of the Agency. Agency shall have the right to control Association only insofar as the results of Association's services rendered pursuant to this Agreement. Agency shall not have the right to control the means by which Association accomplishes services rendered pursuant to this Agreement.

6. **Licenses, Permits, Etc.** Association represents and warrants to Agency that it has all licenses, permits, qualifications, and approvals of whatsoever nature, which are legally required for Association to practice its profession. Association represents and warrants to Agency that Association 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 Association to practice its profession at the time the services are performed.

7. **Time.** Association shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of Association'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.

8. **Insurance.** Association 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 Association'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) Association shall require all subcontractors 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 Association, 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 Association 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 Association 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 Association 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:
- Association 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 Association 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, and the County of Placer, 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 Association, 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.

9. **Indemnity.** Association 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 Association's negligent performance or willful misconduct under this contract or agreement. Association agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the Association. Association 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 Association or the Agency or to enlarge, in any way, the Association'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 Association'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.

10. **Association Not Agent.** Except as Agency may specify in writing, Association shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Association shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.

11. **Assignment Prohibited.** Association 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.

12. **Personnel.**

Notwithstanding the foregoing, if specific persons are designated as the "Project Team" in Exhibit A, Scope of Services, Association agrees to perform the work under this agreement with those individuals identified. Reassignment or substitution of individuals or subcontractors named in the Project Team by Association 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.

13. **Standard of Performance.** Association 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 Association is engaged in the geographical area in which Association practices its profession. All products of whatsoever nature which Association 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 Association's profession.

14. **Termination.**

A. Agency shall have the right to terminate this Agreement at any time by giving notice in writing of such termination to Association. Upon expiration of contract on **October 31, 2007**, the Association will have thirty (30) days to submit their final report and invoice. In the event Agency shall give notice of termination, Association shall immediately cease rendering service upon receipt of such written notice, pursuant to this Agreement. In the event Agency shall terminate this Agreement:

- 1) Association 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 Association pursuant to this Agreement.
- 3) Agency shall pay Association the reasonable value of services rendered by Association to the date of termination pursuant to this Agreement not to exceed the amount documented by Association and approved by Agency as work accomplished to date; provided, however, that in no event shall

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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 Association had Association completed the services required by this Agreement. In this regard, Association 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 Association. The foregoing is cumulative and does not affect any right or remedy, which Agency may have in law or equity.

- B. Association may terminate its services under this Agreement upon thirty (30) working days advance written notice to the Agency.
15. **Non-Discrimination.** Association 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.
16. **Records.** Association 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 Association 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.
17. **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 Association agrees to deliver reproducible copies of such documents to Agency on completion of the services hereunder. The Agency agrees to indemnify and hold Association harmless from any claim arising out of reuse of the information for other than this project.
18. **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.
19. **Conflict of Interest.** Association 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, Association agrees that no such person will be employed in the performance of this agreement without immediately notifying the Agency.
20. **Entirety of Agreement.** This Agreement contains the entire agreement of Agency and Association 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.

21. **Attorney's Fees.** If any party to this Agreement commences legal proceedings to enforce any of its terms or for damages for its breach, the prevailing party shall be entitled to recover reasonable attorney's fees, including those incurred on appeal, if any.
22. **Governing Law.** This Agreement is executed and is 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 Association hereby expressly waives those provisions in California Code of Civil Procedure §394 that may have allowed it to transfer venue to another jurisdiction.
23. **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:

Placer County Redevelopment Agency
Attn.: Rae James, Deputy Director
3091 County Center Drive

Auburn, CA 95603
Tel. Phone: (530) 745-3178
Fax: (530) 889-4095

Tahoe City Downtown Association
Attn.: Kelly Atchley, Exec. Admin.
P.O. Box 6744
Tahoe City, CA 96145
Tel. Phone: (530) 583-3348
Fax: (530) 583-3098

Executed as of the day first above stated:

PLACER COUNTY REDEVELOPMENT AGENCY

By: _____
Rich Colwell, Chief Assistant CEO-Redevelopment
Director

TAHOE CITY DOWNTOWN ASSOCIATION*

By: _____
Name: Carol Hester
Title: President

By: _____
Name: Lolly Kupec
Title: Secretary

Approved As to Form

David Seward, Purchasing Manager

Sabrina Thompson, Agency Counsel

*Two corporate officers if a corporation must sign the agreement; 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.

Attachment:
Exhibit A: Scope of Services and Payment Schedule

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EXHIBIT A

SCOPE OF SERVICES AND PAYMENT SCHEDULE

Listed below is the scope of services and general deliverables for the Tahoe City Downtown Association (TCDA) to develop a Main Street Program, research the formation of an assessment district, and increase community awareness of various commercial business programs.

1. The TCDA will continue to implement the Main Street Program model in Tahoe City.
2. The TCDA will work with County Economic Development staff and consultants to further develop, expand, and enhance the TCDA as a viable Main Street business organization by serving as a liaison between the business and property owners in Tahoe City and the County.
3. The TCDA will continue to work towards becoming a financially sound and self-sustaining business organization.
4. The TCDA will continue to research alternatives, and promote community advocacy towards the formation of an assessment district.
5. The TCDA will develop and implement events and activities that will promote the social and economic well being of Tahoe City.
6. The TCDA will serve as the central point for businesses and property owners in Tahoe City and will assist in the implementation of Economic Development and Redevelopment programs and projects.
7. The TCDA will assist in the creation and implementation of a periodic email newsletter, identifying issues, events, activities, programs and opportunities that can be addressed.
8. The TCDA will submit a monthly invoice (\$5,000) with a monthly report of contacts/meetings with area business and property owners, and progress on Main Street projects and programs as appropriate. The aforementioned will be implemented at a not to exceed total contract amount of \$60,000 including expenses and incidental costs. As the TCDA develops a detailed work plan, and budget to move forward with an assessment district, this contract can be amended to include additional costs as approved by the County. Upon expiration of subject agreement on October 31, 2007, the Association will have thirty (30) days to submit its final report and invoice.

