



PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is effective as of this _____ day of _____, 2017, by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **Townsend Public Affairs, Inc.** ("Consultant"), collectively referred to as the "Parties."

WITNESSETH THAT

WHEREAS, the City desires to secure Federal and State legislative advocacy services; and

WHEREAS, the City finds that specialized knowledge, skills, and training are necessary to render the services necessary to do the work contemplated under this Agreement; and

WHEREAS, the City has determined that the Consultant is qualified by training and experience to render such services; and

WHEREAS, the Consultant desires to provide such services; and,

WHEREAS, the public interest will be served by this Agreement; and

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

1. SCOPE OF SERVICES AND TERMINATION DATE

1.1 Project Description

A complete Project Description is described in SCOPE OF WORK, attached as Exhibit A.

1.2 Services

The services to be completed under this Agreement ("Services") are described in Exhibit A.

1.3 Schedule and Completion Date

The services to be provided by Consultant under this Agreement shall commence on July 1, 2017 and terminate on June 30, 2018.

FOR CITY USE ONLY			
Contract No.		CIP No.	
Resolution No.		EPW No.	

2. WORK CHANGES

2.1 City Rights to Change

The City reserves the right to order changes in the work to be performed under this Agreement by altering, adding to or deducting from the work. All such changes shall be incorporated in written change orders executed by the Consultant and the City. Such change orders shall specify the changes ordered and any necessary adjustment of compensation and completion time. If the parties cannot reach an agreement on the terms for performing the changed work within a reasonable time, to avoid delay or other unfavorable impacts as determined by the City in its sole discretion, the City shall have the right to determine reasonable terms and the Consultant shall proceed with the changed work.

2.2 Additional Work Changes

Any work added to the scope of this Agreement by a change order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a change order duly executed on behalf of the City and the Consultant.

2.3 City Manager Execution

The City Manager has authority to execute without further action of the Emeryville City Council, any number of change orders so long as their total effect does not materially alter the terms of this Agreement or increase the total amount to be paid under this Agreement, as set forth in Section 3.2 below. Any such change orders materially altering the terms of this Agreement or increasing the total amount to be paid under this Agreement in excess of \$45,000 must be approved by resolution of the Emeryville City Council.

3. COMPENSATION AND METHOD OF PAYMENT

3.1 Compensation for Services Performed

City agrees to pay the Consultant for the services performed and costs incurred by Consultant upon certification by the City that the services were actually performed and costs actually incurred in accordance with the Agreement. Compensation for Services performed and reimbursement for costs incurred shall be paid to the Consultant upon receipt and approval by the City of invoices setting forth in detail the services performed and costs incurred. The City shall pay the Consultant within forty-five (45) days after approval of the invoice by City staff.

3.2 Total Compensation Amount

The total amount paid under this Agreement as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **NINETY**

THOUSAND DOLLARS AND NO CENTS (\$90,000), except as outlined in Section 2.3 above. The compensation for Services performed shall be **as set forth in Exhibit A**. Reimbursement for costs incurred shall be limited as follows. Long distance telephone and telecommunications, facsimile transmission, normal postage and express mail charges, photocopying and microcomputer time shall be at cost. Supplies and outside services, transportation, lodging, meals and authorized subcontracts shall be at cost plus no more than a 10% administrative burden. Automobile mileage shall be no more than the current deductible rate set by the Internal Revenue Service.

4. COVENANTS OF CONSULTANT

4.1 Assignment of Agreement

The Consultant covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Agreement, without the prior express written consent of the City. As to any approved subcontractors, the Consultant shall be solely responsible for reimbursing them and the City shall have no obligation to them.

4.2 Responsibility of Consultant and Indemnification of City

It is the intent of the parties that the language of this Paragraph complies fully with the requirements of section 2782.8 of the California Civil Code as enacted by AB 573. To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless City and City's members, officers, agents, employees and volunteers, from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including without limitation injury to or death of an employee of Consultant or subconsultants as well as any claim by any employee, agent, Consultant or independent contractor hired or employed by Consultant that such persons or individuals are entitled to any benefit otherwise provided to employees of the City, including coverage under the California Public Employee Retirement System), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses, and fees of expert consultants or expert witnesses incurred in connection therewith and the costs of investigation, to the extent arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them or anyone that they control, whether or not there is alleged to be concurrent negligence on the part of the City, but, to the extent required by law, excluding liability caused by the conduct of the City. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant. This obligation to indemnify and defend the City, its members, officers, agents, employees and volunteers shall survive termination of this Agreement.

