



MEETING DATE: 4/6/09

ITEM NO:

7

COUNCIL AGENDA REPORT

DATE: March 23, 2009

TO: MAYOR AND TOWN COUNCIL

FROM: GREG LARSON, TOWN MANAGER

SUBJECT: ADOPT A RESOLUTION AUTHORIZING THE TOWN MANAGER TO EXECUTE THE GRANT AGREEMENT BY AND BETWEEN THE TOWN OF LOS GATOS AND A PLACE FOR TEENS AND LOS GATOS-SARATOGA COMMUNITY EDUCATION AND RECREATION 2009-2012

RECOMMENDATION:

Adopt a resolution authorizing the Town Manager to execute the "Grant Agreement By and Between the Town of Los Gatos and A Place For Teens and Los Gatos-Saratoga Community Education and Recreation 2009-2012" (Exhibit A to Attachment 1).

BACKGROUND:

The current Operating Budget includes a one-time allocation of \$88,000 to support teen services at The Venue, operated by A Place For Teens with support from Los Gatos-Saratoga Community Education and Recreation (Recreation Department). This funding was intended to be allocated to and administered by the Recreation Department as an incentive for other matching funds and to ensure continued strengthening of A Place For Teens. It was intended that a funding agreement be drafted which would be concurrent with the existing lease, which expires in January, 2012, and which would prohibit solicitation of the Town for further increased operating or capital support during that time.

DISCUSSION:

The attached draft agreement (Exhibit A to Attachment 1) would serve as the mechanism through which the funding allocated would be provided to the Recreation Department for The Venue. It is a three-party agreement between the Town, the Recreation Department and A Place For Teens. Under the agreement, the Recreation Department would have responsibility for

PREPARED BY: Regina A. Falkner
Community Services Director

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Reviewed by: PSJ Assistant Town Manager _____ Town Attorney

_____ Clerk Administrator sc Finance _____ Community Development

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MAYOR AND TOWN COUNCIL

SUBJECT: GRANT AGREEMENT BETWEEN THE TOWN OF LOS GATOS, A PLACE FOR TEENS, AND LOS GATOS-SARATOGA COMMUNITY EDUCATION AND RECREATION

March 23, 2009

providing semi-annual progress reports to the Town, for submitting invoices as appropriate, and for acting as fiscal agent for The Venue. A Place For Teens would continue to be responsible for providing teen services at The Venue, in cooperation with the Recreation Department.

At its March 5 meeting, the Recreation Department's Board of Directors approved the draft agreement. The Board of Directors of A Place For Teens is scheduled to consider the draft agreement at its April 21 meeting, which it is expected to approve; A Place For Teens staff received the draft agreement for review in February, and has not raised any concerns over the draft language.

CONCLUSION:

It is recommended that Council adopt the draft Resolution (Attachment 1) authorizing the Town Manager to execute the "Grant Agreement By and Between the Town of Los Gatos and A Place For Teens and Los Gatos-Saratoga Community Education and Recreation 2009-2012" (Exhibit A to Attachment 1).

ENVIRONMENTAL ASSESSMENT:

The recommended action is not a project defined under CEQA, and no further action is required.

FISCAL IMPACT:

The FY 2008-09 Operating Budget includes the "one-time" allocation covering FY 2008-09 through 2011/12. The funds are to be drawn down during this period in accordance with the proposed agreement.

Attachments:

1. Draft Resolution of the Town Council of the Town of Los Gatos authorizing the Town Manager to execute the Grant Agreement By and Between the Town of Los Gatos and A Place For Teens and Los Gatos-Saratoga Community Education and Recreation 2009-2012 (Exhibit A).

Distribution:

Lee Fagot, A Place For Teens
Steve Rauwolf, Los Gatos-Saratoga Community Education and Recreation

RESOLUTION NO. 2009-__

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
AUTHORIZING THE TOWN MANAGER TO EXECUTE
THE GRANT AGREEMENT BY AND BETWEEN THE TOWN OF LOS GATOS AND A
PLACE FOR TEENS AND LOS GATOS-SARATOGA COMMUNITY EDUCATION AND
RECREATION 2009-2012

WHEREAS, the Town Council wishes to provide a one-time allocation of \$88,000 to support teen services at The Venue, operated by A Place For Teens with support from Los Gatos-Saratoga Community Education and Recreation; and

WHEREAS, this funding is intended to be an incentive for other matching funds and to ensure continued strengthening of A Place For Teens; and

WHEREAS, the adopted FY 2008-09 Operating Budget includes this one-time allocation of funds.

