AM No. 10-106 (C10)

MEMO TO: City Council

FROM: John Marchione, Mayor

DATE: May 18, 2010

SUBJECT: APPROVE CONTRACT WITH BULLSEYE CREATIVE FOR THE

TOURISM PROMOTION PROGRAM

I. RECOMMENDED ACTION

Approve motion to authorize the Mayor to sign the attached contract with Bullseye Creative (Attachment A).

II. DEPARTMENT CONTACT PERSONS

Rob Odle, Director, Planning and Community Development, 425.556.2417 Jim Roberts, Economic Development Manager, 425.556.2424 Karen Nolz, Tourism Promotion Program Administrator, 425.556.2444

III. DESCRIPTION/BACKGROUND

The Lodging Tax funding structure allows fifty percent of the Lodging Tax revenue to be dedicated to a marketing/public relations program designed to bring overnight visitors, especially weekend overnight visitors, to Redmond.

For the past three years, the City has contracted with the Bullseye Creative marketing firm to carry out the Tourism Promotion Program. The current contract expires June 10, 2010, and in keeping with good business practice and at the request of the Lodging Tax Advisory Committee (LTAC), the City issued two Requests for Proposals (RFPs) for the new contract year. The two requests for proposals were: Tourism Media Marketing Program Proposal and Tourism Events Development Program Proposal. Two firms responded to both proposals. The proposal review committee, consisting of Jane Christenson, Deputy City Administrator; Jim Roberts, Economic Development Manager; and Karen Nolz, Tourism Promotion Program Administrator, unanimously agreed that only one applicant met the established criteria for both proposals. Bullseye Creative, our consultant for the past three years, provided imaginative and comprehensive responses to all criteria in both RFPs. Although there will be an increased scope of work, the contractor's proposed charges were reduced by one-third from its current contract in response to the decrease in Lodging Tax revenues in 2009-2010.

Bullseye Creative created and continues to develop, maintain and enhance the ExperienceRedmond.com website, and has provided excellent advertising, marketing and public relations services that have proven very effective, even in these difficult economic

City Council

RE: APPROVE CONTRACT WITH BULLSEYE CREATIVE FOR THE TOURISM PROMOTION PROGRAM

May 18, 2010

Page 2

times, in continuing to move the Tourism Promotion Program in the direction that is important to LTAC and in continuing to promote economic vitality in Redmond. In the past when the LTAC requested significant changes in directions for the marketing campaign, Bullseye has been fully responsive, meeting and usually exceeding every new goal set. Therefore, the LTAC members who have all reviewed the two proposals recommend that Bullseye Creative continue to enhance Redmond's Tourism Promotion Program and our economic vitality through Council's approval of this new contract.

IV. IMPACT

- **A.** <u>Service Delivery</u>: This is a twelve-month contract with two two-year extensions provided with mutual agreement of both parties and upon the recommendation of the LTAC.
- **B.** Fiscal: The source of funding for this contract is from the one percent Lodging (Hotel-Motel) Tax Fund. The one contract with Bullseye Creative for both RFPs totals \$95,000 (Media Marketing, \$80,000, and Events Development, \$15,000) and includes management fee; ExperienceRedmond website improvements, updates, and maintenance; all promotional and media advertising, including social media; and public relations, including events development and facilitating marketing meetings.

V. ALTERNATIVES TO STAFF RECOMMENDATION

Council could choose not to approve the contract. Council would then need to give the LTAC 45 days' notice to review and comment on Council's intended action.

VI. TIME CONSTRAINTS

The LTAC is anxious to have this contract in place to avoid an extended break in continuation of the program.

VII. LIST OF ATTACHMENTS

Attachment A: Contract between the City of Redmond and Bullseye Creative

/s/	5/11/2010
Robert G. Odle, Planning Director	Date
Approved for Council Agenda: /s/	5/11/2010
John Marchione, Mayor	Date

