

RESOLUTION NO. 6048

**RESOLUTION TO CONTRACT WITH THE WRITE COMPANY, INC. TO
PROVIDE SERVICES FOR THE PREPARATION OF ANNUAL REPORT FOR
THE TULSA DEVELOPMENT AUTHORITY**

WHEREAS, the Tulsa Development Authority (TDA) has issued a Request for Qualifications (RFQ) for the preparation of an Annual Report for The Tulsa Development Authority; and,

WHEREAS, the TDA has received responses to the RFQ from qualified firms to provide such services, has selected The Write Company, Inc. and has successfully negotiated a Professional Services Agreement to provide such services; and,

WHEREAS, it has been determined by the Board of Commissioners of TDA that it is in the best interest of the TDA, the City of Tulsa, and the citizens of the City that the Tulsa Development Authority (TDA) enter into a Professional Services Agreement with The Write Company, Inc., in the form attached hereto, for the preparation of a 2014 Annual Report for The Tulsa Development Authority.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TULSA DEVELOPMENT AUTHORITY, that:

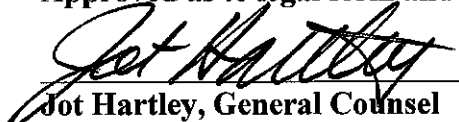
Section 1. The Board of Commissioners of the Tulsa Development Authority authorizes the Chairman of the Tulsa Development Authority (TDA) to execute a Professional Services Agreement with The Write Company, Inc., in the form attached hereto, for the preparation of a 2014 Annual Report for The Tulsa Development Authority.

Section 2. This Resolution shall take effect immediately.

PASSED and ADOPTED this 15th day of January, 2015.

By: 
Julius Pegues, Chairman

Approved as to legal form and adequacy


Jot Hartley, General Counsel
The Hartley Law Firm, PLLC

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“the “Agreement”) is entered into this 15th day of January, 2015, between TULSA DEVELOPMENT AUTHORITY (“Authority”) of 1216 N. Lansing Avenue, Suite A, Tulsa, Oklahoma 74106, and THE WRITE COMPANY, INC. (“TWC”) of _____, and OVERLEASE DESIGN, INC. (“ODI”) of 5910 Canyon Road, Tulsa, OK 74131 (individually and/or collectively hereafter: “Consultant” or “Consultants”).

1. SCOPE OF WORK.

Consultants’ principals, Missy Kruse (TWC) and Annette Overlease (ODI), will perform the services to be performed by Consultants under this Agreement unless otherwise agreed separately in writing by Authority’s Executive Director. Kruse is represented to have more than 40 years of experience and expertise in the communications business including work as a public relations consultant, magazine editor and writer, newspaper reporter, and grant writer. Kruse (TWC) will perform the writing, interviewing, editing, and proofing functions for preparation of a 2014 Annual Report for the Authority. Overlease (ODI) is represented to have experience as a graphic designer who plans, organizes, and strategizes with clients on their promotional needs. TWC and ODI represent that they have collaborated since 1990 on numerous in the preparation of printed public relations materials. TWC and ODI propose to collaborate in the creation, preparation, and publication of the Authority’s 2014 Annual Report and presentation of Report to the Executive Director and the Board of Commissioners of the Authority.

A. Scope of Work:

The Authority’s Annual Report should include the following:

- History of the Authority
- Past Projects
- Current Projects
- Review of Project History
- Board Members and Management
- Purpose Statement
- Mission Statement
- Stakeholders
- Job Creation
- Tax Revenue
- Significant Board Actions

The estimated size of the Annual Report is 32 pages with 15-20 images. The estimated timeline for completion of the Annual Report is four months.

1. Phase One – Interview, write and get approval of writing of above elements concurrent with creation and approval of preliminary design (two months).
2. Phase Two– Review and proofing of both written content and design. (one month)