RESOLVED, by the Town Council of the Town of Los Gatos, County of Santa Clara, State of California, that the Town of Los Gatos Town Manger is authorized to execute the "Grant Agreement By and Between the Town of Los Gatos and A Place For Teens and Los Gatos-Saratoga Community Education and Recreation 2009-2012."

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 6th day of April, 2009 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

GRANT AGREEMENT BY AND BETWEEN
THE TOWN OF LOS GATOS AND
A PLACE FOR TEENS AND
LOS GATOS-SARATOGA COMMUNITY EDUCATION AND RECREATION
2009 - 2012

THIS Agreement is made and entered into this ____ day of _____, 2009, by and between the Town of Los Gatos, a municipal corporation of the State of California (hereinafter Town), A Place for Teens, a nonprofit corporation (hereinafter APFT), and Los Gatos-Saratoga Community Education and Recreation, a nonprofit corporation (hereinafter LGS Recreation).

WITNESSETH

WHEREAS, APFT operates a youth center known as "The Venue," located at 4 New York Avenue, Los Gatos, California, which is owned by the Town and leased by APFT, and which is of benefit to the Los Gatos community, and;

WHEREAS, APFT and LGS Recreation enjoy an ongoing contractual relationship under which LGS Recreation provides staff and programming at The Venue, and acts as fiscal agent for APFT, and;

WHEREAS, the Town has appropriated funds for the purpose of stabilizing and strengthening APFT to operate the Town-owned facility known as The Venue, to be utilized during the term of the current lease agreement between the Town and APFT, which expires on January 30, 2012.

NOW, THEREFORE, THE PARTIES AGREE, as follows:

I. TERM OF AGREEMENT

The term of this Agreement shall commence upon the execution of this Agreement and issuance of a Town purchase order, and shall terminate on January 30, 2012.

II. SCOPE OF SERVICES

APFT and LGS Recreation shall collectively provide the services listed in Exhibit A, Scope of Services.

III. PROGRAM COORDINATION

A. TOWN: The Director of Community Services or his/her designee, shall be the Program Manager and shall render overall supervision of the progress and performance of this Agreement by the Town.

B. APFT/LGS RECREATION: The Director of LGS Recreation shall be the single Program Director for APFT and LGS Recreation, and shall have overall responsibility for the progress and execution of this Agreement on their behalf. Should circumstances or conditions

subsequent to the execution of this Agreement require a substitute Program Director, the Town shall be notified immediately of such occurrence in writing.

C. NOTICES: All notices or other correspondence required or contemplated by this Agreement shall be sent to the parties at the following addresses:

TOWN:

Community Services Director
Town of Los Gatos
208 East Main Street
Los Gatos, CA 95030

APFT/LGS RECREATION:

Director
Los Gatos Community Education and Recreation
123 East Main Street
Los Gatos, CA 95030

IV. REPORTING

LGS Recreation shall submit bi-annual reports to the Town, to be submitted on July 30 and January 30, or the first working day thereafter, of each year during the term of this Agreement, and shall cover the entire six (6) months immediately preceding the date on which the report is filed; i.e., the report due on July 30 shall cover the period of January 1 through June 30, and the report due on January 30 shall cover the period of July 1 through December 31. These reports will contain full, detailed, and thorough description and analysis of APFT and LGS Recreation's collective progress in providing the services contained in Exhibit A. In addition, these reports shall contain a detailed schedule of work planned for the following six (6) months. No compensation shall be made under Section IV, Compensation, unless these reports are submitted in a timely manner.

V. COMPENSATION

A. GRANT AMOUNT: The Town agrees to reimburse a sum of money not to exceed Eighty-Eight Thousand Dollars and No Cents (\$88,000.00), including all costs and expenses.

