

CITY OF YUBA CITY  
STAFF REPORT

**Date:** September 15, 2009  
**To:** Honorable Mayor & Members of the City Council  
**From:** Administration  
**Presentation By:** Darin E. Gale, Economic Development Manager

---

**Summary**

**Subject:** "Buy Local" Program Media Marketing Agreement

**Recommendation:** Authorize the City Manager to enter into an Agreement with Wag the Frog for "Buy Local" Program marketing services with a subcontract to MarComm Communications in an amount not to exceed \$100,000 of which \$50,000 will be matched by private sector businesses, with the finding that it is in the best interest of the City

**Fiscal Impact:** \$50,000. \$25,000 from General Fund Unallocated Reserves and \$25,000 from Redevelopment Agency Reserves as a dollar to dollar match of private sector funding from account 4120-62701 (Economic Development Professional Services)

---

**Background:**

On June 16, 2009, the City Council formed an Ad Hoc Committee for the purpose of evaluating the formation of a "Buy Local" program. The Committee recommended funding for the program which was approved and adopted by Council at your meeting on August 18, 2009. The Council authorized this funding as part of a dollar to dollar private sector match of up to \$50,000 in order to implement a \$100,000 "Buy Local" marketing campaign.

Over the past two months, the "Buy Local" Ad Hoc Committee has met to discuss the details of the marketing campaign. Throughout the process, the Yuba-Sutter Chamber of Commerce and the Appeal Democrat proposed a wide range of budgets and ideas for the Committee to consider. As a result, the Committee asked the marketing agency of the Appeal Democrat, Wag the Frog, and another local firm, MarComm Communications, to provide proposals.

**Analysis:**

The Ad Hoc Committee appointed a subcommittee of members to evaluate the proposals and make a final decision on which firm to recommend. As a result, the Committee is recommending using both Wag the Frog and MarComm Communications for this marketing campaign with Wag the Frog being the lead agency. Marketing firms charge a 15% mark up on all media buys and/or printing projects. This fee is on top of hourly or management charges to a project and can be significant in a campaign using mass media. Both Wag the Frog and MarComm Communication have offered to waive these charges and reinvest those savings back into the "Buy Local" campaign.

The proposed agreement will take place over 12 months and provide the following services to

the "Buy Local" Marketing Campaign: Logo design; Website design and publishing; Creation and production of campaign advertising for print, TV and radio; Purchase of radio, TV and print Advertising; Creation and implementation of a social networking marketing action plan; and, printed marketing materials for use by local businesses.

In addition, the agreement will be contingent upon collection of matching private sector funding (to date, \$42K has been committed by the private sector).

**Fiscal Impact:**

\$50,000. Council approved and authorized the supplemental appropriation and transfer of \$25,000 from General Fund Unallocated Reserves and \$25,000 from Redevelopment Agency Reserves as a dollar to dollar match of private sector funding at your meeting on August 18, 2009.

**Alternatives:**

Request the Ad Hoc Committee to evaluate other agencies to provide services. If this option is chosen, it may delay the implementation of the marketing campaign.

**Recommendation:**

Authorize the City Manager to enter into an Agreement with Wag the Frog for "Buy Local" Program marketing services with a subcontract to MarComm Communications in an amount not to exceed \$100,000 of which \$50,000 will be matched by private sector businesses, with the finding that it is in the best interest of the City.

Attachments:

- Wag the Frog Professional Services Agreement

Prepared By:

D. G.

\_\_\_\_\_  
Darin E. Gale  
Economic Development Manager

Submitted By:



\_\_\_\_\_  
Steven R. Jepsen  
City Manager

Reviewed By:

Finance

City Attorney

\_\_\_\_\_  
\_\_\_\_\_

## **AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement is made and entered into as of September 15, 2009, by and between the City of Yuba City, a municipal corporation ("City") and Wag the Frog ("Consultant").

### **RECITALS**

- A. Consultant is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and
- B. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein; and
- C. City desires to retain Consultant to render professional services as set forth in this Agreement.

### **AGREEMENT**

1. Scope of Services. The Consultant shall furnish the following services in a professional manner.

Provide Logo Design, Website design and publishing; Creation and production of campaign advertising for print, TV and radio; Purchase of radio, TV and print advertising; Creation and implementation of social networking marketing action plan; and, printed marketing materials for use by local businesses and any other marketing materials deemed appropriate by the Mayor's Ad Hoc Taskforce. All services shall be solely related to the successful implementation of the City's "Buy Local" marketing campaign as directed by the Mayor's Ad Hoc Taskforce.

The Consultant team shall be led by Dave Schmall of Wag the Frog and the Appeal Democrat. The Consultant shall use the services of MarComm Communications as part of the Consultant team as directed by the Ad Hoc Taskforce. In addition this contract is contingent upon the collection of private sector matching funds. The City has agreed to match dollar for dollar up to \$50,000 for a total marketing campaign of \$100,000. To date only \$42,000 has been committed by the private sector.

As part of this agreement, no Ad Agency commissions shall be charged for media buys. Any such commissions received by the Consultant shall be credited back for additional media buys and or used to offset monthly cost.