4.3 Independent Contractor

The Consultant hereby covenants and declares that it is engaged in an independent business and agrees to perform the services as an independent contractor and not as the

agent or employee of the City. The Consultant agrees to be solely responsible for its own matters relating to the time and place the services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the services; hiring of consultants, agents or employees to complete the services; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Consultant agrees to be solely responsible for its own acts and those of its subordinates and employees during the life of this Agreement.

4.4 Insurance

4.4.1 REQUIREMENTS

The Consultant shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, its agents, representatives, employees or subcontractors. If requested, Consultant shall provide the City with copies of all insurance policies. These requirements are subject to amendment or waiver if so approved in writing by the City Manager.

4.4.2 MINIMUM LIMITS OF INSURANCE

Consultant shall maintain limits no less than:

- A. Commercial General Liability providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than One Million Dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and, if required by City, products and completed operations coverage for the term of the policy.
- B. Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000).
- C. Professional Liability of One Million Dollars (\$1,000,000) providing coverage on a claims made basis for errors, omissions or malpractice. Professional liability insurance must be continued for at least 5 years after termination or final payment under the Agreement, whichever is later.

- D. Workers' Compensation limits as required by the laws of the State of California and Employers Liability limits of not less than \$1,000,000 per accident.

No Workers' Compensation insurance shall be required if Consultant completes the following certification:

I certify that my business has no employees and that I do not employ anyone. I am exempt from the legal requirement to provide Workers' Compensation Insurance.

_____ (Consultant's Initials)

4.4.3 DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and are subject to approval by the City.

4.4.4 OTHER INSURANCE PROVISIONS

The policy is to contain, or be endorsed to contain, the following provisions:

A. General Liability and Automobile Liability Coverage

1. Consultant shall name the City of Emeryville, its officials, employees, agents and volunteers as additional insureds in its Commercial General Liability and Automobile Liability policies. If Consultant submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG 20 10 11 85 form (or more recent) and/or CA 20 48 – Designated Insured Form (for business auto insurance); The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents or volunteers, except where limited by State laws.

When a certificate says, "certificate issued to" this does not mean the same as additional insured and is not acceptable.

2. Consultant's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the City, its officials, employees, agents or volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents or volunteers.

4. Coverage shall state that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.
6. The insurer agrees to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.
7. All endorsements to policies shall be executed by an authorized representative of the insurer.

B. Workers' Compensation Coverage

The insurer will agree to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.

C. All Coverages

Each insurance policy required by this clause shall be endorsed to state that City will be provided thirty (30) days written notice of cancellation or material change in the policy language or terms.

4.4.5 ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with an A.M. Best's rating of no less than A:VII.

4.4.6 VERIFICATION OF COVERAGE

Consultant shall furnish the City with certificates of insurance and endorsements to the policies evidencing coverage required by this Agreement prior to the start of work. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate of insurance and endorsements shall be on a form utilized by Consultant's insurer in its normal course of business and shall be received and approved by the City prior to execution of this Agreement by the City. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The Consultant shall provide proof that any expiring coverage has been renewed or replaced at least two (2) weeks prior to the expiration of the coverage.

4.4.7 SUBCONTRACTORS

Consultant shall either include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor demonstrating that subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage required by this Agreement, including but not limited to naming the City, its officials, employees, agents and volunteers as additional insureds.

4.4.8 CLAIMS-MADE POLICIES

Consultant shall extend any claims-made insurance policy for at least 5 years after termination or final payment under the Agreement, whichever is later.

4.5 Records, Reports and Audits

4.5.1 RECORDS

- A. Records shall be established and maintained by the Consultant in accordance with requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Agreement. Furthermore, records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.
- B. All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

4.5.2 REPORTS AND INFORMATION

Upon request, the Consultant shall furnish to the City any and all statements, records, reports, data and information related to matters covered by this Agreement in the form requested by the City.

4.5.3 AUDITS AND INSPECTIONS

At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Agreement. The Consultant will permit the City to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Agreement.

4.6 Conflicts of Interest

The Consultant covenants and declares that, other than this Agreement, it has no holdings or interests within the City of Emeryville, nor business holdings or agreements with any official, employee or other representative of the City. For the duration of this Agreement, in the event the Consultant or its principals, agents or employees acquire such a holding, interest or agreement within the City of Emeryville or with any official, employee or representative of the City in the future, the Consultant will immediately notify the City of such holding, interest or agreement in writing.