Consulting Services Agreement

Non-Public Work

# is known) Tourism Digital and Print Media Marketing Program/Tourism Events Development Program	WORK DESCRIPTION (reference & list all attached exhibits) Exhibit A = Scope of Work Exhibit B = Work Schedule Exhibit C = Payment Schedule and Budget Exhibit D = Option for Renewal Exhibit E = Insurance Addendum
CONTRACTOR Bullseye Creative	CITY PROJECT ADMINISTRATOR (Name, address, phone #) Karen Nolz City of Redmond 4SPL P.O. Box 97010 Redmond, WA 98073-9710 425.556.2444 knolz@redmond.gov
CONTRACTOR CONTACT (Name, address, phone #) Peter Klauser Bullseye Creative 165 Western Avenue West Seattle, WA 98119 206.352.6264	BUDGET OR FUNDING SOURCE Lodging Tax Fund
FEDERAL ID # 20-3894292	MAXIMUM AMOUNT PAYABLE, IF ANY \$ 95,000.00
SUPPLIER/CONTRACTOR'S REDMOND BUSINESS LICENSE ID # 50254	COMPLETION DATE May 31, 2011
APPLICANT NAME	APPLICANT CONTACT (Name, address & phone #)

page 2 – Consulting Services Agreement, Non-Public Work City of Redmond, standard form

THIS AGREEMENT is entered into on ________, 20___ between the City of Redmond, Washington, hereinafter called "the CITY", and the above person, firm or organization, hereinafter called "the CONSULTANT".

WHEREAS, the CITY desires to accomplish the above-referenced project; and

WHEREAS, the CITY does not have sufficient staff or expertise to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the project; and

WHEREAS, the CONSULTANT has represented to the CITY that the CONSULTANT is in compliance with the professional registration statutes of the State of Washington, if applicable, and has signified a willingness to furnish consulting services to the CITY, now, therefore,

IN CONSIDERATION OF the terms and conditions set forth below, or attached and incorporated and made a part hereof, the parties agree as follows:

- 1. Retention of Consultant Scope of Work. The CITY hereby retains the CONSULTANT to provide professional services as defined in this agreement and as necessary to accomplish the scope of work attached hereto as Exhibit A and incorporated herein by this reference as if set forth in full. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this agreement.
- 2. <u>Completion of Work.</u> The CONSULTANT shall not begin any work under the terms of this agreement until authorized in writing by the CITY. The CONSULTANT shall complete all work required by this agreement according to the schedule attached as Exhibit B and incorporated herein by this reference as if set forth in full. A failure to complete the work according to the attached schedule, except where such failure is due to circumstances beyond the control of the CONSULTANT, shall be deemed a breach of this agreement. The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the CITY, in the event of a delay attributable to the CITY, or because of unavoidable delays caused by circumstances beyond the control of the CONSULTANT. All such extensions shall be in writing and shall be executed by both parties.
- 3. Payment. The CONSULTANT shall be paid by the CITY for satisfactorily completed work and services satisfactorily rendered under this agreement as provided in Exhibit C, attached hereto and incorporated herein by this reference as if set forth in full. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in the Scope of Work attached. The CONSULTANT shall be entitled to invoice

page 3 – Consulting Services Agreement, Non-Public Work City of Redmond, standard form

the CITY no more frequently than once per month during the course of the completion of work and services by the CONSULTANT. Invoices shall detail the work performed or services rendered, the time involved (if compensation is based on an hourly rate) and the amount to be paid. The CITY shall pay all such invoices within 30 days of submittal, unless the CITY gives notice that the invoice is in dispute. In no event shall the total of all invoices paid exceed the maximum amount payable set forth above, if any, and the CONSULTANT agrees to perform all services contemplated by this agreement for no more than said maximum amount.

4. <u>Changes in Work.</u> The CONSULTANT shall make such changes and revisions in the complete work provided by this agreement as may be necessary to correct errors made by the CONSULTANT and appearing therein when required to do so by the CITY. The CONSULTANT shall make such corrective changes and revisions without additional compensation from the CITY. Should the CITY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the CITY. This work shall be considered as Extra Work and will be paid for as provided in Section 5.

5. Extra Work.

- A. The CITY may, at any time, by written order, make changes within the general scope of the agreement in the services to be performed. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work or services under this agreement, whether or not changed by the order, or otherwise affects any other terms or conditions of the agreement, the CITY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule or both; and (3) other affected terms, and shall modify the agreement accordingly.
- B. The CONSULTANT must submit any "proposal for adjustment" under this clause within 30 days from the date of receipt of the written order to make changes. However, if the CITY decides that the facts justify it, the CITY may receive and act upon a proposal submitted before final payment of the agreement.
- C. Failure to agree to any adjustment shall be a dispute under the Disputes clause of this agreement, as provided in Section 13. Notwithstanding any such dispute, the CONSULTANT shall proceed with the agreement as changed.
- D. Notwithstanding any other provision in this section, the maximum amount payable for this agreement shall not be increased or considered to be increased except by specific written amendment of this agreement.