2. Time of Performance. The services of Consultant are to commence upon execution of this Agreement and shall continue until all authorized work is completed and approved by the City. Finalization shall be completed at the

direction of the City of Yuba City, no later than 12 months after execution of this contract.

3. Compensation. Compensation to be paid to Consultant shall be in accordance with the scope of work mentioned within this contract. In no event shall Consultant's compensation exceed \$84,000 without additional written authorization from the City. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.
  4. Method of Payment. Consultant shall submit monthly billings to City describing the work performed during the preceding month. Consultant's invoices shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenses. City shall pay Consultant not later than 30 days after approval of the monthly invoice by City staff. When payments made by the City equal 90% of the maximum fee provided for in this Agreement, no further payments shall be made until the final work under this Agreement has been accepted by City.
  5. Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City.
  6. Termination. This Agreement may be terminated by the City immediately for cause or by either party without cause upon fifteen days written notice of termination. Upon termination, Consultant shall be entitled to compensation for services performed up to the effective date of termination. Such compensation is subject to the conditions of Section 4 of this agreement.
  7. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees, agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and other writings to City upon request.
- \* Licensing of Intellectual Property. This Agreement creates a nonexclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but limited to, physical drawings or data magnetically or otherwise recorded on computer

diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”). Consultant shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regards to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City’s sole risk.

Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the services under this Agreement. Nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this Agreement. Nothing furnished to Consultant, which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City’s name or insignia, photographs relating to project for which Consultant’s services are rendered, or any publicity pertaining to the Consultant’s services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

8. Consultant’s Books and Records:

- a. Consultant shall maintain any and all ledgers, books of accounts, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.
- b. Consultant shall maintain all documents and records which demonstrated performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.
- c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Administrator, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually

agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

- d. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above named officers, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

9. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the City. Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

- a. Will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal agreement monitoring; and
  - b. Possesses no authority with respect to any City decision beyond rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(B)(2).)
10. Interest of Consultant. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.
  11. Professional Ability of Consultant. City has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.



17. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.
18. Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.
19. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Consultant. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express consent of the City. Consultant shall not subcontract any portion of the work to be performed under the Agreement without the written authorization of the City. If City consents to such subcontract, Consultant shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.
20. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.
21. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
22. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Sutter.
23. Litigation Expenses and Attorneys' Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.
24. Mediation. The parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified

mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

25. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
26. Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.
27. Prohibited Interest. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising there from.
28. Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

**CITY OF YUBA CITY:**

**CONSULTANT:**

By: \_\_\_\_\_ By \_\_\_\_\_

**Steven R. Jepsen, City Manager  
City of Yuba City**

**[Name]  
[Title]**

Attachments:      Exhibit A - Insurance Requirements  
                         Exhibit B - Workers' Compensation Exemption

**Exhibit A**  
**Professional Services Agreement**  
**Insurance Requirements**

- I. **Workers' Compensation Coverage.** Consultant shall maintain Workers' Compensation Insurance for his/her employees in accordance with the laws of the State of California and Employers Liability Insurance in an amount not less than one million dollars (\$1,000,000) per accident for bodily injury and/or disease. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance in accordance with the laws of the State of California and Employers Liability Insurance in an amount not less than one million dollars (\$1,000,000) per accident for bodily injury and/or disease. for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Consultant for City. This provision shall not apply if Consultant has no employees performing work under this Agreement. If the Consultant has no employees for the purposes of this Agreement, Consultant shall sign the "Certificate of Exemption from Workers' Compensation Insurance" which is attached hereto as Exhibit C.
  
- II. **General Liability Coverage.** Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.
  
- III. **Automobile Liability Coverage.** Consultant shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence.
  
- IV. **Professional Liability Coverage.** Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's operations under this Agreement, whether such operations are by the Consultant or by its employees, subcontractors, or sub-consultants. The amount of this insurance shall not be less

than one million dollars (\$1,000,000) on a claims-made annual aggregate basis, or a combined single-limit per occurrence basis.

- V. **Endorsements.** Each general liability and automobile liability insurance policy shall be with insurers possessing a current A.M. Best's rating of no less than A:VII and shall be endorsed with the following specific language or equivalent:
- A. The City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insured with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations. Conforms to ISO CG 2009 and CG 2037 10 01. Both are required.
  - B. This policy shall be considered primary insurance as respects to the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.
  - C. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
  - D. The insurer waives all rights of subrogation against the City, its elected or appointed officers, officials, employees or agents.
  - E. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.
  - F. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage except after thirty (30) days written notice has been received by the City.
- VI. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retention's.
- VII. **Certificates of Insurance.** Consultant shall provide certificates of insurance with original endorsements to City, as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

**Exhibit B**  
**Certificate of Exemption From**  
**Workers' Compensation Insurance**

I hereby certify that in the performance of the work for which the Agreement is entered into, I shall not employ any person in any manner so as to become subject to the Worker's Compensation Laws of the State of California.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, at Yuba City, California.

By: \_\_\_\_\_

Title: \_\_\_\_\_

**[Add Consultant's name and title]**