4.7 Confidentiality

The Consultant agrees that such reports, information, opinions or conclusions shall not be made available to or discussed with any individual or organization, including the news media, without prior written approval of the City. The Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether deemed confidential or not.

4.8 Discrimination Prohibited

The Consultant covenants and agrees that in performing the services required under this Agreement, the Consultant shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin or ancestry, age or disability.

4.9 Licenses, Certifications and Permits

The Consultant covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Consultant by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the services contracted for under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

4.10 Key Personnel

Niccolo De Luca ("Project Manager") is necessary for the successful prosecution of the work due to his unique expertise and depth and breadth of experience. There shall be no change in Consultant's Project Manager or members of the project team. Consultant recognizes that the composition of this team was instrumental in the City's decision to award the work to Consultant and that compelling reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Consultant's obligations under this Agreement and shall be grounds for termination.

4.11 Authority to Contract

The Consultant covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Consultant to the terms of this Agreement, if applicable.

4.12 Ownership of Work

All reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the services to be performed by the Consultant ("Materials") shall be and are the property of the City and the City shall be entitled to full access and copies of all such Materials. Any such Materials remaining in the hands of the Consultant or subcontractor upon completion or termination of the work shall be delivered immediately to the City. The Consultant assumes all risk of loss, damage or destruction of or to such Materials. If any Materials are lost, damaged or destroyed before final delivery to the City, the Consultant shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment.

4.13 Living Wage

If this Agreement provides for compensation to Consultant of \$25,000 or more within a single fiscal year for providing services to the City, then Consultant shall comply with the requirements of the City's Living Wage Ordinance set forth in Chapter 31 of Title 5 of the Emeryville Municipal Code, unless (i) Consultant is a governmental entity, (ii) this Agreement is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Agreement is subject to federal or state laws or regulations that would preclude the application of the City's laws.

Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Agreement for all employees of Consultant who perform at least twenty-five percent (25%) of the work arising from this Agreement, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to Section 5-31.08. Consultant shall promptly provide to the City documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the City.

Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Consultant for back pay, reinstatement and compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Agreement and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.

Consultant shall notify each of its affected employees regarding wages that are required to be paid pursuant to this Agreement. "Living Wage" means no less than \$14.83 per hour (as of July 1, 2016, subject to increase annually on July 1st to reflect the twelve-month average increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.

4.14 Prevailing Wages

To the extent the services to be provided by Consultant pursuant to this Agreement constitutes "public work" as defined in Labor Code Section 1720, Consultant shall pay and shall ensure that all subconsultants or subcontractors pay all persons providing labor to perform the work under this Agreement applicable prevailing wage rates for the work to be performed as determined in the General Prevailing Wage Determination ("Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code sections 1770, 1773, et. seq., and otherwise comply with all provisions of this Section IV.N. A copy of the applicable Wage Determination is on file in the offices of the City.

Consultant is required to comply with the following provisions and to ensure that all subcontracts include the following provisions. If, for some reason, these provisions are not included in subcontracts, they shall nevertheless apply:

4.14.1 HOURS OF LABOR

Eight hours' labor constitutes a legal day's work. Consultant shall forfeit, as penalty, Twenty-Five Dollars (\$25) for each worker employed in the performance of the Agreement by Consultant or by any subconsultant under him for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any one (1) day and forty (40) hours in any one (1) calendar week in violation of the provisions of the California Labor Code and in particular sections 1810 to 1815 thereof, inclusive, except that work performed by employees of Consultant in excess of eight (8) hours per day and forty (40) hours during any one (1) week shall be permitted under compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay, as provided in said section 1815.

4.14.2 LABOR NON-DISCRIMINATION

Consultant shall not discriminate against any employee who is employed on the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, gender identity, or age of such persons, except as provided in section 12940 of the Government Code.

