

**CONSULTING SERVICES AGREEMENT BETWEEN
THE RODEO HERCULES FIRE PROTECTION DISTRICT AND
TOWNSEND PUBLIC AFFAIRS, INC
FOR
GRANT WRITING AND FUNDING ADVOCACY SERVICES**

THIS AGREEMENT for Grant Writing and Funding Advocacy services (“Agreement”) is made by and between the Rodeo Hercules Fire Protection District (“District”) and Townsend Public Affairs, Inc (“Consultant”) (together sometimes referred to as the “Parties”) as of _____, 20__ (the “Effective Date”).

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to District the services described in the Scope of Work attached as Exhibit A, incorporated herein by this reference, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on _____, the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the District’s right to terminate the Agreement, as referenced in Section 8.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged and in the geographic area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement to the standards normally observed by a person practicing in Consultant’s profession.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that District, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from District of such desire of District, reassign such person or persons. Consultant acknowledges and agrees that the persons named in its proposal, as described in Exhibit A, shall be assigned to the District’s engagement.
- 1.4 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Consultant’s obligations hereunder.
- 1.5 Reserved**

Section 2. COMPENSATION. District hereby agrees to pay Consultant a sum not to exceed an annual sum of \$60,000.00 notwithstanding any contrary indications that may be contained in Consultant’s

proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, this Agreement shall prevail. District shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from District to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to District in the manner specified herein. Except as specifically authorized by District in writing, Consultant shall not bill District for duplicate services performed by more than one person.

Consultant and District acknowledge and agree that compensation paid by District to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. District therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information, unless waived by the Contract Administrator:

- Serial identification of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At District's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;
- Consultant shall give separate notice to the District when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and District. Such notice shall include an estimate of the time necessary to complete work described in Exhibit

A and the estimate of time necessary to complete work under any other agreement between Consultant and District, if applicable.

- 2.2 Monthly Payment.** District shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. District shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.
- 2.3 Final Payment.** District shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to District of a final invoice, if all services required have been satisfactorily performed.
- 2.4 Total Payment.** District shall pay for the services to be rendered by Consultant pursuant to this Agreement. District shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. District shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- 2.5 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.
- 2.6 Reimbursable Expenses.** Reimbursable expenses, if any, are specified in Exhibit B, incorporated herein, and shall not exceed \$_____. Expenses not listed in Exhibit B are not chargeable to District. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 Payment upon Termination.** In the event that the District or Consultant terminates this Agreement pursuant to Section 8, the District shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. District shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

District shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with District employees and reviewing records and the information in possession of the District. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of District. In no event shall District be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before fully executing this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to District of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the District. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's proposal. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to District. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation.

4.1.1 General Requirements. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than **\$1,000,000** per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the District for all work performed by the Consultant, its employees, agents, and subcontractors.

4.1.2 Submittal Requirements. To comply with Subsection 4.1, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section; and
- b. Waiver of Subrogation Endorsement as required by the section.

4.2 Commercial General and Automobile Liability Insurance.

- 4.2.1 General Requirements.** Consultant, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than \$2,000,000 and automobile liability insurance for the term of this Agreement in an amount not less than \$2,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability 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. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.
- 4.2.2 Minimum Scope of Coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.
- 4.2.3 Additional Requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:
- a. The Insurance shall cover an occurrence or an accident basis, and not on a claims-made basis.
 - b. District, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant.
 - c. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

- d. For any claims related to this Agreement or the work hereunder, the Consultant's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

4.2.4 Submittal Requirements. To comply with Subsection 4.2, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section.
- b. Additional Insured Endorsement as required by the section.
- c. Waiver of Subrogation Endorsement as required by the section; and
- d. Primary Insurance Endorsement as required by the section.

4.3 Professional Liability Insurance.

4.3.1 General Requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$2,000,000 covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 Claims-Made Limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained, and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the District for review prior to the commencement of any work under this Agreement.

4.3.3 Additional Requirements. A certified endorsement to include contractual liability shall be included in the policy.

4.3.4 Submittal Requirements. To comply with Subsection 4.3, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.

4.4 Cyber Liability Insurance.

4.4.1 General Requirements. Consultant, at its own cost and expense, shall maintain cyber liability insurance for the term of this Agreement in an amount not less than \$1,000,000.00 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress; invasion of privacy violations; information theft; damage to or destruction of electronic information; release of private information; alteration of electronic information; extortion; and network security. The policy shall provide coverage for liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering technology services:

- Violation or infringement of any right of privacy, including breach of security and breach of security/privacy laws, rules or regulations globally, now or hereinafter constituted or amended;
- Data theft, damage, unauthorized disclosure, destructions, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential District information in whatever form, transmission of a computer virus or other type of malicious code; and participation in a denial-of-service attack on third party computer systems;
- Loss or denial of service;
- No cyber terrorism exclusion;

Such coverage must include technology/professional liability including breach of contract, privacy and security liability, privacy regulatory defense and payment of civil fines, payment of credit card provider penalties, and breach response costs, including without limitation, notification costs, forensic analysis, credit protection services, call center services, identity theft protection services, and crisis management/public relations services.

