

**RODEO HERCULES FIRE PROTECTION
DISTRICT REQUEST FOR PROPOSALS (RFP)**

Strategic Planning Services

I. DISTRICT BACKGROUND

The Rodeo Hercules Fire Protection District (“RHFPD” or "District") is an independent fire protection district located in western Contra Costa County. The Fire District is approximately thirty-two (32) square miles, and includes the City of Hercules and the unincorporated area of Rodeo. The population of the Fire District is approximately 35,000, with population expected to continue increasing due to new residential development in the City of Hercules. The Fire District contains a major oil refinery (Phillips 66), numerous underground fuel pipelines, two major rail lines, two major highways—Hwy 4, Hwy 40, the Interstate-80 Freeway and significant Wildland Urban Interface.

Fire District staff consists of a Fire Chief, a Battalion Chief, six captains, six engineers, one part-time fire inspector, one full time administrative services officer, and one part-time administrative assistant. This all-risk Fire District responds to approximately 2,600 calls annually, providing fire suppression and Advanced Life Support emergency medical response services. Medical transportation within the Fire District is provided by American Medical Response under a regional ambulance contract. The Fire District has 2 active fire stations, one located in the City of Hercules and one in the unincorporated Town of Rodeo. RHFPD operates within Battalion 7, a jointly operated Battalion with the City of Pinole Fire Department, and the Contra Costa County Fire Protection District.

The Fire District has an annual budget of approximately \$9 million. Principal sources of funding for the Fire District are property taxes, two benefit assessments, and a parcel tax enacted by the voters of the Fire District in 2016 (commonly known as Measure O).

The Fire District is governed by an elected five member board of directors. The Fire Chief is the chief executive of the Fire District.

II. PROJECT SCOPE OF WORK

The RHFPD is requesting proposals from qualified firms (“Applicants”) to develop a strategic plan to guide (a) future service expansions and improvements due to development and (b) organizational development, including establishment of priorities and timeframes, pricing of potential organizational improvements and development of revenue options to fund needed expansions and improvements. The selected applicant will be expected to engage the community and collect stakeholder and Board of Directors input as part of the process.

A more complete Sample Scope of Services has been attached to this Request for Proposals (RFP) as Attachment 1.

III. PROPOSALS

A. Proposal Submission

The Fire District must receive from Proposers five (5) printed copies of their proposals, as well as an electronic version on a USB flash drive, no later than 5 p.m. (Pacific Time) on November 22, 2021, addressed to:

Bryan Craig, Fire Chief
Rodeo Hercules Fire Protection District
1680 Refugio Valley Road
Hercules, CA 94547

The RHFPD will not pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract.

During the evaluation process, the RHFPD reserves the right to request additional information or clarification from Proposers, and to waive any and all immaterial informalities and irregularities. At the discretion of the RHFPD, firms submitting proposals may be requested to make oral presentations as part of the evaluation process. Once submitted, the proposals will be the property of the Fire District.

Submission of a proposal shall constitute a firm offer to the RHFPD for 90 days from the date proposals are due to the Fire District. By submitting the proposal, it is expected that the Proposer has carefully read and fully understands this RFP (including the Attachments). A Proposer may withdraw its proposal at any time before the submittal deadline by delivering a written request for withdrawal signed by, or on behalf of, the Proposer.

B. Subcontracting

RHFPD will accept proposals from individual firms or consultant teams. Any proposal submitted on behalf of multiple consultants must designate a “lead” consultant/firm to enter into a contract with the Fire District. The lead consultant will be solely responsible for contractual performance and management of all subconsultant relationships. Any secondary consultant/firm would be a subconsultant to the lead consultant.

All proposals must disclose and describe the use of any subconsultants (except those performing copying and/or printing services) and include the specific scope of work proposed to be performed under subcontract(s). RHFPD reserves the right to reject any proposed subconsultant as part of the RFP and contract negotiation process.

C. Agreement Form

The Fire District will utilize the agreement included as Attachment 2 for the project. Except as specified in the proposal, submission of a proposal constitutes acceptance of the agreement format and provisions included in Attachment 2.

