



## Peralta Community College District

### REQUEST FOR PROPOSAL

**RFP No.: 14-15/09** Employee Benefits Insurance Broker and Consulting Services

The Board of Trustees of the Peralta Community College District (PCCD), Oakland, California, through the Office of Purchasing, is hereby requesting sealed proposals for the above mentioned project.

The successful vendor will be required to furnish all labor, material, equipment, supplies, applicable taxes, insurance, bonding, and licenses to complete this project.

#### Proposal Information

<b>Proposal Description</b>	<b>Broker and Consulting Services</b>
<b>Proposal Type</b>	<b>Service</b>
<b>Proposal Number</b>	<b>14-15/09</b>
<b>Proposal Issued</b>	<b>October 6, 2014</b>
<b>Department</b>	<b>Purchasing Department</b>
<b>Mandatory Pre-proposal Meeting</b>	<b>October 29, 2014 at 10:00 District Board Room 333 East 8<sup>th</sup> Street Oakland, CA 94606</b>
<b>Scheduled Publication Dates</b>	<b>October 16, 2014; October 22, 2014</b>
<b>Proposal Due Date</b>	<b>November 12, 2014 at 11:00 a.m.</b>

#### Instructions for Submitting Proposals

<b>Submittal Address</b>	Peralta Community College District Purchasing Department Attn: Marie Hampton 501 5 <sup>th</sup> Avenue Oakland, CA 94606
<b>Submittal Copies</b>	One (1) Original copy clearly marked "Original" and two (2) Copies marked "copy".
<b>Submittal Envelope Requirements</b>	Proposal must be <u>sealed</u> and have the following information <u>clearly marked</u> and visible on the outside of the envelope: <ul style="list-style-type: none"><li>• Proposal Number</li><li>• Name of Your Company</li><li>• Address</li><li>• Phone Number</li></ul>
<b>Late Submittals</b>	Proposals received after the time and date stated above shall be returned unopened to the vendor.

## How to Obtain Proposal Documents

Copies of the Proposal documents may be obtained at:

Available	Location
Yes	Peralta Community College District Purchasing Department 501 5 <sup>th</sup> Avenue Oakland, CA 94606 Monday through Friday 9:00 AM to 4:00 PM (510) 466-7225
Yes	Website: <a href="http://www.peralta.edu">www.peralta.edu</a> Click on “Business Opportunities” and then on “List of Current RFPs/Bids” to download the RFP packet.
N/A	Ford Graphics 2210 Magnolia Street Oakland, CA 94607 Tel. 510- 451-9060 Fax 510- 595-2383 <a href="http://www.fordgraphics.com">www.fordgraphics.com</a> Email: <a href="mailto:fgoakland@fordgraphics.com">fgoakland@fordgraphics.com</a> Attn: Christina

## Questions about the Proposal

Questions and or Requests for Information (RFI) must be submitted in writing and can be submitted by fax or email as follows:

<b>Primary Contact</b>	Marie Hampton, Director of Purchasing Services Fax: 510-587-7873 Email: <a href="mailto:mhampton@peralta.edu">mhampton@peralta.edu</a>
<b>Question/RFI Due Date</b>	<b>November 3, 2014 at 4:00 p.m.</b> Please submit questions as soon as possible. No questions regarding the specifications will be responded to after the above date. All pertinent questions will be responded to and answered in writing no later than the Response Date listed below.
<b>Response Date</b>	<b>November 6, 2014</b> All pertinent questions will be responded to <b>via addendum</b> faxed (or emailed) to all prospective bidders, and placed on the District’s website. Proposer who did not receive a copy of the addendum should download it from the District’s website. See “How to Obtain Proposal Documents” section for our web address. All addendums must be acknowledged on the RFP Acknowledgement and Signature form.