4.4.2 Claims-Made Limitations. The following provisions shall apply if the cyber liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained, and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.

- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the District for review prior to the commencement of any work under this Agreement.

4.4.3 Additional Requirements. A certified endorsement to include contractual liability shall be included in the policy.

4.4.4 Submittal Requirements. To comply with Subsection 4.4, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.

4.5 All Policies Requirements.

4.5.1 Acceptability of Insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.5.2 Verification of Coverage. Prior to beginning any work under this Agreement, Consultant shall furnish District with complete copies of all Certificates of Liability Insurance delivered to Consultant by the insurer, including complete copies of all endorsements attached to the policies. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the District does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The District reserves the right to require complete copies of all required insurance policies at any time.

4.5.3 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the written approval of District for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the District guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.5.4 Wasting Policies. No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.5.5 Endorsement Requirements. Each insurance policy required by Section 4 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the District.

4.5.6 Subcontractors. Consultant shall include all subcontractors as insured under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

4.6 Remedies. In addition to any other remedies District may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, District may, at its sole option exercise any of the following remedies, which are alternatives to other remedies District may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Refer to the attached Exhibit C, which is incorporated herein and made a part of this Agreement.

Section 6. STATUS OF CONSULTANT.

6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of District. District shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise District shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other District, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by District, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of District and entitlement to any contribution to be paid by District for employer contributions and/or employee contributions for PERS benefits.

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

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to the Americans with Disabilities Act, and any copyright, patent or trademark law. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which District is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to District that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to District that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from District.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, genetic information, marital status, gender, gender identity, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** District may cancel this Agreement at any time and without cause upon written notification to Consultant .

Consultant may cancel this Agreement upon 30 days' written notice to District and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; District, however, may condition payment of such compensation upon Consultant delivering to District any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the District in connection with this Agreement.

- 8.2 Extension.** District may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if District grants such an extension, District shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, District shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.4 Assignment and Subcontracting.** District and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to District for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between District and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, District's remedies shall include, but are not limited to, the following:
- 8.6.1** Immediately terminate the Agreement;
 - 8.6.2** Retain the reports, work papers, and any other work product prepared by Consultant pursuant to this Agreement;
 - 8.6.3** Retain a different Consultant to complete the work described in Exhibit A not finished by Consultant and charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that District would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

8.6.4 No remedy mentioned in this Agreement is intended to be exclusive of any other right, power, or remedy permitted by law. Neither the failure nor any delay on the part of the District to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the District of any such right or remedy preclude any other or further exercise of any such right or remedy.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Consultant's Performance. All reports, work papers, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the District. Consultant hereby agrees to deliver those documents to the District upon termination of the Agreement and District may use, reuse, or otherwise dispose of the documents without Consultant's permission. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the District and are not necessarily suitable for any future or other use. District and Consultant agree that, until final approval by District, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.

9.2 Consultant's Books and Records. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the District under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that Subsection 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the District. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of District or as part of any audit of the District, for a period of 3 years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

10.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of District or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any District official in the work performed pursuant to this Agreement. No officer or employee of District shall have any financial interest in this Agreement that would violate California Government Code Section 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the District. If Consultant was an employee, agent, appointee, or official of the District in the previous 12 months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of California Government Code Section 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the District for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of California Government Code Section 1090 *et seq.*, and, if applicable, will be disqualified from holding public office in the State of California.

- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 Contract Administration. This Agreement shall be administered by the Fire Chief ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 Notices. Any notice, demand, request, consent or approval that either party is required to give the other pursuant to this Agreement, shall be in writing and may be given by either (i) personal service, (ii) delivery by reputable overnight delivery service (e.g. Federal Express) which provides a receipt showing date and time of delivery, (iii) certified United States mail, postage prepaid, return receipt requested, or (iv) by email transmission . Notice shall be effective upon personal delivery or delivery to the addresses specified below, as reflected on the receipt of delivery or return receipt, as applicable. Notice by email transmission shall be deemed given upon verification of receipt if received before 5:00 p.m. on a regular business day, or else on the next business day.