page 4 – Consulting Services Agreement, Non-Public Work City of Redmond, standard form

- 6. Ownership of Work Product. Any and all documents, drawings, reports, and other work product produced by the CONSULTANT under this agreement shall become the property of the CITY upon payment of the CONSULTANT'S fees and charges therefore. The CITY shall have the complete right to use and re-use such work product in any manner deemed appropriate by the CITY, provided, that use on any project other than that for which the work product is prepared shall be at the CITY'S risk unless such use is agreed to by the CONSULTANT.
- 7. <u>Independent Contractor</u>. The CONSULTANT is an independent contractor for the performance of services under this agreement. The CITY shall not be liable for, nor obligated to pay to the CONSULTANT, or any employee of the CONSULTANT, sick leave, vacation pay, overtime or any other benefit applicable to employees of the CITY, nor to pay or deduct any social security, income tax, or other tax from the payments made to the CONSULTANT which may arise as an incident of the CONSULTANT performing services for the CITY. The CITY shall not be obligated to pay industrial insurance for the services rendered by the CONSULTANT.
- 8. <u>Indemnity</u>. The CONSULTANT agrees to hold harmless, indemnify and defend the CITY, its officers, agents, and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, including employees of the CONSULTANT, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of the CONSULTANT, its officers, agents, subconsultants or employees, in connection with the services required by this agreement, provided, however, that:
- A. The CONSULTANT's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or sole negligence of the CITY, its officers, agents or employees; and
- B. The CONSULTANT's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the CONSULTANT and the CITY, or of the CONSULTANT and a third party other than an officer, agent, subconsultant or employee of the CONSULTANT, shall apply only to the extent of the negligence or willful misconduct of the CONSULTANT.
- 9. <u>Insurance</u>. The CONSULTANT shall provide the following minimum insurance coverages:
- A. Worker's compensation and employer's liability insurance as required by the State of Washington;

page 5 – Consulting Services Agreement, Non-Public Work City of Redmond, standard form

- B. General public liability and property damage insurance in an amount not less than a combined single limit of two million dollars (\$2,000,000) for bodily injury, including death, and property damage per occurrence.
- C. Professional liability insurance, if commercially available in CONSULTANT's field of expertise, in the amount of one million dollars (\$1,000,000) or more against claims arising out of work provided for in this agreement.

The amounts listed above are the minimum deemed necessary by the CITY to protect the CITY'S interests in this matter. The CITY has made no recommendation to the CONSULTANT as to the insurance necessary to protect the CONSULTANT'S interests and any decision by the CONSULTANT to carry or not carry insurance amounts in excess of the above is solely that of the CONSULTANT.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. Excepting the professional liability insurance, the CITY will be named on all insurance as an additional insured. The CONSULTANT shall submit a certificate of insurance to the CITY evidencing the coverages specified above, together with an additional insured endorsement naming the CITY, within fifteen (15) days of the execution of this agreement. The additional insured endorsement shall provide that to the extent of the CONSULTANT's negligence, the CONSULTANT's insurance shall be primary and non-contributing as to the City, and any other insurance maintained by the CITY shall be excess and not contributing insurance with respect to the CONSULTANT's insurance. The certificates of insurance shall cover the work specified in or performed under this agreement. No cancellation, reduction or modification of the foregoing policies shall be effective without thirty (30) days prior written notice to the CITY.

- 10. Records. The CONSULTANT shall keep all records related to this agreement for a period of three years following completion of the work for which the CONSULTANT is retained. The CONSULTANT shall permit any authorized representative of the CITY, and any person authorized by the CITY for audit purposes, to inspect such records at all reasonable times during regular business hours of the CONSULTANT. Upon request, the CONSULTANT will provide the CITY with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the CONSULTANT, but the CONSULTANT may charge the CITY for copies requested for any other purpose.
- 11. <u>Notices</u>. All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth in the box for the same appearing at the outset of this Agreement. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

page 6 – Consulting Services Agreement, Non-Public Work City of Redmond, standard form