## **Full Opportunity**

The Peralta Community College District hereby affirmatively ensures that Disadvantaged Business Enterprises (DBE), Small Local Business Enterprise (SLBE) and Small Emerging Local Business Enterprise (SELBE) shall be afforded full opportunity to submit bids in response to this notice and will not be discriminated against on the basis of race, color, national origin, ancestry, disability, gender, transgender status, political affiliation or religion in any consideration leading to the award of contract.

No qualified disabled person shall, on the basis of disability, be excluded from participating in, be denied the benefits of, or otherwise be subjected to discrimination in any consideration leading to the award.

Peralta Community College District reserves the right to reject any or all proposals, to waive any irregularities or informalities not affected by law, to evaluate the proposals submitted and to award the contract according to the proposal which best serves the interests of Peralta Community College District.

Marie Hampton, Director of Purchasing Services

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**Attachments:**

Title		Must Be Returned with Proposal
1	Vendor Questionnaire and Certificate by Compliance	Yes
2	Environmentally Sustainable Procurement	Yes
3	Certificate Regarding Workers’ Compensation	Yes
4	Statement of Equal Employment Opportunity	Yes
5	Small Local Business Enterprise/Small Emerging Local Business Enterprise Program	
6	SLBE/SELBE Self Certification Affidavit	Yes, If applicable
7	Non-Collusion Affidavit	Yes
8	General Provisions	
9	RFP Acknowledgement and Signature Form	Yes
10	Fee Proposal	Yes
11	Contract for Services	Yes
12	Appendix	No

## **I. Project Overview**

Peralta Community College District (PCCD) is seeking a qualified brokerage/consulting firm to perform a full range of services related to the design, implementation, maintenance communication and improvement of the group insurance programs for active and retired employees of the Peralta Community College District.

## **II. District Background and Description**

The Peralta Community College District is a collaborative of community colleges. Together, we provide educational leadership for the East Bay, delivering programs and services that sustainably enhance the region's human, economic, environmental, and social development.

Founded in 1964, the District serves six cities in the East Bay Area, including Albany, Alameda, Berkeley, Emeryville, Oakland and Piedmont. The colleges are Berkeley City College, College of Alameda, Laney College, and Merritt College. The Peralta Colleges are located in the beautiful San Francisco/Oakland Bay Area, which, adjacent to the Silicon Valley, is known for its technology and innovation.

The District has a reputation for developing effective approaches to serving the varied interests and needs of its vibrant community. The District serves over 29,000 students, and is one of the top community college districts in California in transferring students into the UC system. Currently, the District has about 850 full-time employees and over 1,250 part-time faculty and part-time staff.

The District empowers its students to achieve their highest aspirations and develop leaders who create opportunities and transform lives. Together with our partners, we provide our diverse students and communities with equitable access to the educational resources, experiences, and life-long opportunities to meet and exceed their goals.

## **III. Scope of Services**

**A. The Peralta Community College District (PCCD) Benefits Office services over 2500 employees, retirees and their eligible dependents. The awarding vendor shall provide full range broker and consulting services in the following areas:**

1. Collaborate on the development of short and long term planning strategies to ensure long term fiscal stability in the acquisition and delivery of the following products for the population as noted in Appendix I, per the attached (See Appendix I).
2. Represent PCCD in negotiations with providers on all elements of group health and welfare benefit, administrative and compliance issues, including those related to premiums, benefit funding levels, plan design and special terms and conditions.
3. Negotiate renewal premium rates on behalf of PCCD and assess the reasonableness and appropriateness of any rate adjustment and or changes in contract or service provisions.
4. Maintain availability for consultation to address issues and concerns raised in joint labor-management Health Benefits Fringe Committee meetings. The committee is comprised of a cross-section of District constituent groups which includes:

Active and recognized unions

- Peralta Federation of Teachers
- Service Employees International Union Local 1021
- Teamsters Local 39

Non-represented constituent

- Confidential employees, as defined by the California Education Code
- Management employees, as defined by the California Education Code
- Board of Trustees
- Peralta Retirees Organization.

5. Serve as a resource to management in group insurance negotiations in order to reach mutually acceptable changes to the health and welfare programs.