D. Contact Information: Requests for Clarifications

All requests for clarifications, questions, or other communications about this RFP shall be made in writing via e-mail, or U.S. Mail, for receipt by the Fire District no later than **5 p.m. (Pacific Time)** on October 18, 2021. Address all communications to the person listed below. To ensure that requests for clarifications and questions are received and answered in a timely manner, e-mail correspondence is preferred. Responses will be summarized and distributed by e-mail and website FAQ without identifying the original source of the question. Firms should rely only on written statements issued by the person named below:

Bryan Craig, Fire Chief
Rodeo Hercules Fire Protection District
1680 Refugio Valley Road
Hercules, CA 94547
510-799-4561
craig@rhfd.org

E. RFP Schedule

The RHFPD reserves the right to amend the RFP schedule as necessary:

RFP Issued	October 8, 2021
Deadline For Submitting Written Questions	October 18, 2021
Deadline for Receipt of Proposals	November 22, 2021
Ad Hoc Committee Reviews Proposals for Responsiveness	by November 30, 2021
Distribution of Proposals to Board	by December 1, 2021
Board Review of Proposals, Receives Recommendations from Ad Hoc Committee to move forward with interviews	January 12, 2022
Finalist Interviews (if scheduled)	January - February 2022
Contract Negotiations with proposed consultant	January - February 2022
Board of Directors Approval/Contract Award	February 9, 2022

F. Proposal Content

In order to be considered for selection for award of contract, the Proposer must demonstrate the ability to perform the scope of services. Proposals must include information on relevant experience, key staff members and their qualifications and, where relevant, familiarity with the RHFPD's services, service area, demographics, constituencies, finances and challenges.

Each proposal must include:

1. Introduction of the proposed Consultant team indicating the Proposer's agreement to be bound to its proposal for 90 days.

2. Confirmation that the Proposer is prepared to sign the standard agreement included in sample form as Attachment 2 if a contract is awarded, or identification of any exceptions, changes or revisions requested relative to any element of the standard agreement.
3. Information on the “lead” consultant/firm and any proposed sub-consulting firms including firm name, contact name, business address, telephone number, e-mail address, type of entity (individual, partnership or corporation), years in business.
4. Information on proposed firm(s) and on key personnel including names, proposed roles for this project, and relevant experience. Complete resumes may be attached.
5. Contact names and phone numbers for at least three public agency references for which the Proposer has performed a similar engagement within the previous three to five years. Contact names and phone numbers for at least three public agency references for which each proposed subconsultant has performed a similar engagement within the previous three to five years. Please include a brief description of the project, key consultant personnel involved, the project cost and time expended, and the date of completion. Please also include a summary of the outcome(s).
6. A well-conceived work plan and schedule indicating timelines for deliverables, critical meetings, and the completion of each task.

The work plan and schedule should include a full description of all major tasks and subtasks. Attachment 1 – Sample Scope of Services is provided as a baseline, which Proposers may use at their discretion for their responses.

7. A detailed cost proposal for services based on the associated requirements detailed in this RFP. The cost proposals should include a total-not-to-exceed amount and a proposed payment schedule tied to deliverables. Included in the fee shall be all labor, travel expenses, profit, administrative and overhead fees, and other direct costs, including the cost of obtaining insurance, as required in the Agreement. The cost proposal also should include an estimate for the number of hours that will be required of Proposer's personnel/staff members/subconsultants to accomplish the work. Proposers also must submit their hourly rate schedule for all personnel who may be involved in the work. Flexible cost proposals identifying potential options (i.e. different forms or quantities of stakeholder and/or public engagement) are encouraged. Proposers also must submit their policies on cost reimbursement and describe their customary billing procedures, including any terms of payments with any discounts allowed.
8. Verification of Proposer’s ability to act as an independent consultant. If there is a relationship to work performed for other entities which may present a conflict

of interest, or the appearance of such a conflict, it should be fully disclosed as it relates to the proposed scope of work.

G. Confidentiality

The California Public Records Act (Cal. Govt. Code Sections 6250 et seq.) mandates public access to government records. Therefore, unless the information is exempt from disclosure by law, the proposals and any written communications between the District and a Proposer will be subject to disclosure to the public upon request.