Any written notice to Consultant shall be sent to:
 Townsend Public Affairs, Inc
 Attention: Christopher Townsend, President
 1401 Dove Street, Suite 330
 Newport Beach, CA 92660_____

Any written notice to District shall be sent to:
 Rodeo Hercules Fire Protection District
 Attention: Rebecca Ramirez, Fire Chief
 1680 Refugio Valley Road
 Hercules, CA 94547

10.12 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, and C represents the entire and integrated agreement between District and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

<u>Exhibit A</u>	Scope of Services
<u>Exhibit B</u>	Compensation Schedule & Reimbursable Expenses
<u>Exhibit C</u>	Indemnification

10.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.14 Conflicts or Inconsistency. In interpreting this Agreement, and resolving conflicts, errors, or discrepancies, the order of precedence shall be:

1. This Agreement
2. The resolutions and policies of the District

3. The Consultant's proposal

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Agreement as of the Effective Date. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

RODEO HERCULES FIRE DISTRICT

TOWNSEND PUBLIC AFFAIRS, INC

Interim Fire Chief Rebecca Ramirez

Christopher Townsend, President

Attest:

Kimberly Corcoran, District Secretary

Approved as to Form:

Richard D. Pio Roda, General Counsel

EXHIBIT A

SCOPE OF SERVICES

TPA will utilize the following strategic and comprehensive approach to provide grant writing and funding advocacy services to the District:

- **Conduct Detailed Orientation:** TPA utilizes a comprehensive onboarding process that includes extensive meetings with various relevant members of District leadership to help develop a strategic plan that is carefully tailored to satisfy the needs of the District and is designed for maximum success in the current political climate and funding environment.
- **Craft Strategic Funding Plan:** Utilizing the information gathered during the onboarding process, TPA will coordinate with the District to develop a proactive and comprehensive strategic funding plan that serves the needs of the District's priorities. *The plan will do more than simply identify District projects*; it will outline and prioritize multiple funding options for each project and develop a specific plan of work tailored for each project. It will also identify key "strings attached" to help assess the cost/benefit ratio for each grant opportunity.
- **Identify, Research, and Monitor Grant Funding Opportunities:** TPA will utilize list-serv subscription programs, funding workshops, agency canvassing, and other networking tactics to ensure every potential opportunity is identified and reviewed for relevance with the District's projects. TPA will then share these opportunities with the District for further assessment and determination if a grant application is warranted. The District will also receive a grant matrix of funding programs that is updated regularly as new opportunities arise.
- **Community Outreach:** TPA will assist the District with community outreach required for grant applications by ensuring the District is aware of specific requirements, helping develop materials that capture all elements required by the grant, and compiling the outreach data for inclusion in the application.
- **Grant Application Development and Submittal:** TPA will develop, draft, submit, and follow up on each District grant application through the following process:
 - **Establishment of Clear Accountabilities:** TPA will coordinate with the District to ensure the assignment of responsibilities and tasks are made clear so that confusion and inefficiency are avoided, and the District is burdened as little as possible while TPA pursues a grant opportunity.
 - **Provide Overview of Full Application Requirements:** For each grant application, TPA will provide the District with a detailed overview of the requirements for the grant program and corresponding application to ensure that the program is a strong fit for the District's project. This will include:
 - Application timeline
 - Eligible project types
 - Funding availability and award maximums and minimums
 - List of application components, including proposal questions and any required attachments
 - **Assemble Project Background and Details:** TPA will conduct a detailed informational session with District staff most involved with each project in order to gain a full understanding of the project background and scope details necessary for developing the grant proposal and addressing all application questions.