4.14.3 PREVAILING WAGES

Consultant shall comply with California Labor Code sections 1770 to 1780, inclusive. In accordance with section 1775, Consultant shall forfeit as a penalty an amount determined by the Labor Commissioner, not to exceed Fifty Dollars (\$50), for each calendar day or portion thereof for each worker paid less than stipulated prevailing wage rates for such work or craft in which such worker is employed for any work done under the Agreement by him or by any subconsultant under him in violation of the provisions of the Labor Code, and in particular, Labor Code sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Consultant.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county in which the work is to be done have been determined by the Director of the California Department of Industrial Relations and can be obtained online at www.dir.ca.gov. It is mandatory for Consultant and any subcontractor to pay not less than the specified rates to laborers and workers employed by them in the execution of this Agreement.

Consultant shall comply with the provisions enacted by AB 854 that require Consultant and any subcontractor be registered with the State Department of Industrial Relations (DIR) pursuant to Labor Code section 1725.5. This Agreement is subject to monitoring and enforcement by the DIR pursuant to Labor Code Section 1771.4. Consultant shall post job site notices, pursuant to Title 8 California Code of Regulations Section 16451.

Consultant shall make travel and subsistence payments to each worker needed to execute the work in accordance with the requirements of section 1773.8.

4.14.4 PAYROLL RECORDS

Consultant shall be responsible for the compliance with Labor Code section 1776 by his subconsultants.

- A. Each Consultant and subconsultant shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.

- B. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of Consultant on the following basis:
 - 1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - 2. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to the City, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - 3. A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the City, the Division of Apprenticeship Standards, or the division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (b), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Consultant, subconsultant and the entity through which the request was made. The public shall not be given access to such records at the principal office of Consultant.
- C. The certified payroll records shall be on forms provided by the division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.
- D. Each Consultant shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of a written request.
- E. Any copy of records made available for inspection as copies and furnished upon request to the public or City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Consultant shall not be marked or obliterated.

- F. In the event of noncompliance with the requirement of this section, Consultant shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with this section. Should noncompliance still be evident after such ten (10) day period, Consultant shall, as a penalty to the State or City, forfeit Twenty-Five Dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.

The penalties specified in subdivision (g) of Labor Code section 1776 for noncompliance with the provisions of said section 1776 may be deducted from any monies due or which may become due to Consultant.

Consultant and each subconsultant shall preserve their payroll records for a period of three (3) years from the date of completion of the Agreement.

4.14.5 APPRENTICES

Consultant shall fully comply with the requirements of sections 1777.5 and 1777.6 of the California Labor Code and the regulations of the California Apprenticeship Council. In accordance with section 1777.5, Consultant shall secure the necessary certificates and shall contribute to the apprenticeship fund or funds, as provided for therein. Consultant shall require each subconsultant who will perform work or labor or render service to Consultant in or about the construction of the work to comply fully with sections 1777.5 and 1777.6 of the Labor Code. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the State Division of Apprenticeship Standards and its branch offices.

4.14.6 WORKERS' COMPENSATION

Pursuant to the requirements of section 1860 of the California Labor Code, Consultant will be required to secure the payment of workers' compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. By signing this Agreement, Consultant certifies the following:

"I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

4.14.7 EVENT OF DEFAULT

Failure by Consultant to comply with any provision of this Section shall constitute a default of this Agreement and shall be grounds for termination as provided in this Agreement.

5. TERMINATION

- A. The City shall have the right to terminate this Agreement for any reason whatsoever by providing written notice thereof at least five (5) calendar days in advance of the termination date.
- B. All termination notice periods triggered pursuant to written notice shall begin to run from the date of the United States Postal Service postmark.
- C. Upon termination, City shall provide for payment to the Consultant for services rendered and expenses incurred prior to the termination date.
- D. Upon receipt of a termination notice the Consultant shall: (1) promptly discontinue all services affected, unless the notice directs otherwise; and (2) promptly deliver to the City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Consultant in performing this Agreement, whether completed or in process, in the form specified by the City.
- E. The rights and remedies of the City and the Consultant provided in this Section are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

6. NO PERSONAL LIABILITY

No member, official or employee of the City shall be personally liable to the Consultant or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Consultant or successor or on any obligation under the terms of this Agreement.

7. ENTIRE AGREEMENT

This Agreement constitutes the complete agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of both parties with appropriate authorization.

8. SUCCESSORS AND ASSIGNS

Subject to the provision of this Agreement regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective parties.

9. APPLICABLE LAW AND ATTORNEY'S FEES; VENUE

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of California will control. The prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which said party may be entitled. The exclusive venue for any legal action taken pursuant to this Agreement shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

10. SEVERABILITY

The caption or headnote on articles or sections of this Agreement are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement nor in any way affect this Agreement. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect to the extent possible.