3. Phase Three – Final design and copy approved by Authority Board of Commissioners (one month).
 - B. Anticipated Work Hours. Consultant will devote the required degree of time and effort as shall be reasonably required to perform the Services identified in this Agreement. Consultants estimate that the project will require 116 hours of services to properly complete.
2. FEES.
 - A. Payment for Services. Authority will pay Consultants (jointly unless otherwise directed by both TWC and ODI in writing) the sum of \$6,000.00 for the Writing, Interviewing, Editing and Proofing functions and shall pay Consultants (jointly unless otherwise directed by both TWC and ODI in writing) the sum of \$5,600.00 for the Design function, for a total payment of \$11,600.00.
 - B. Expenses. Except to the extent this Agreement provides otherwise, Consultants will **not** be reimbursed for reasonable and necessary expenses incurred by Consultants in providing services to Authority under this Agreement. Authority will pay the expenses of the publication of the final approved Annual Report.
 - C. Payment of Invoices. Upon acceptance and approval of the Annual Report, Consultants will submit to Authority an original invoice for fees specified in Section 2.A above. Authority will pay all undisputed invoiced amounts within fifty (50) days of receipt of the invoice. All invoices made pursuant to this Agreement will be made in writing and delivered by personal delivery, U.S. mail, courier, express delivery services or electronic mail and will be addressed to:

Tulsa Development Authority
1216 N. Lansing Avenue, Ste A
Tulsa, OK 74106
Attn: Mr. O. C. Walker, Executive Director

3. TERM AND TERMINATION.
 - A. Term. The term of this Agreement will become effective as of the date first written above and, unless earlier terminated pursuant to this Section 3, will expire on June 30, 2015. Upon completion and approval of the Annual Report by the Authority's Board of Commissioners, this Agreement shall terminate.
 - B. Events of Default. In the event that either party commits any breach of or default in any of the terms or conditions of this Agreement, and also fails to remedy the default or breach within ten (10) days after receipt of written notice thereof from the other party, the party giving notice may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending written notice of

termination to the defaulting party in accordance with the notice provisions of this Agreement, and the termination will be effective as set out in such notice provisions.

C. Continuing Obligations. Termination of this Agreement will not terminate (i) Authority's obligations under Section 2 accruing prior to such termination, (ii) each party's obligations under Sections 5, 7.B, 7.C, 8,10, 11 and 12, or (iii) other provisions, that by their sense and context, are intended to survive such termination.

D. Effect of Consultant Breach. In the event Consultant breaches any material obligations under this Agreement, Authority shall have the right to withhold payment of any pending invoices as well as any rights or remedies available under the law.

4. OFFICE SERVICES.

A. During the term of this Agreement for purposes of facilitating provision of the Services in a cost-effective manner and at no cost to Consultant, Authority will provide Consultant with reasonable access to Authority's relevant files, information, personnel, and resources to complete the scope of work defined in Section 1.A.

5. PROPERTY RIGHTS.

A. Title to Certain Tangible Property. All tangible or written materials (whether original or duplicates) including, without limitation, file or data base materials in whatever form, files, documents, photographs, designs, logos, notes, agreements, books, manuals, client record cards, client files, correspondence, contracts, orders, messages, memoranda, invoices, receipts, and all other records of any kind in the possession or control of Consultant that in any way relate or pertain to Authority's business, whether furnished to Consultant by Authority or Authority's attorneys or other outside resources, or prepared, compiled, or acquired by Consultant in performing the Services, will be the sole property of Authority. At any time upon request of Authority, and in any event promptly upon termination of this Agreement, Consultant will deliver all such materials to Authority.

B. Consultant's Intellectual Property. The deliverables under the Services specified in this Agreement may include data, modules, components, designs, utilities, subsets, objects, program listings, tools, models, methodologies, programs, systems, analysis, frameworks, leading or best practices, and specifications ("Technical Elements") owned or developed by Consultant prior to or independently from, this Agreement, and Consultant retains all rights thereto. To the extent that any Technical Elements are integrated into any deliverables, Consultant grants to Authority a perpetual, worldwide, fully paid-up license to use and modify such Technical Elements as integrated into such deliverables.