If a Proposer believes any record or information, they submit contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer shall request that the RHFPD withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. By submitting a proposal with portions marked "confidential," a Proposer represents it has determined such portions qualify for exemption from disclosure under the California Public Records Act. Proposer may not designate its entire Proposal nor its cost proposal as confidential. The Fire District has the ultimate authority to determine whether or not a record is exempt from disclosure.

If a Proposer does not request that the RHFPD withhold from disclosure information identified as confidential, the RHFPD will have no obligation to withhold the information from disclosure and may release the information sought without any liability to the RHFPD.

H. Review and Selection Process

The RHFPD reserves the right to select a Proposer based on the RHFPD's sole discretion. Proposals will be evaluated in response to this RFP and based on the needs of the RHFPD in accordance with the following criteria:

- i. Quality and completeness of the proposal.
- ii. Proposer's qualifications and relevant experience, including the experience of the firm and staff assigned to the project.
- iii. Measurable success with projects/engagements of similar scope and complexity, including as demonstrated by references from at least three other clients.
- iv. Proposer's ability to schedule and efficiently perform the work.
- v. Proposer's prior record of performance with the RHFPD or other public agencies.

- vi. Proposer's knowledge and familiarity with the demographics, constituencies and relevant stakeholders in the RHFPD's service area.
- vii. Proposer's knowledge of financial challenges and funding sources that are pertinent to fire districts; and
- viii. Reasonableness of cost proposal.

One or more Proposers may be invited to participate in an interview process. The RHFPD requests that Proposers make themselves available if asked to participate in an interview. If an interview is requested, the Proposer will be responsible for all costs related to the interview (travel, meals, lodging, etc.).

I. Revised Proposals, Discussions, Negotiations, Best And Final Offers

The RHFPD may request revised proposals, enter into discussions and/or negotiations with one or more of the Proposers and/or request "best and final offers." The RHFPD also may award a contract without conducting any negotiations, discussions or interviews.

○ **Contract Award**

The District's Board of Directors will select the Proposer to award the contract. All proposers will be notified of the final award in writing.

This RFP does not commit the RHFPD to award a contract. The RHFPD reserves the right to waive informalities and irregularities in the Proposals received or in the procedures outlined herein, to accept or reject any or all Proposals, or to modify or cancel the RFP in part or in its entirety.

○ **Budget and Compensation**

Following execution of a contract with the successful Proposer, the RHFPD and the selected Proposer will finalize the work plans and associated costs before the selected Proposer commences work on same.

ATTACHMENT 1

SAMPLE SCOPE OF SERVICES: STRATEGIC PLAN FOR THE RODEO HERCULES FIRE PROTECTION DISTRICT

The Rodeo Hercules Fire Protection District (Fire District) seeks to develop and adopt a 5 year strategic plan to guide (a) future service expansions/improvements and (b) improvements to the Fire District's organizational effectiveness, including a plan to fund expansions and improvements. The strategic plan should provide the Fire District with short-term and long-term direction based on the Fire District's vision, goals, and objectives updated or developed through the planning process; an honest assessment of the Fire District's strengths and weaknesses; and Board of Directors, staff, and community priorities. The plan should optimize available Fire District resources and create a roadmap for securing and utilizing potential future resources. The plan should build upon - rather than duplicate or replace - prior Fire District planning efforts.

Work must include (but may not be limited to):

- Reports to the Board at various milestones (tied to projects or deliverables)
- **Mission, vision and goals:** Working with the Board of Directors and Fire Chief, update the District's mission, vision, and goals;
- **Community Engagement:** Develop and implement a community engagement strategy for the strategic planning effort, including focused stakeholder input and broader community input;
- **Information Gathering and Documentation:** Gather and document information including, at a minimum:
 - Services currently provided by the Fire District.
 - Interviews with the Board of Directors, community stakeholder and Fire District personnel regarding their impressions of the Fire District's current services, and priorities for potential service expansions/improvements.
 - Community impressions of the Fire District generally, what services the Fire District should provide, and priorities for service expansions/improvements. Coordinate with the Fire District to hold a community workshop to gather this information. Consultant is encouraged to procure and provide a professional facilitator.
 - Priorities for potential service expansions and improvements, which may include refurbishment of existing and construction of new stations.