11. BUSINESS LICENSE

Prior to commencement of the services to be provided hereunder, Consultant shall apply to the City of Emeryville Finance Department for a business license, pay the applicable business license tax and maintain said business license during the term of this Agreement, as provided in Article 1 of Chapter 1 of Title 3 of the Emeryville Municipal Code.

12. NOTICES

12.1 Communications Relating to Daily Activities

All communications relating to the day-to-day activities of the work shall be exchanged between **Chadrick Smalley** for the City and **Niccolo De Luca** for the Consultant.

12.2 Official Notices

All other notices, writings or correspondence as required by this Agreement shall be directed to the City and the Consultant, respectively, as follows:

CITY

Chadrick Smalley
1333 Park Avenue
Emeryville, California 94608
Phone No.: (510) 596-4355
Fax No.: (510) 596-4389
E-Mail: csmalley@emeryville.org

CONSULTANT

Christopher Townsend
Townsend Public Affairs
300 Frank Ogawa Plaza Ste. 204
Oakland, CA 94610
Phone No.: 510-835-9050
Fax No.: N/A
E-Mail: ndeluca@townsendpa.com

13. WAIVER OF AGREEMENT

The City's failure to enforce any provision of this Agreement or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

IN WITNESS WHEREOF the City and the Consultant have executed this Agreement, which shall become effective as of the date the City Manager executes this Agreement on behalf of the City.

Approved As To Form:



Michael A. Guina, City Attorney

CITY OF EMERYVILLE

Dated:

_____, 2017

Carolyn Lehr, City Manager

CONSULTANT

Dated:

_____, 2017

BY: 

ITS: CHRISTOPHER TOWNSEND, PRESIDENT

MEMORANDUM

To: Carolyn Lehr, City Manager

From: Christopher Townsend, President, Townsend Public Affairs, Inc.
Niccolo De Luca, Senior Director
Casey Elliott, State Director
James Peterson, Federal Director
Alex Gibbs, Associate

Date: May 15, 2017

Subject: Summary and Scope for 2017-2018 State and Federal Advocacy and Funding Services

Townsend Public Affairs, Inc. (TPA) has enjoyed a long, successful working relationship with the City of Emeryville and prides itself on providing the City with the experience, resources, and political network expected from a premiere advocacy firm while also providing the unique brand of customer service the City deserves. This includes personal attention, accessibility and passion for your mission.

Over the past several years, TPA's record of service for the City has generated significant project funding and legislative success. Our ability to directly secure over \$4.3 million for City priority projects is a direct result of our expertise in numerous policy areas, including, but not limited to: transportation; housing and economic development; public safety; job training; education; and community facilities.

Grant Program	Project	Year Awarded	Amount
California Transportation Commission: Active Transportation Program	Emeryville Bicycle and Pedestrian Greenway	2017	\$265,000
PetSafe Bark for Your Park Grant Program	Emeryville Community Dog Park	2016	\$25,000
Department of Housing & Community Development: Housing-Related Parks Program	City of Emeryville: Housing-Related Parks Program	2013	\$477,950
Department of Parks & Recreation: Proposition 84 Statewide Parks Grant	Peladeau Park and Greenway	2012	\$828,792

FEMA: Pre-Disaster Mitigation Grant Program	Seismic Retrofitting of Emeryville Secondary Gymnasium	2010	\$600,000
Natural Resources Agency & Strategic Growth Council: Proposition 84 Urban Greening Project	48 th Street Community Organic Garden	2010	\$49,569
Department of Housing & Community Development: Sustainable Strategies Pilot Program: Catalyst Projects	Emeryville Marketplace	2010	\$1,350,000
Department of Labor: Labor, Health and Human Services Program: East Bay Green Jobs Project	Emeryville: Labor, Health and Human Services Program: East Bay Green Jobs Project	2010	\$200,000
FEMA: Pre-Disaster Mitigation Grant Program	Disaster Mitigation for Emeryville Cultural Arts Center	2008	\$600,000

Total funding secured for the City of Emeryville \$4,396,311.

Below please find a summary of the state and federal projects TPA is working on and the proposed scope of services for the remainder of 2017 and first half of 2018. We are proud to represent the City in Sacramento and Washington, DC and we look forward to continuing this relationship and securing victories that will improve the lives of those that live, work and visit the City of Emeryville.