6. CONSULTANT STATUS.

- A. Independent Contractor. Consultant agrees to perform the Services as an Independent Contractor under the direction of Authority's Executive Director. Consultant, in its performance of this Agreement, has and hereby retains the right to exercise full control and supervision over the accomplishment of the objectives set forth in Section 1, subject to the provisions of Section 22.A. This agreement does not create a partnership, agency, joint venture, employment or third party beneficiary contract. Consultant is not a principal, partner, co-venturer, franchisee, or employee of Authority and Consultant will not make any representation to the contrary to any person or take any action which would imply otherwise. Consultant will not bind, nor attempt to bind, Authority to any obligation with any third party unless expressly authorized by Authority in writing to do so for that particular limited purpose. Authority does not and will not have actual, potential or any other control over Consultant, except as otherwise expressly set forth in this Agreement.
- B. Taxes on Compensation. Consultant is solely responsible to pay any federal, state, or local taxes or assessments applicable to the compensation paid under this Agreement.
- C. Reporting of Compensation. Authority will report to the IRS all amounts paid to consultant pursuant to this Agreement as non-employee compensation, and provide Consultant annually an IRS Form 1099 outlining annual non-employee compensation paid to Consultant. Consultant will complete, execute, and deliver to Authority a Form W-9, "Request for Taxpayer Identification Number and Certification," upon the execution of this Agreement.
- D. No Entitlement to Benefits. Consultant and its employees, if any, will not be entitled to (i) participate in or receive benefits under any of Authority's programs maintained for its employees, including, without limitation, life, medical and disability benefits, pension, profit sharing or other retirement plans or other fringe benefits or (ii) any direct or indirect compensation of any kind as a result of the performance of this Agreement, except for the fees provided for herein.

7. CONFIDENTIALITY.

- A. Definition. As used herein, the term "Confidential Information" refers to any and all confidential information relating to Authority's business activities and includes, without limitation, the terms and conditions of this Agreement, as well as information relating to Authority's business processes, products, services, strategies, objectives, financial information, technical information, data, marketing materials, business plans, and employees. Confidential Information will include, but not be limited to, any information or communications of Authority that (i) is a trade secret or (ii) is subject to a privilege against disclosure or use in litigation, including, without limitation, information or communications subject to the attorney-client, attorney work product, or settlement negotiation privileges. For purposes of this Agreement, communications from or to Authority and its attorneys (including attorneys serving as employees of Authority) will

be presumed subject to the attorney-client privilege unless and until Authority determines otherwise. Such Confidential information is the exclusive property of Authority and may be used by Consultant solely in the performance of its obligations under this Agreement. Notwithstanding anything to the contrary above, Confidential Information does not include information that (a) is now, or hereafter becomes, publicly known or available through lawful means; (b) is disclosed to the receiving party without confidential or proprietary restriction by a third party who rightfully possesses and rightfully discloses the information; (c) is independently developed by the receiving party without any breach of this Agreement; or (d) is the subject of a written permission to disclose provided by the disclosing party.

- B. **Obligations upon Termination.** Upon termination of this Agreement or upon notice from Authority, Consultant will either return all Confidential Information, as defined in Section 7.A above, together with any copies thereof, to Authority or certify Consultant has destroyed any Confidential Information in its possession. Consultant will also upon termination maintain the confidentiality of any and all Confidential Information in accordance with Section 7.C below.
 - C. **Maintaining Confidentiality.** As long as such Confidential Information, as defined in Section 7.A above, remains confidential, Consultant will not, without the express written consent of Authority, directly or indirectly communicate or divulge to, or use for its own benefit or for the benefit of any other person or entity, any Confidential Information, except that Consultant may disclose such matters to the extent that disclosure is (i) required in the course of performing the Services or (ii) made pursuant to the requirement or request of a governmental agent or court of competent jurisdiction to the extent such disclosure is required by a valid law, regulation, subpoena or court order, and provided further, that, prompt notice thereof is given (unless such notice is prohibited by law) to the disclosing party of any such requirement or request.
- 8. **RESTRICTIONS ON PERFORMING SOLICITATIONS FOR OTHERS.** This Agreement is not exclusive in that Consultant will remain free under this Agreement to perform work for and otherwise become engaged in the business activities of entities other than project and construction management on behalf of Authority during the term of this Agreement, so long as such solicitation is not a conflict of interest for either party.
 - 9. **IMPROPER PAYMENTS.** Consultant will not use any funds received under this Agreement for illegal or otherwise improper purposes related to the Agreement. Consultant will not pay any commissions, fees or rebates to any employee of Authority nor favor any employee of Authority with gifts or entertainment of significant cost or value.
 - 10. **PROFESSIONAL RESPONSIBILITY AND COMPLIANCE WITH APPLICABLE LAWS.** Consultant represents that its principals, Missy Kruse (TWC) and Annette Overlease (ODI), possess certain experience and expertise concerning the Services and covenants that the Services to be performed for Authority under this Agreement will be completed in a manner consistent with the highest level of care and skill exercised by

other professional Consultants engaged in the same profession and working under similar circumstances. Consultant represents and warrants that it possesses all necessary licenses, approvals, qualifications and/or certifications required to perform the Services, that all such licenses, approvals, qualifications and /or certifications are valid, and that there are no claims, complaints or investigations against Consultant and further agrees to comply with all applicable laws of the jurisdictions in which Consultant's Services are to be performed under this Agreement.