6. Provide monthly comprehensive metrics and benefit expense reports for products brokered.

7. Participate in the long-term planning recommendations to reinforce competitive and balance benefit offerings.

**B. The awarding vendor shall provide services as it relates to the PCCD and its population, which includes:**

**General Services  
Financial Services  
Customer Service  
Legal/Compliance  
Administrative  
Service Fees and Commission Structure**

**1. GENERAL SERVICES**

a) Assist in development of long range and annual employee benefit goals and strategies for PCCD and participate in planning meetings with PCCD executive management, the Benefits Office and the Health Benefits Fringe Committee.

b) Negotiate with health and welfare providers on matters such as, but not limited to, premium rates, benefit levels, performance standards and guarantees, contractual terms and conditions, quality assurance standards.

c) Assist in developing and implementing contracts with selected health & welfare, providers in accordance with PCCD timelines and requirements. Recommend business partners who can effectively execute cost containment strategies.

d) Review and prepare an analysis of all reports submitted by plan providers. Make recommendations regarding the format and content of the reports. Recommend additional reports as needed.

e) Deliver monthly metrics, utilization and performance reports, statistical and/or financial reports, and plan specific data such as medical conditions, prescription drugs, high cost procedures and in-patient data to District Management.

- f) Provide day-to-day consultation on matters such as, but not limited to, plan interpretation and problem resolution, including attendance at periodic meetings to facilitate and assist in the management of PCCD's health and welfare plans and programs.
- g) Prepare bid specifications to obtain competitive proposals to reflect PCCD's benefit goals and assist with any vendor changes and with any specific takeover provisions.
- h) Prepare annual and special cost projections for existing and proposed plan designs; provide quarterly budget projections and analysis.
- i) Provide comparison of PCCD's benefit plan design and cost structure with other public entity programs of like plan design and audience.
- j) Research and advise PCCD of developments and trends in the employee benefits insurance market.
- k) Assist with overall plan administration and insurance carrier claims and administrative issues and facilitate compliance and/or customer service resolution.
- l) Provide assistance in the preparation and improvement of various employee and retiree communication materials.
- m) Provide research and responses to technical questions posed by PCCD Human Resources staff.
- n) Provide a quarterly statement to PCCD of services performed during the reporting period.
- o) Meet bi-monthly (or upon request) with PCCD executive management, Human Resources, and the Health and Welfare Committee to provide updates on all ongoing activities to review plan performance and to identify trends.
- p) Conduct surveys as deemed appropriate and upon request.
- q) Provide such other services as requested by PCCD Human Resources for which the consultant has the technical capability and capacity to render.
- r) Recommend contemporary products, goods and/or services to ensure a fiscally balanced and culturally fit comprehensive and complementary plan design.
- s) Engage various business partners to support efforts of the Peralta Foundation.
- t) Review policies and endorsements for accuracy and conformance with negotiated coverages. Insure the timely issuance of policies and endorsements to the District.

## **2. FINANCIAL SERVICES**

- a) Evaluate and negotiate annual renewals for insured benefit plans and communicate with vendors on all aspects of renewal, plan design changes or transition to new vendor.
- b) Assist with gathering census data for each vendor, analyze financial/plan performance for PCCD benefit plans.
- c) Analyze financial/plan performance against projections for all health and welfare plans.

- d) Establish benchmarking resources in order to determine and monitor trend deviations-deliver trending and forecasting reports and analysis.
- e) Assist with the development, negotiation and implementation of performance standards and guarantees with various employee benefits+ plan vendors.
- f) Review vendor compliance with performance standards and guarantees.
- g) Review and prepare analysis of plan utilization reports submitted by plan providers and third party administrators. Recommend additional reports a needed.
- h) Collaborate with Management to execute short, intermediate and long-range fiscally sustainable spending plan.
- i) Partner with supportive efforts and reporting needs for actuarial studies and external audits and analysis (such as GASB 45 and Medicare Drug Subsidy Program).
- j) Collaborate with District management on reserve modeling for self-funded medical and dental plans.
- k) Recommend cost containment strategies.