LGS Recreations shall act as fiscal agent for APFT and LGS Recreation, and shall be responsible for submission of invoices and receipt of Town grant payments. Payment shall be based upon Town receipt and approval of a written invoice, to be submitted at the discretion of LGS Recreation, but not more often than once monthly. Each invoice shall include the following:

- i. A current financial statement for APFT, demonstrating that current funds, including reserves, are less than the current fiscal year's total budgeted expenses; and,
- ii. Copies of receipts for costs incurred in providing services under this Agreement; and,
- iii. A detailed explanation of the work performed by whom at what rate and on what date, for costs related to staffing.

Payment shall be net thirty (30) days. All invoices to the Town shall reference the Town's purchase order number and shall be addressed as follows:

Town of Los Gatos
Attn: Accounts Payable
P.O. Box 655
Los Gatos, CA 95031

B. FUTURE FUNDING: APFT and LGS Recreation hereby agree not to solicit the Town for future increased operating costs and/or capital support during the term of this Agreement. APFT may continue to apply for status quo funding from the Town under the competitive Community Grant process.

VI. INFORMATION HANDLING

A. CONFIDENTIAL CLIENT INFORMATION: The Town, to the extent allowed by the California Public Records Act, APFT, and LGS Recreation agree to maintain the confidentiality of any information regarding applicants for services offered pursuant to this Agreement or their immediate families which may be obtained through application forms, interviews, tests, or reports, from public agencies or counselors, or any other source. Without the written permission of the applicant or court order, such information shall be divulged only as necessary for purposes related to the performance or evaluation of the services and work to be provided pursuant to this Agreement to designated persons having responsibilities under the contract, including those furnishing services through subcontracts.

B. CONFIDENTIAL INFORMATION AND REPORTS: All documents furnished to APFT and/or LGS Recreation by the Town and all reports and supportive data prepared by APFT and/or LGS Recreation under this Agreement are the Town's property and shall be delivered to the Town upon the completion of services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by APFT and/or LGS Recreation in connection with the performance of services pursuant to this Agreement are confidential until released by the Town to the public, and APFT and/or LGS Recreation shall not make any of these documents or information available to any individual or organization not employed by APFT and/or LGS Recreation or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by APFT and/or LGS Recreation pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by APFT and/or LGS Recreation in connection with other projects shall be solely at Town's risk, unless APFT and/or LGS Recreation expressly consents to such use in writing.

VII. ASSIGNABILITY AND INDEPENDENT CONTRACTOR REQUIREMENTS

A. The relationship of APFT and/or LGS Recreation to the Town is that of an independent contractor. APFT and/or LGS Recreation are responsible for the results of its services and compliance with the terms of this Agreement. APFT and/or LGS Recreation have full rights to manage employees subject to the requirements of the law. All persons employed by APFT and/or LGS Recreation in connection with this Agreement shall be employees of APFT

and/or LGS Recreation and not employees of the Town in any respect. APFT and/or LGS Recreation shall be responsible for all employee benefits, including, but not limited to, statutory workers' compensation benefits.

B. None of the work or services to be performed hereunder shall be delegated or subcontracted to third parties without prior written Town approval.

C. No subcontractor of APFT and/or LGS Recreation will be recognized by the Town as such. All subcontractors are deemed to be employees of APFT and/or LGS Recreation, and APFT and/or LGS Recreation agrees to be responsible for their performance and any liabilities attached to their actions or omissions.

D. This Agreement is based on the unique services of APFT and/or LGS Recreation. This Agreement shall not be assigned or transferred without the written consent of the Town. No changes or variations of any kind are authorized without the written consent of the Town Manager.

VIII. COMPLIANCE WITH LAW

APFT and/or LGS Recreation shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state, and local laws, ordinances, codes, regulations, and decrees. Failure of APFT and/or LGS Recreation to, in any manner, observe and adhere to law as described herein or as amended shall in no way relieve APFT and/or LGS Recreation of responsibility to adhere to same and APFT and/or LGS Recreation herein acknowledges this responsibility. APFT and/or LGS Recreation represents and warrants to the Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required to practice its profession. APFT and/or LGS Recreation represents and warrants to Town that APFT and/or LGS Recreation 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 to provide its services.