- 12. Project Administrator. The Project Administrator shall be responsible for coordinating the work of the CONSULTANT, for providing any necessary information for and direction of the CONSULTANT's work in order to ensure that it meets the requirements of this Agreement, and for reviewing, monitoring and approving the quality and quantity of such work. The CONSULTANT shall report to and take any necessary direction from the Project Administrator.
- 13. <u>Disputes</u>. Any dispute concerning questions of fact in connection with the work not disposed of by agreement between the CONSULTANT and the CITY shall be referred for resolution to a mutually acceptable mediator. The parties shall each be responsible for one-half of the mediator's fees and costs.
- 14. Termination. The CITY reserves the right to terminate this agreement at any time upon ten (10) days written notice to the CONSULTANT. Any such notice shall be given to the address specified above. In the event that this agreement is terminated by the City other than for fault on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the notice to terminate. In the event that services of the CONSULTANT are terminated by the CITY for fault on part of the CONSULTANT, the amount to be paid shall be determined by the CITY with consideration given to the actual cost incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the CITY at the time of termination, the cost of the CITY of employing another firm to complete the work required, and the time which may be required to do so.
- 15. Non-Discrimination. The CONSULTANT agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman, because of race, color, creed, religion, national origin, marital status, sex, age or handicap, except for a bona fide occupational qualification. The CONSULTANT understands that if it violates this provision, this agreement may be terminated by the CITY and that the CONSULTANT may be barred from performing any services for the CITY now or in the future.
- 16. <u>Compliance and Governing Law</u>. The CONSULTANT shall at all times comply with all applicable federal, state, and local laws, rules, ordinances, and regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.
- 17. <u>Subcontracting or Assignment</u>. The CONSULTANT may not assign or subcontract any portion of the services to be provided under this agreement without the express written consent of the CITY. Any sub-consultants approved by the CITY at the

page 7 – Consulting Services Agreement, Non-Public Work City of Redmond, standard form

outset of this agreement are named on Exhibit D attached hereto and incorporated herein by this reference as if set forth in full.

- 18. Non-Waiver. Payment for any part of the work or services by the CITY shall not constitute a waiver by the CITY of any remedies of any type it may have against the CONSULTANT for any breach of the agreement by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it under the agreement by the CITY. Waiver of any right or entitlement under this agreement by the CITY shall not constitute waiver of any other right or entitlement.
- 19. <u>Litigation</u>. In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this agreement, the parties agree that such actions shall be initiated in the Superior Court of the State of Washington, in and for King County. The parties agree that all questions shall be resolved by application of Washington law and that parties to such actions shall have the right of appeal from such decisions of the Superior Court in accordance with the law of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, in and for King County. The prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.
- 20. <u>Taxes</u>. The CONSULTANT will be solely responsible for the payment of any and all applicable taxes related to the services provided under this agreement and if such taxes are required to be passed through to the CITY by law, the same shall be duly itemized on any billings submitted to the CITY by the CONSULTANT.
- 21. <u>City Business License</u>. The CONSULTANT has obtained, or agrees to obtain, a business license from the CITY prior to commencing to perform any services under this agreement. The CONSULTANT will maintain the business license in good standing throughout the term of this Agreement.
- 22. Entire Agreement. This agreement represents the entire integrated agreement between the CITY and the CONSULTANT, superseding all prior negotiations, representations or agreements, written or oral. This agreement may be modified, amended, or added to, only by written instrument properly signed by both parties hereto. These standard terms and conditions set forth above supersede any conflicting terms and conditions on any attached and incorporate exhibit. Where conflicting language exists, the CITY'S terms and conditions shall govern.

page 8 – Consulting Services Agreement, Non-Public Work City of Redmond, standard form

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

CONSULTANT:	CITY OF REDMOND:
BULLSEYE CREATIVE	
By:	John Marchione, Mayor
Title:	DATED:
	ATTEST/AUTHENTICATED:
	City Clerk, City of Redmond
	APPROVED AS TO FORM:
	-

Exhibits A, B, C and D

BULLSEYE CREATIVE CONTRACT

June 1, 2010 - May 31, 2011

EXHIBIT A - SCOPE OF WORK

Tourism Events Development Program

- Assemble event information in and around the City of Redmond (including neighboring cities) to maximize promotional exposure for relevant tourism activities.
- Assist City of Redmond Parks Department and each Redmond hotel's Affinity Marketing program with the solicitation of events that encourage hotel stays (especially focused on weekend traffic).
- Organize and facilitate periodic Redmond Marketing Club meetings.
- Work in conjunction with Tourism Digital Marketing Program efforts to promote public relations efforts, increase media relations, and establish partnerships with travel and tour groups.
- Manage budget and provide regular reports of measurable results and activities updates.