Summary of Legislative Advocacy

On behalf of the City of Emeryville TPA actively monitors, and directly advocates when appropriate, legislation to ensure the needs of the City are met. In addition, we are constantly on the lookout for any surprises that may negatively impact the City. In order to best advance the City's legislative agenda, TPA works closely with Congresswoman Lee, Senator Feinstein, Senator Harris, State Senator Skinner, Assembly Member Thurmond, leadership of both Houses of the Legislature, committee staff and others to convey the City's positions and stay on top of new proposals.

The City is becoming more active on state legislation and taking positions which is a great strategy to help push our legislative agenda. This process includes TPA drafting letters for signature once the City takes a position, then submit the legislative positions to the impacted author, our legislative delegation, committee staff, leadership and others. We also testify at committee hearings on behalf of the City when it's a high priority and draft amendments to legislation that will benefit the City.

In addition, we send comprehensive weekly legislative reports to the Mayor, City Manager, and staff to ensure the City has the most up to date legislative information. For the 2017 legislative session, which

is still in progress, TPA has directly advocated in support of the following legislative topics on the City's behalf;

- **Affordable Housing.** With the dissolution of redevelopment came the decrease in affordable housing funds. In addition, due to the high cost of housing in the Bay Area and state, legislative support for low income residents and working families is needed. The legislation includes:
 - Formally supporting and advocating for Senate Bill 2 (Atkins) Building Homes and Jobs Act. This is the legislation that seeks to create a new \$75-dollar fee for a new revenue source to support affordable housing.
 - Formally supporting and advocating for Assembly Bill 74 (Chiu) Housing. This bill requires HCD to establish the Housing for a Healthy California Program (Program) to fund competitive grants to pay for rental assistance for homeless recipients.
 - Formally supported Assembly Bill 1506 (Bloom) Residential rent control: Costa-Hawkins Rental Housing Act. The original intent of this bill is to make changes to the Costa Hawkins Act, but the legislation will not move forward this year.
 - Our efforts have included: Presenting the City's official letter, in person, and speaking with policy staff from the authors office; asking what we can do to help; informing our legislative delegation on the City's position; briefing committee staff of our position; speaking with leadership staff; and testifying in support when the bill is up in committee.
- **Homelessness.** Cities and counties have the direct, daily perspective and responses to conditions that contribute to homelessness in their areas, however state or federal funding is needed to provide additional tools and support to maintain access to support services, treatment, housing, and jobs. The legislation includes:
 - Formally supporting and advocating for Assembly Bill 932 (Ting) Shelter crisis: homeless shelters and permanent supportive housing. This bill as currently written seeks to create a pilot program in San Francisco to suspend certain legal rules and standards during a declared shelter crisis, in order to expedite the design and construction of more shelters and long-term housing for the homeless. We have requested the bill be amended to include Emeryville.
 - Our efforts have included: Presenting the City's official letter in person and speaking with the policy staff from the authors office and requesting an amendment to include the City. We have had discussions with the Assembly Member and his staff and will be checking in soon on amendments.
- **Transportation funding for existing infrastructure.** With an aging infrastructure and an increase in commuters and residents in the Bay Area, an ongoing source of funds is greatly needed to help enhance road repair. In a city, such as Emeryville that has a disproportionate number of commuters compared to households, new revenue is needed to address much needed road repair. This has been included in the Governor's recent budget proposal and will be a major theme throughout the budget session. The legislation includes:
 - Formally supported and advocated for SB 1 (Beall) Transportation funding. This legislation increases several taxes and fees in new transportation revenues to be used towards local streets and roads, transit, and active transportation facilities.
 - Our efforts have included: Presenting the City's official letter in person and speaking with the policy staff from the authors office; helping build a coalition of cities who support the bill; and testifying in support in the various policy committees.
- **Transportation grants.** Emery Go-Round, a free shuttle service provided by Emeryville businesses, is a tremendous success. As time goes on, the fleet unfortunately wears down yet service requests increase, especially to the West Oakland BART station. Help is needed to

provide a regional service that supports employees, businesses and further encourages the use of public transportation. In addition to the expansion of the fleet, space is needed for a bus yard.