11. **INDEMNIFICATION.** Contractor will be liable for and will indemnify Authority against all claims, demands, damages, costs, liabilities and expenses whatsoever (including court costs and actual attorney's fees) incurred by reason of any claim brought by any person as a result of or in connection with the performance of the Services provided under this Agreement, except where such claim arises solely due to gross negligence or willful misconduct by officers, employees or agents of Authority. Likewise, Authority will be liable for and will indemnify Contractor against all claims, demands, damages, costs, liabilities, and expenses whatsoever (including court costs and actual attorney's fees) incurred by reason of any claim brought by any person as a result of or in connection with the performance of the Services provided under this Agreement, except where such claim arises solely due to gross negligence or willful misconduct by Contractor, its officers, employees, agents or anyone acting for or on behalf of Contractor in the performance of the Services.
12. **EXCLUDED PARTIES.** Consultant will, upon request from Authority, provide written documentation that the company and/or any principals of the company and/or an individual directly involved with the delivery of goods or services contracted in this Agreement has not been suspended or disbarred from doing business with any federal agency.
13. **EQUAL EMPLOYMENT OPPORTUNITY.** Consultant for itself and its successors and assigns, agrees that in the performance of Services hereunder Consultant shall adhere to the following:
 - A. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, age, national origin or handicapped status. The Consultant will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, age, national origin or handicapped status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Seller setting forth the provisions of this nondiscrimination clause.
 - B. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applications will receive consideration for

employment without regard to race, color, religion, sex, sexual orientation, age, national origin or handicapped status.

14. COPELAND "ANTI-KICKBACK" ACT. Consultant will comply with the Copeland "Anti-kickback" Act, 18 U.S.C. 874, as supplemented by Department of Labor regulations, 29 CFR part3, "Contractor and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States." The Act provides that each Contractor will be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled, CAP will report all suspected or reported violations to the Federal awarding agency.
15. CONTRACT WORK HOURS AND SAFETY STADARDS. Where applicable, Consultant will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act as supplemented by the Department of Labor Regulations. Under Section 103 of the Act, each Consultant will be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8-hours and a standard work week of 40-hours. Work in excess of the standard work day or work week is permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 40-hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic will be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety, These requirements do not apply to purchases of materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
16. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT. For all contracts in excess of \$1000,000, Consultant will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.). When a violation is identified it will be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
17. BYRD ANTI-LOBBYING AMENDMENT. For all contracts of \$100,000 or more, Consultant will certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of a member of Congress in connections with obtaining any Federal contract, grant or other award covered by 31 U.S.C. 1352.
18. COMPANY POLICIES. Consultant will comply with Authority's generally applicable policies, when on Authority's properties or properties which are included within the boundaries of any TIF district managed by Authority.
19. RIGHT TO AUDIT. Consultant will keep sufficient records to readily disclose the basis for any charges, expenses or credits, ordinary or extraordinary, billed due to Authority under this Agreement. Consultant will permit access to and review all documentation and

processes relating to the Consultant's operations that apply to Authority, as well as all documents maintained or processed on behalf of Authority, for a period of three years. Audit procedures may be performed by Authority employees or any outside auditor or contractor designated by Authority.

20. ASSIGNABILITY. This Agreement may not be assigned by either party without the prior written consent of the other party.
21. NOTICES. All notices made pursuant to this Agreement will be made in writing and delivered (i) personally, (ii) by facsimile, (iii) by U.S. Registered or Certified Mail, Return Receipt Requested mail, (iv) by overnight delivery at a nationally recognized overnight courier service, or (v) by electronic mail. Such notices and advices shall be deemed to have been given (i) the first business day following the date of delivery if delivered personally, by facsimile, or by electronic mail, (ii) on the third business day following the date of mailing if mailed by U.S. Registered or Certified Mail, Return Receipt Requested, or (iii) on the date of receipt if delivered for overnight delivery by a nationally recognized overnight courier service. All such notices and advices and all other communications related to this Agreement shall be given as follows:

If to Authority from Consultant:

Mr. O. C. Walker, Executive Director
Tulsa Development Authority
1216 N. Lansing Avenue, Ste A
Tulsa, OK 74106
(918) 592-4944
ocwalker@tulsadevelopmentauthority.org