Tourism Digital and Print Media Marketing Program

- Upgrade, manage and maintain the website marketing tools, including the integration of a booking engine for commissionincented hotel reservation conversions.
- Manage, maintain and promote the tourism social media relationships.
- Coordinate digital and print media in cooperation with the Tourism Events Development Program efforts.
- Execute integrated marketing, public relations and media strategies.
- Coordinate with community businesses and organizations to promote events and activities, develop promotional packages, and negotiate co-op advertising programs.
- Manage budget and provide regular reports of measurable results and activities updates.
- Leverage relationships with partners and media outlets to negotiate added-value promotional considerations and, where possible, seek additional grants and funding resources.

Exhibits A, B, C and D

EXHIBIT B - WORK SCHEDULE

Tourism Events Development Program

Estimated hours are fifteen hours per month for the twelve-month period.

Tourism Digital and Print Media Marketing Program

Estimated hours are sixty-seven hours per month for the twelve-month period.

EXHIBIT C - PAYMENT SCHEDULE AND BUDGET

Tourism Events Development Program

The contract amount will be \$15,000.

A portion of the fee, \$13.500, can be pro-rated monthly (\$1,125 each month) upon receipt of invoice from Bullseye Creative and accompanied by status or work completed within that month. Expenses, such as printing and production of collateral sales and Public Relations materials, HTML email distribution and list rental, report materials, and tracking tool subscriptions, in the amount of \$1,500 will be paid upon receipt of invoice and backup information from Bullseye Creative at time of expense.

Tourism Digital and Print Media Marketing Program

The contract amount will be \$80,000.

A portion of the fee, \$60,000, can be pro-rated monthly (\$5,000 per month) upon receipt of invoice from Bullseye Creative and accompanied by status of work completed within that month. Media ads, online media costs, Pay Per Click Advertising costs, printing and production of collateral sales and PR materials, HTML email distribution and list rental, website hosting, report materials and tracking tool subscriptions in the amount of \$20,000 will be paid upon receipt of invoice and backup information from Bullseye Creative at time of expense.

Exhibits A, B, C and D

EXHIBIT D - OPTION FOR RENEWAL

CITY OF REDMOND reserves the right to renew this contract for two two-year terms, if mutually agreed to by both parties in writing. If renewal provision is exercised, all terms and conditions of original contract remain in full force and effect. Such a renewal could be accomplished through the use of an addendum to the original contract.

Any changes to the scope of work, work schedule, payment schedule and budget shall be agreed to in writing by both parties.

EXHIBIT <u>E</u> INSURANCE ADDENDUM

	ovisions of the (check one): General Services
	ant Agreement, Instructional Services Agreement,
	Short Term Facility Agreement, Fixed Asset Loan
	greement (hereinafter "the Agreement") or Public
Work Consultant Agreement entered into be	etween the parties on,
THE INDEDSIONED DARTIES on	ree to modify paragraph 8 (if a General Services
•	
5 , ,	ant Agreement), 7 (if Instructional Services Agreement), 6 (i
	Short Term Facility Agreement), 5 (if Fixed Asset Loan
•	Agreement) or 8 (if Public Work Consultant Agreement) as
follows (check all applicable items):	
The general public liability a	nd property damage insurance limit is
increased/reduced to \$	(insert amount).
The professional liability ins	urance amount is increased/reduced to \$
	unt). This item relates to Consultant and Three
Party Consultant Agreement	
1 arty Consultant Agreement	is only.
The professional liability ins	urance requirement is eliminated. This item relates
	ty Consultant Agreements only.
to consumm and anice and	ty consultant rigitements only.
The insurance provisions are	otherwise modified as follows:
· · · · · · · · · · · · · · · · · · ·	
	all insurance-related terms and conditions of the Agreement
will remain unchanged and in full force and	effect. The City has made no recommendation to the
contractor/consultant as to the insurance nec	cessary to protect the contractor/consultant's interests and
any decision by the contractor/consultant to	carry or not carry insurance amounts or coverage in excess
of the above is solely that of the contractor/ of	consultant.
D 4 MED	
DATED	·,·
CITY OF REDMOND	CONTRACTOR/CONSULTANT
	CONTINUETOROCONSCENA
MAYOR JOHN MARCHIONE	By:
	Title:
ATTEST/AUTHENTICATED:	APPLICANT (IF THREE PARTY
	CONSULTANT AGREEMENT
CITY CLERK, CITY OF REDMOND	D
CITY CLERK, CITY OF REDWIOND	By:
	Title:
APPROVED AS TO FORM:	
OFFICE OF THE CITY ATTORNEY	
office of the offi milower	
APPROVED:	
RISK MANAGER, CITY OF REDMOND	·