- In addition to the funding opportunities created by SB 1 (Beall), there is another major opportunity for transportation funding that TPA is actively working on. Its Regional Measure 3 also known as the Bay Area Toll increase.
 - The Bay Area Caucus has been focusing their attention on this major transportation proposal.
 - The specific RM3 bill will be a senate bill from Transportation Chair Senator Jim Beall and its SB 595. The Legislature is working with MTC since it impacts all 9 Bay Area counties but the funding break down isn't clear. MTC will start doing stake holder meetings soon.
 - Our efforts have included: We have been very active on this policy topic and constantly updating the City on its status, next steps, and suggesting strategies to move forward and place Emeryville in the best possible position. We have expressed our support to Senator Skinner and her office, Assembly Member Thurmond and his office, and all of the offices of the Bay Area Caucus.
- **Rail crossing traffic improvements.** With the redevelopment of the Oakland Army Base, additional rail traffic will be coming through the City. To adequately prepare for this increase and to ensure the health and safety of Emeryville residents, funding is needed to enhance the traffic mitigation at rail crossings within the City.
 - Our efforts have included: Proactive communication to staff at the California Transportation Commission to discuss this funding need, how SB1 funds for rail crossings will be disseminated and how we can secure these funds. This is a new and ongoing effort.
 - **Bike share programs.** Emeryville's small size and flat topography make it an ideal city for walking and cycling. With the addition of the award winning 2012 Bicycle and Pedestrian Plan for the City of Emeryville, funding is needed to support the efforts of bicyclists and pedestrians, create an environment that encourages active lifestyles and physical exercise, and connect schools, transit, businesses, and community and employment centers within the City of Emeryville and the region. The City is already a part of the East Bay program approved by MTC and new opportunities will greatly expand these efforts.
 - Our efforts have included: Similar to above, TPA has reached out to staff at the California Transportation Commission to discuss this funding need, how SB1 funds for bicycle and pedestrian programs will be disseminated and how we can secure these funds. This new and ongoing effort will also be supported by RM3 funding too.
 - **Autonomous Vehicles.** The City of Emeryville prides itself on supporting innovation and technology while partnering with the businesses in these fields. As technology grows and regulations for autonomous vehicles are drafted, the City is a perfect location for pilot programs.
 - Our efforts have included: Closely watching the various AV related legislation introduced this year. There have not yet been opportunities for the City of Emeryville however we are ready to strike when they appear.
 - **Medicinal Cannabis Statewide Regulations and Proposition 64 Implementation.** As the City moves forward on new, comprehensive, thorough medicinal cannabis regulations this is a new policy topic to closely work on. With the passage of Proposition 64 there will be a legislative effort to ensure the initiative and the already approved statewide framework reflect the needs of local government, law enforcement and the industry.
 - Our efforts have included: TPA has also been very active on this policy topic and constantly updating the City on its status and next steps to put Emeryville in the best possible position. We have had numerous meetings with the Governor's

Administration, Governor's Cabinet, the Bureau of Medicinal Cannabis Regulation, legislators and others. TPA drafted a position letter for the City once the Governor's proposal was put forward and continues to follow up on our suggested changes and amendments.

- **Immigration.** With the election of President Trump, there has been many aggressive, harmful actions regarding immigrants and their families. Any expansion of federal deportation efforts will have a significant effect on the Bay Area and California's economy and society. The City of Emeryville has maintained a focus to protect the safety and well-being of all Californians by ensuring that state and local resources are not used to fuel mass deportations, separate families, and ultimately hurt California's economy. The City seeks to support Federal and State actions that overturn or stop the President's current actions. The legislation includes:
 - Formally supporting and advocating for Senate Bill 54 (de Leon) Law enforcement: sharing data. This bill limits state and local law enforcement agencies involvement in immigration enforcement and ensures that eligible individuals are able to seek services from and engage with state agencies without regard to their immigration status.
 - Our efforts have included: Presenting the City's official letter in person and speaking with the policy staff from the authors office; helping build a coalition of cities who supported the bill; testifying in support in the various policy committees; and sending the City up to the minute updates on status.
 - In addition, our federal team has been very active on the City's behalf regarding the President's efforts on immigration and his attempted travel bans. TPA has sent the City ongoing, thorough, and timely updates explaining what is being proposed, its impact, the next steps, and likelihood.
- **Miscellaneous topics.** Throughout the course of the legislative year, the City may take positions on legislation outside of the adopted legislative agenda. Once the City does, TPA then moves forward to fulfill the City's position and objectives. The bills this year include:
 - Formally opposing and advocating against Senate Bill 649 (Hueso) Wireless telecommunications facilities which seeks to establish a nondiscretionary permitting process for small cell wireless facilities and limits the fees that local governments may charge;
 - Formally supporting and advocating for Senate Bill 562 (Lara) The Healthy California Act which seeks to provide comprehensive universal single-payer health care coverage system for all California residents; and
 - Formally supporting and advocating for Senate Bill 687 (Skinner) Health facilities: emergency centers: Attorney General which seeks to require any nonprofit public benefit corporation provide written notice to and obtain the written consent of the Attorney General prior to agreeing to sell, transfer, lease, exchange, option, convey, or otherwise dispose of the assets resulting from the reduction or elimination of emergency medical services provided at a licensed emergency center after the Attorney General gives a specified consent or conditional consent.