### **3. Legal Compliance**

- a) Provide PCCD executive management, Human Resources, and the Health and Welfare Committee with updates of adopted and proposed changes in employee benefit statues and regulations that may impact PCCD;s employee benefit plans.
- b) Respond to specific benefit compliance questions and provide leadership (e.g. Affordable Care Act, COBRA, FMLA, HIPAA, Internal Revenue Code and ancillary regulations).
- c) Recommend changes in policy and procedure to comply with legislative changes.
- d) Assist in the development, design and review of vendor contracts. Ensure compliance with current federal and state laws or regulations. Assist PCCD in the preparation and/or review and updating of benefit plan documents and assist in developing benefit summary plan descriptions for all plans, as requested.
- e) Recommend operational controls to support passing compliance audits.

### **4. Customer Service**

- a) Provide dedicated staff to provide quality and personal customer service directly to employees, retirees and dependents covered under the plan.
- b) The consultant shall monitor the claims status and assist the District in obtaining timely resolution of the submitted claims.
- c) Assist the District as a resource during employee education sessions.
- d) Recommend training opportunities to District staff.



## **5. Administrative Services**

a) Support Electronic Eligibility and Enrollment efforts to include:

- On-line or electronic enrollment
- Electronic feeds to each carrier
- Bill tracking and reconciliation
- Total Compensation Benefit Statement generation for employees and retirees
- Employer access to customized reports

b) Internet

- Make available and provide support for a consultant-sponsored website as well as provide support to the District's internet.

c) Audits-Recommend support and suggest compliance audits as appropriate in the areas of self-funded claims and payroll.

d) Wellness Program-Develop integrated wellness program which leverages existing relationships and community resources.

e) Ensure synchronization between collective bargaining agreement language and vendor contracts.

### 6. Service Fees & Commission Structure

a) The Vendor shall declare its preference for payment method and billing as follows:

- Submit attached fee proposal based on an annual service fee for each area of the District's population as outlined in the Scope of Services.
- Submit a detailed commission plan for completing all requirements as outlined in the Scope of Work.

**The Vendor understands the only source of income; revenue, or compensation in connection with PCCD account is the commission paid to the awarding VENDOR by PCCD. Any other source of income, revenue, consideration, including commissions and overrides received by VENDOR in connections with PCCD account must be disclosed.**

## **IV. Submission Requirements**

PCCD has scheduled a Mandatory Pre-proposal meeting on the date indicated in the cover page of this RFP, to review the submission requirements.

Please respond to the following 7 submission requirements in a straightforward, concise delineation of your capabilities proposed to satisfy the requirement of the RFP. PCCD will use your responses to objectively determine your capabilities and experience. Please label your responses 1 through 8, in the order presented below. Please limit your total response to 20 pages (excludes the required attachment forms provided with this RFP).

### **Submittal Format:**

Responses may not be longer than 20 pages (one sided or 10 pages double sided), printed on 8 ½" x 11" paper and formatted in no smaller than 11 point font. Each section shall be labeled according to the sections below. All submitted material must only be bound with only **one staple** in the upper left corner. Please no binders or any other type of spiral binding. Submittals must be able to fit into an 8 ½ x 11 inch folder.

**1. Company Information:** Provide the name of your company (including the name of any parent company), legal form, business address, email address, Federal Tax ID number, telephone and FAX numbers, number of employees and names, titles, qualifications, certifications and resumes of key personnel who will be assigned to the PCCD account, days/hours of operations and a brief history of your company. Please describe any litigation pending against your company (if any). Provide a brief statement of who is authorized to submit the proposal on the behalf of your firm. Please make sure that person signs and dates the statement.

**2. Knowledge and Experience:** Provide relevant information about your company's knowledge and experience (please include most noteworthy qualifications for providing the proposed services to be rendered and highlight those qualifications that provide a competitive advantage) including a list of three or more projects with brief descriptions that demonstrate your experience.