With a copy to:

Jot Hartley, General Counsel
The Hartley Law Firm, PLLC
201 W. 5th Street, Ste 501
Tulsa, OK 74103
jot@hartleylawfirm.com

And if by Authority to Consultant TWC:

Missy Kruse, APR
The Write Company, Inc.
3228 S. Utica Ave.
Tulsa, OK 74105
(918) 688-4577
missy@write-co.com

And if by Authority to Consultant ODI:

Annette Overlease
Overlease Design, Inc.
5910 Canyon Road
Tulsa, OK 74131
(918) 224-8480
Annette@overleasedesign.com

22. SERVICE COORDINATION.

Authority's Coordinator. Consultants' Services will be performed under the direction of Mr. O. C. Walker (918-592-4944), who will be the individual responsible for coordinating with Consultant on performance of the Services and issues arising under this Agreement, until and unless Authority provides notice of replacement.

23. AMENDMENTS. This Agreement, may be altered, amended, modified, or superseded only in a writing executed jointly by Authority and Consultant.

24. COMPLETE AGREEMENT. Both parties acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms, and further agree that it is the complete and exclusive statement of the agreement between the parties, which supersedes all proposals oral or written and other communications between the parties relating to the Service.

25. GOVERNING LAW. The rights and obligations of the parties to this Agreement will be governed by and construed in accordance with, the laws of the State of Oklahoma without regard to the choice of law principles thereof. Consultant hereby consents to the jurisdiction of the federal and state courts located in Tulsa County, Oklahoma, over any proceeding initiated with respect to the enforcement or interpretation of this Agreement.

26. SEVERABILITY. If any term or provision of this Agreement will, to any extent, be determined to be invalid or unenforceable by a court or body of competent jurisdiction, then (a) both parties will be relieved of all obligations arising under such provision and this Agreement will be deemed amended by modifying such provision to the extent necessary to make it valid and enforceable while preserving its intent, and (b) the remainder of this Agreement will be valid and enforceable.

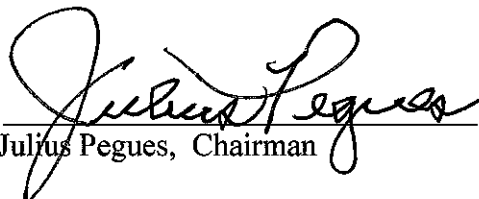
27. SURVIVAL OF PROVISIONS. The expiration or termination of this Agreement will not affect the rights or obligations of either Party with respect to confidentiality or indemnification.

28. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement. Facsimile or electronic mail signatures will be deemed original signatures.

29. NO WAIVER. A party to this Agreement may decide or fail to require full or timely performance of any obligation arising under this Agreement. The decision or failure of a party hereto to require full or timely performance of any obligation arising under this Agreement (whether on a single occasion or on multiple occasions) shall not be deemed a waiver of any such obligation. No such decisions or failures shall give rise to any claim of estoppel, laches, course or dealing, amendment of this Agreement by course of dealing, or other defense of any nature to any obligation arising hereunder.
30. PREVAILING PARTY. In any action brought by a party hereto to enforce the obligations of any other party hereto, the prevailing party shall be entitled to collect from the opposing party to such action such party's reasonable litigation costs and attorney's fees and expenses (including court costs, reasonable fees of accountants and experts, and other expenses incidental to the litigation).
31. REPUDIATION OF PERFORMANCE. The repudiation, breach, or failure to perform any obligation arising under this Agreement by a party after reasonable notice thereof shall be deemed a repudiation, breach, and failure to perform all of such party's obligations arising under this Agreement.
32. TIME IS OF THE ESSENCE. Time is of the essence with respect to each obligation arising under this Agreement. The failure to timely perform an obligation arising hereunder shall be deemed a failure to perform the obligation.
33. INTERPRETATION. This Agreement, and all the provisions of this Agreement, shall be deemed drafted by all of the parties hereto. This Agreement shall not be interpreted strictly for or against any party, but solely in accordance with the fair meaning of the provisions hereof to effectuate the purposes and intent of this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on this 15th day of January, 2015.

TULSA DEVELOPMENT AUTHORITY

By: 
Julius Pegues, Chairman

AUTHORITY

THE WRITE COMPANY, INC.

By: _____
Missy Kruse, President

Overlease Design, Inc.

By: _____
Annette Overlease, President

CONSULTANT(S)

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