In addition, we have also kept the City up to date on federal topics such as:

- Fiscal Year 2017-2018 Budget proposals and Appropriations;
- Affordable Health Care Act / American Health Care updates;
- EPA Administrator Pruitt comments on city-related program funding;
- Sanctuary cities and travel ban updates;
- Presidential Executive Orders; and
- President Trump's address to Congress.

Monthly Grant meetings

City staff conducts monthly Interdepartmental Grant Collaboration meetings. An important service that TPA provides is monitoring and alerting the City of pending grant opportunities. TPA is committed to alerting the City of pending grant funding opportunities and is available to discuss the opportunity relevance and our suggestions on key traits or initiatives that would make the City's application competitive. TPA also works to ensure feedback and debriefings for applications that are not funded so that we can strengthen our application and apply again. TPA is an active participant as we assist with the review of upcoming funding opportunities, discuss which projects are the most applicable, assign responsibilities, and develop and execute application completion strategies

Propose Scope of Work for 2017-2018 Fiscal Year

For the remainder of 2017 and moving forward in 2018, we propose continuing our proactive advocacy efforts for the City of Emeryville on the multiple objectives discussed above. Our continued efforts include, but are not limited to:

Implement City's State and Federal Legislative Efforts

- TPA will continue our constant advocacy which includes arranging for the City to meet with selected Members of Congress and/or their staff, with selected Bay Area State legislators and/or their staff and accompany them to such appointments;
- Schedule the City to testify at selected legislative hearings, as desired, and oversee preparation of such testimony and coordinate and develop all advocacy activities related to the City's legislative needs and formal positions;
- Continue to monitor State and Federal legislation and provide updates to the City;
- Continue to monitor the State and Federal Budget proposals and alert the City to the impacts.

Track State and Federal Activities of Interest

- Regular contact with Bay Area federal and state legislators and staff on behalf of the City, ensuring you are aware of the latest initiatives;
- Monitor selected hearings and committees and to intercept legislative and/or policy opportunities in advance.

Develop Appropriate Materials for Meetings and Maintain Records

- Prepare agendas, memos, and talking points for calls, meetings and other advocacy efforts that support the City's priorities;
- Develop relevant materials to document and support the City's positions, including associated research.

Pursue State and Federal Funding

- Identify and pursue federal and state funding opportunities and grant programs for priority projects as identified by City leadership or departments;
- Identify sources of grant funding for Capital Improvement Projects including public and private foundation sources;
- Attend and provide staff access to, and information regarding, state and regional round tables and grant workshops;
- Data support research and cataloguing of core data, as requested by City staff, for the City of Emeryville's grant applications;
- Assist in the development and submittal of federal and state applications;
- Assist in reviewing grant applications and editing narratives as requested by staff;
- Secure letters of support for grant applications;
- Work with federal and state legislative members and staff to advocate for the applications.

Cost of Services

Description of Services	Standard Fees for Public Agencies	Discounted Fee for City of Emeryville
Federal Government Advocacy Services	\$10,000/mo	\$5,000/mo
State Government Advocacy Services	\$10,000/mo	\$5,000/mo
<u>Previous Bundled Discount</u> for Federal and State Advocacy Services	\$15,000/mo	\$10,000/mo
<u>CURRENT Bundled Discount</u> for Federal and State Advocacy Services		\$7,500/mo

TPA understands the City is currently facing fiscal pressures. Given the long-standing history between the City of Emeryville and TPA, TPA has agreed to a fee for State and Federal Advocacy Services of \$7,500 per month effective July 1, 2017 to June 30, 2018. This represents a 10% decrease over the prior year rate of \$8,333 per month.