**3. Clients:** Provide names, addresses and contact information of three (3) current clients.

**4. Plans and Approach:** Provide an overview describing the approach, scope of services, and methodology of firm's ability to furnish the services required by the RFP. Please use this section to describe how you propose to provide the services subject to this RFP to the District. Your services can be above and beyond the requirements listed in the "Scope of Services" section. At a minimum please describe your approach to the following:

**a) Describe your firm's approach/methodology for providing the services required by this RFP.**

**b) Address the task as outline in the "Scope of Services" and your firm's proposed approach to completing these tasks.**

**c) Identify additional or different tasks you believe would be necessary or should be performed to complete the tasks in this RFP.**

**5. Proposed Costs and Commission Fees:** Provide your annual cost on the PCCD Fee Proposal Form and submit a commission plan for completing all requirements outlined in the Scope of Services. It is important that you provide your firm's fee proposal and commission plan so that PCCD can evaluate your bid. Proposals submitted without a fee proposal and commission plan will be considered non-responsive and will be rejected.

**6. Debarment:** Provide a statement that your company has not been debarred from providing services to any State or Federal Agency within the last five (5) years. Sign and Date your statement. If your firm has been debarred, you will need to provide background information and reason for the debarment. Provide the name and contact information for the Agency that debarred your firm. The District must review the reason and duration for the debarment before it can determine if your firm can be consider for this project.

**7. Environmentally Sustainable Procurement:** It is the policy of the Peralta Community College District (Board Policy 2.40, Environmental Sustainability), to purchase products or services that help to minimize the adverse effects on human health and the environment, when compared to other products and services that serve the same purpose with comparable efficacy. Does your product or service promote the District's Environmentally Sustainable Procurement goal? Please use the attached Environmentally Sustainable Procurement form to describe how your product or service directly meets the District's goal. If your product or service does not directly meet the District's goal, then describe what initiatives your firm has taken to become more environmentally sustainable. The District will evaluate each response, and more points will be awarded to firms who products and services directly meet the District's Environmentally Sustainable Procurement goal.

**8. Required Forms:**

The Vendor must fill out all forms included in the RFP (listed in the attachments section) and return them with your proposals. Failure of the vendor to provide any information requested in the RFP,

may result in rejection for non-responsiveness. (These required forms will not count against the 10 page maximum for your response.)

**V. Evaluation Criteria**

Prior to contract award, the Peralta Community College District must be assured that the responder (vendor) selected has all of the resources required to successfully perform under the contract. This includes, but is not limited to, personnel with skills required, equipment/materials and financial resources sufficient to provide services called for under this contract. If during the evaluation process, the Peralta Community College District is unable to assure itself of the responder’s ability to perform under the contract, if awarded, the Peralta Community College District has the option of requesting from the responder, any information that the Peralta Community College District deems necessary to determine the responder’s capabilities. If such information is required, the responder will be notified and will be permitted five (5) working days to submit the requested information.

In awarding the contract, the district will evaluate a number of factors in combination. Please make sure you have submitted responses to all items listed in the Submission Requirements section, as your responses will be evaluated based on the weights (Points) listed below.

**Evaluation Criteria**

<b>Item</b>	<b>Criteria</b>	<b>Points</b>
1	<u>References, Resources, and Key Personnel</u> Vendor’s capacity to provide professional service as evidenced by past performance, resources, and from list of key personnel. (Items 1, 3 and 7 of Submission Requirements section.)	20
2	<u>Knowledge and Experience</u> Vendor’s knowledge and experience in providing Broker and Consulting services as evidence from your response to item 2 of Submission Requirements section.	25
3	<u>Plans and Approach</u> As evidence from your response to item 4 of Submission Requirements section	25
4	<u>Proposed Costs and Commission Fees</u> As provided on the PCCD Fee Proposal and Vendor’s Commission Plan.	20
5	<u>Environmentally Sustainable Procurement</u> Does your product or service meet the District’s Environmentally Sustainability initiatives? (Item 6 of Submission Requirements section.)	5
6	<u>SLBE</u> Does your company meet the District’s definition of an SLBE or SELBE?	5
	Total	100

**VI. Additional Requirements:**

**A. Cost of Participation in Selection Process**

Costs for developing responses to this RFP are entirely the responsibility of the firm and shall not be chargeable to the District.