IX. TERMS AND AMENDMENTS

Amendments to the terms and conditions of this Agreement shall be requested in writing by the party desiring such revision, and any such adjustment to this Agreement shall be determined and effective only upon the mutual Agreement in writing of the parties hereto unless the Amendments are made by the Town as corrective actions, in which case they will be adopted as ordered.

X. LEGAL MATTERS

A. **INTEGRATION:** This document including Exhibit A represents the entire and integrated Agreement between the Town and APFT and/or LGS Recreation, and supersedes all prior negotiations, representations, and agreements, either written or oral.

B. **BINDING EFFECT:** The terms of this Agreement shall bind, and inure to the benefit of, the parties, their heirs, successors, and assigns.

XI. HOLD HARMLESS

A. APFT and/or LGS Recreation hereby releases and agrees to protect, defend, hold harmless, and indemnify the Town, its Town Council, its officers, employees and elected

officials, boards and commissions, from and against all claims, injury, liability, loss, costs and expense, or damage, however same may be caused, including all cost and reasonable attorney's fees in providing the defense to any claim arising therefrom, for any loss or damage to property (real and/or personal) and for personal injury to or death of any person or persons arising out of, occurring by reason of, or in any way connected with APFT and/or LGS Recreation's activities under this Agreement, or in consequence thereof.

B. APFT and/or LGS Recreation shall hold the Town, its Town Council, officers, employees and boards and commissions harmless from APFT and/or LGS Recreation's failure(s) to comply with any requirement imposed by virtue of the utilization of Federal funds. APFT and/or LGS Recreation shall reimburse the Town, for any disallowed costs and/or penalties imposed on the Town because of APFT and/or LGS Recreation's failure to comply with Federal regulations or requirements.

C. The Town shall indemnify and save APFT and/or LGS Recreation, its officer, employees, and officials harmless with respect to any judgements arising from the Town's sole negligence or intentional actions or omissions in performance of Town's obligations under this Agreement.

D. The Town and APFT and/or LGS Recreation agree that the Town's indemnification shall extend solely to the payment of any judgements and is not intended to require that a defense to suit be provided by the Town, or to limit in any manner APFT and/or LGS Recreation's duty to defend all suits, actions, claims and causes of action arising out of the services APFT and/or LGS Recreation provides pursuant to this Agreement.

XII. WHEN RIGHTS AND REMEDIES WAIVED

In no event shall any payment by the Town or any acceptance of payment by APFT and/or LGS Recreation hereunder constitute or be construed to be a waiver by the Town or APFT and/or LGS Recreation of any breach of covenants or conditions of this Agreement or any default which may then exist on the part of the Town or APFT and/or LGS Recreation, and the making of any such payment while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the Town or APFT and/or LGS Recreation with respect to such breach or default.

XIII. TERMINATION

A. **TERMINATION FOR CAUSE:** Unearned payments under this Agreement may be suspended or terminated at any time before the date of completion by the Town if:

- i. APFT and/or LGS Recreation fails to comply with conditions of the Agreement.
- ii. APFT and/or LGS Recreation refuses to accept any additional conditions that may be imposed by the Federal or State Government.
- iii. The Town Council determines the Town can no longer fund the monies for the Agreement.

B. **TERMINATION FOR CONVENIENCE:** The Town or APFT and/or LGS Recreation may terminate this Agreement in whole or in part when both parties agree that its continuation would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

- C. Upon Suspension or Termination, APFT and/or LGS Recreation shall:
- i. Not incur new obligations and shall cancel as many outstanding obligations as possible.
 - ii. Be paid only for services actually rendered to the Town to the date of such suspension or termination; provided, however, if this Agreement is suspended or terminated for fault of APFT and/or LGS Recreation, the Town shall be obligated to compensate APFT and/or LGS Recreation only for that portion of APFT and/or LGS Recreation's services which are of benefit to the Town.
 - iii. Turn over to the Town immediately any and all copies of studies, reports and other data, prepared by APFT and/or LGS Recreation or its subcontractors, whether or not completed, if any, in connection with this Agreement; such materials shall become property of the Town. APFT and/or LGS Recreation, however, shall not be liable for the Town's use of incomplete materials or for the Town's use of complete documents if used for other than the services contemplated by this Agreement.
- The Town is not liable for any APFT and/or LGS Recreation expenses incurred after the termination or closing date of the Agreement.