- Identify existing training, training gaps, and additional training opportunities for staff and the community including through cooperation with existing educational programs in the region.
- District demographics, characteristics, and subsets of population; race, gender, age of population, socioeconomic conditions.
- Develop an environmental analysis that trends and occurrences in the RHFPD's internal and external environment that focuses on its success currently and that can be obtained in the future Elements key environmental indicators—internal, external, qualitative and quantitative. Highlight results within the implementation of the Strategic Plan.
- Analyze and present trends in calls for service related to fire (home, commercial/retail, industrial, refinery, wildland.), and for EMS services.
- Information on volunteer recruitment offered by fire districts in California.
- Development of a retention succession planning program for the District.
- **SWOT Analysis:** Strengths and weaknesses of the Fire District's organization, and opportunities for and threats to organizational improvement.
- **Financial Analysis:** Conduct financial analysis including at a minimum:
 - Review of existing revenue and potential sources;
 - Financial analysis of costs of each potential service expansion/improvement and each potential organizational improvement (including a plan for periodically updating the analysis);
 - Revenue enhancement options to fund service expansions/improvements and organizational improvements
Include revenue generation vehicles which can be implemented:
(1) at the Fire District's discretion; (2) via service agreements with other local agencies; (3) via State legislation and/or local elections.
- **Funding Analysis:** Determine stakeholder priorities for pursuit of revenue enhancements and examine related effects on prioritization of service expansions/improvements, including a review and analysis of Fire District's fees as compared to the other fire districts within Contra Costa County.
- **Strategic Plan:** Develop a plan, using the information and analysis above, to:
 - Define and apply criteria to select and prioritize a subset of potential (a) service expansions/improvements and (b) organizational improvements.
 - An objective of the strategic plan is to maintain and/or improve the Fire District's Public Protection

- Classification rating of 2 as the communities within its jurisdiction develop and change over the next five years.
 - Examples of potential service expansions/improvements: shared service agreements with neighboring fire districts / departments; adding to or enhancing key performance indicators.
 - Examples of potential organizational improvements, including but not limited to: changing the balance of staffing based on projected EMS service calls vs fire service calls; coordinating social services organizations with the expected impact to improve public safety and reduce overall EMS call volume.
- For each selected and prioritized improvement:
 - Establish realistic goals and objectives (including timing for implementation);
 - Determine strategic initiatives associated with each selected/prioritized improvement.
 - Identify tasks required for successful implementation of each strategic initiative for each selected/prioritized improvement and develop timeframes/guidelines for accomplishment of each task, culminating in an Implementation Action Plan.
 - Proposed schedule for Board review and updates, as necessary.
- Develop a plan to guide Fire District efforts in securing organizational and community commitment to implementing the guidance and funding the selected improvements.
- Identify tasks within the completed Strategic Plan that can be used to create a five year business plan for the Fire District.
- Community Town Hall to review the Implementation Action Plan
- Final report to Board

**ATTACHMENT 2
SAMPLE
AGREEMENT**

**District's Consulting
Services Agreement**

3880099.1

**CONSULTING SERVICES AGREEMENT BETWEEN
THE RODEO HERCULES FIRE PROTECTION DISTRICT AND**

FOR

STRATEGIC PLANNING SERVICES

THIS AGREEMENT for strategic planning services is made by and between the Rodeo Hercules Fire Protection District (“District”) and _____ (“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 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. The Exhibit A may be the proposal submitted by Consultant pursuant to the District’s Requests for Proposals dated _____.

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.

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 _____, 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:

- 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 are specified in Exhibit B, 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 on 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 **All Policies Requirements.**

- 4.4.1 **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.
- 4.4.2 **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.
- 4.4.3 **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.
- 4.4.4 **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).
- 4.4.5 **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.
- 4.4.6 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.5 **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, marital status, 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.

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. 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 Kimberly Corcoran ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 Notices. Any written notice to Consultant shall be sent to:

Any written notice to District shall be sent to:

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.

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

[NAME OF CONSULTANT]

Fire Chief Bryan Craig

[NAME, TITLE]

Attest:

Kimberly Corcoran, District Secretary

Approved as to Form:

Richard D. Pio Roda, General Counsel

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B

COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES

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.

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.

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