- **Coordinate Technical Project Details:** For technical application components such as site plans, detailed cost estimates, project timelines, engineering plans, and cost-benefit analyses, TPA will coordinate with District staff to compile all necessary attachments and ensure consistency across all elements of the application.
- **Draft Written Proposal:** TPA will fully draft all narrative components of the application and, when applicable, will indicate where additional input or project detail from the District could be provided during the proposal review process.
- **Incorporate Feedback to Finalize Proposal:** Well ahead of the application deadline, TPA will provide the District with a full draft for review and feedback. TPA will incorporate any additional details or revisions provided during this process to finalize the grant application and will obtain District approval for the final version of the application prior to submission.
- **Submit Completed Application:** TPA will ensure that applications are submitted prior to the deadline, whether the submission is electronic or through hard copies, in accordance with submission instructions for each individual program. For hard copy submissions, TPA will print and package applications according to submission instructions and will ship applications through a reliable carrier service such as FedEx in order to provide the District with tracking and delivery confirmation for the application. TPA will also obtain a receipt for proof of submission and provide the District with a final copy of all submitted application documents.
- **Funding Advocacy:** Throughout the grant application process TPA will leverage relationships with relevant officials and program officers in various state and federal funding agencies to ensure that District grant applications are aligned with the goals of the specific grant program and that the applications are well-crafted and well-positioned for funding.
- **State Budget Funding Opportunities:** In an effort to maximize state funding, TPA will work with the District to identify projects and other funding priorities that may be suitable for funding through the State Budget. TPA will coordinate with the District to develop supporting materials for the budget request. TPA will also work with members of the District's state legislative delegation, along with the Assembly and Senate Budget Committees, to gain support for the inclusion of the District's project in the final State Budget approved by the Legislature.
- **Federal Earmark Opportunities:** In an effort to maximize federal funding, TPA will work with the District to identify projects and other funding priorities that may be suitable for funding through the Federal Earmark process. TPA will coordinate with the District to develop supporting materials for the earmark request. TPA will also work with members of the District's federal legislative delegation to gain support for the inclusion of the District's project.
- **Post-Grant Submittal Advocacy:** TPA will frequently contact legislators and agency officials to follow up on the status of a grant application and promote its need and urgency. This will include drafting letters of support after grant submissions and distributing them to legislators for their consideration. In addition, TPA will work with legislators to reach out to individual granting agencies to provide background on District's projects and convey their support for those projects.
- **Post-Award Grant Administration and Compliance:** TPA will also assist, as needed, with post-award administration and compliance for all grant applications submitted by TPA on behalf of the District. This assistance will include interacting with granting agencies on behalf of the District, providing support for the

drafting and submission of required reports and evaluations, and other tasks related to the successful monitoring of and compliance with the program requirements.

- **Post-Award Services—Above and Beyond Advocacy:** TPA has a track record of success with post-award grant administration and retention. TPA has worked on behalf of clients who, due to unforeseen circumstances, have needed to request an extension of the grant performance period to accomplish project deliverables. TPA is prepared to engage in the legislative process and work with legislators to get bills passed that would allow for the District to retain its grant funding after the performance period would have otherwise ended. Additionally, TPA is prepared to work directly with the District and agencies to secure scope of work changes to already awarded projects to ensure the District will not have to return any hard-won grant funding.
- **Comprehensive Follow-Up on Unsuccessful Applications:** Despite all best efforts, some grant applications are not selected for funding. In those instances where grant applications are unsuccessful, TPA will work with the relevant state and federal funding agencies to set up in-person or telephone debriefing sessions to discuss the grant applications and how to best revise the grant applications for the next funding round to ensure success.
- **Provide Monthly Progress Reports:** TPA will confer regularly with the District on our activities. TPA will provide timely electronic monthly reports on the status of all funding activity, such as current funding opportunities, current applications, submitted applications, and post-grant submittal advocacy. In addition to written reports, TPA will be available to the District for conference calls, in-person briefings, and meetings.

EXHIBIT B

COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES

DESCRIPTION OF SERVICES	MONTHLY FEE
Grant Writing & Funding Advocacy Services	\$5,000*
• Conduct Detailed Orientation	Included
• Craft Strategic Funding Plan	Included
• Identify, Research, and Monitor Grant Funding Opportunities	Included
• Grant Application Development and Submittal	Included
• Establishment of Clear Accountabilities	Included
• Provide Overview of Full Applications Requirements	Included
• Assemble Project Background and Details	Included
• Coordinate Technical Project Details	Included
• Draft Written Proposal	Included
• Incorporate Feedback to Finalize Proposal	Included
• Submit Completed Application	Included
• Funding Advocacy	Included
• State Budget Funding Opportunities	Included
• Federal Earmark Opportunities	Included
• Post-Grant Submittal Advocacy	Included
• Post-Award Grant Administration and Compliance	Included
• Post-Award Services—Above and Beyond Advocacy	Included
• Comprehensive Follow-Up on Unsuccessful Applications	Included
<i>*The monthly fee includes all reasonable business and travel expenses.</i>	
ANNUAL NOT-TO-EXCEED AMOUNT: \$60,000	

EXHIBIT C

INDEMNIFICATION

Consultant shall indemnify, defend with counsel acceptable to District, and hold harmless District and its officers, elected officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the services called for or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the active negligence or willful misconduct of District or Consultant.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days to the tender of any claim for defense and indemnity by the District. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the District, may be retained by the District until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

Consultant's obligation under this Agreement shall survive the termination of this Agreement for at least five (5) years after full or partial completion of performance by Consultant, or termination by either party.

Acceptance by District of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damage or claim for damages whether or not such insurance policies have been determined to apply.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of District, Consultant shall indemnify, defend, and hold harmless District for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of District.