XIV. MISCELLANEOUS PROVISIONS

- A. **THE CAPTION:** The captions of the various sections, paragraphs, and subparagraphs of the Agreement are for convenience only and shall not be considered nor referred to for resolving questions of the interpretation.
- B. **NO THIRD PARTY BENEFICIARY:** This Agreement shall not be construed or deemed to be an Agreement for the benefit of any third party or parties, and no third party shall have any claim or right of action hereunder for any cause whatsoever.
- C. **SEVERABILITY CLAUSE:** In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal, or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.
- D. **NO PLEDGING OF TOWN'S CREDIT:** Under no circumstances shall APFT and/or LGS Recreation have the authority or power to pledge the credit of the Town, or incur any obligation in the name of the Town. APFT and/or LGS Recreation shall save and hold harmless the Town, its Town Council, its officers, employees and boards and commissions from expenses arising out of this Agreement.
- E. **DISPUTES:** In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, as well as reasonable costs, but not to exceed \$5,000.
- F. **NONDISCRIMINATION:** Neither APFT and/or LGS Recreation nor any of its subcontractors shall discriminate in the employment of persons because of their race, color, national origin, sex, age, ancestry, sexual orientation, religion, physical or mental disability, or marital status, unless based upon a bona fide qualification under the California Fair Employment and Housing Act. Neither APFT and/or LGS Recreation nor any of its subcontractors shall discriminate in the provision of any services or programs because of race, color, national origin, sex, age, ancestry, sexual orientation, religion, physical or mental disability, or marital status, unless based upon a bona fide qualification under the California Fair Employment and Housing Act.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first herein above set forth.

TOWN OF LOS GATOS

A PLACE FOR TEENS

Greg Larson
Town Manager

Lee Fagot
President

APPROVED AS TO FORM:

LOS GATOS-SARATOGA COMMUNITY
EDUCATION AND RECREATION

Orry P. Korb
Town Attorney

Steve Rauwolf
Director

APPROVED AS TO CONTENT:

Regina A. Falkner
Community Services Director

ATTEST:

Jackie Rose
Clerk Administrator

EXHIBITS:

A. Scope of Services

EXHIBIT A SCOPE OF SERVICES

ADMINISTRATIVE GOALS

1. Stabilize and strengthen the administrative capabilities of A Place for Teens.
2. Stabilize and strengthen the fiscal health of A Place for Teens.
 - a. Create a fiscal atmosphere which encourages the receipt of matching funds grants
 - b. Ensure the ongoing integrity of fund reserves and endowment, with regard to operating costs

DIRECT SERVICES

1. Provide teen services at The Venue. These services may include, but are not limited to:
 - a. Access to the facility provided to teens on a drop-in basis
 - b. Special events, including concerts, dances, and movie nights
 - c. Workshops, classes, and meetings
 - d. Community service opportunities
 - e. Special events and other efforts in collaboration with local youth groups

A summary of these direct services, and the number to be provided each quarter, follows:

Service	Quarterly Service Goals				
	Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	Annual Total
a. Facility access	325	450	450	350	1,575
b. Special events	21	27	25	22	95
c. Workshops	12	16	24	18	70
d. Community service	16	21	20	18	75
e. Special events	8	14	12	16	50

INDIRECT SERVICES:

1. Refer teens to local services such as counseling.
2. Work with local groups such as Drug Free Community, CASA, the Los Gatos-Monte Sereno Police Department, and the Los Gatos High School in their efforts on youth issues.

A summary of these indirect services, and the number to be provided each quarter, follows:

Service	Quarterly Service Goals				
	Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	Annual Total
1. Teen referrals	10	10	10	10	40
2. Community work	6	6	6	6	24