**B. District Rights:**

The District reserves the right to waive any irregularities or required formalities or to amend or cancel, in part or entirety, this request for information if it is in the best interest of the District.

**C. Law Compliance**

The Vendor must comply with all laws, ordinances, regulations and codes of the Federal, state, and local governments which may in any way affect the preparation of proposals or the performance of the contract.

**D. Public Records:**

Except for materials exempted from disclosure such as Trade Secrets (as defined in California Civil Code 3426.1) that are specifically marked "Confidential" or "Proprietary", all material submitted in response to this RFP are deemed property of the District and public records upon submission to the District. The District is not liable or responsible for the disclosure of RFP Responses, or portion thereof, deemed to be public records, including those exempt from disclosure if disclosure is by law, by an order Court, or which occurs through inadvertence, mistake or negligence on the part of the District or its agents or representatives. If the District is required to defend or otherwise respond to any action or proceeding wherein request is made for the disclosure of the contents of any portion of a RFP Response deemed exempt from disclosure hereunder, by submitting a response to the RFP, each Respondent agrees to defend, indemnify and hold harmless the District in any action or proceeding from and against any liability, including without limitation attorneys' fees arising there from. The party submitting materials sought by any other party shall be solely responsible for the cost and defense in any action or proceeding seeking to compel disclosure of such materials.

**E. Proposal Considerations**

PCCD has absolute discretion with regard to acceptance and rejection of proposals. In order to be considered the party submitting a proposal waives the right to bring legal proceedings challenging the Board's choice of the award.

**F. False Statements**

False statements in a proposal will disqualify the proposal.

**G. Legal Proceeding Waiver**

The Vendor relationship to PCCD shall be that of independent contractor and not deemed to be agent of PCCD.

**H. Taxes**

The Vendor will be responsible for all Federal, State and Local taxes.

**I. Grade of Service**

The Vendor must provide professional service and maintain appropriate personnel to provide expedient and courteous service.

**J. The Vendor's Liability**

The Contractor shall be responsible for any and all damages to the PCCD premises resulting from the negligent acts or willful misconduct of the Contractor agents or employees.

**K. Contract Termination**

PCCD may terminate the agreement with the Vendor on thirty days notice for the failure of the Vendor to comply with any term(s) of the agreement between PCCD and the Vendor.

**L. Award Consideration**

Award of contract will be based on the information submitted as a result of this RFP.

**M. Amendments**

The Peralta Community College District may, at its sole discretion, issue amendments to this RFP at any time before the time set for receipt of proposals. The vendor's are required to acknowledge receipt of any amendments (addenda) issued to this RFP by acknowledging the Addendum in the space provided on the RFP Acknowledgement and Signature Form. The Peralta Community College District shall not be bound by any representations, whether oral or written, made at a pre-proposal, pre-contract, or site meeting, unless such representations are incorporated in writing as an amendment to the RFP or as part of the final contract. All questions or request for clarification concerning material terms of the contract should be submitted in writing for consideration as an amendment.

**N. Withdrawal or Modification of Offers**

The Vendor may modify or withdraw an offer in writing at any time before the deadline for submission of an offer.

**O. Acceptance**

Any offer received shall be considered an offer which may be accepted or rejected, in whole or in part, by the District based on initial submission without discussions or negotiations.

The District reserves the right to reject any or all offers and to waive informalities, minor irregularities, or other requirements in offers received, and/or to accept any portion of the offer if deemed in the best interest of the District. Failure of the vendor to provide in its offer any information requested in the RFP, may result in rejection for non-responsiveness. Failure of the vendor to meet or exceed any stated minimums in the RFP may also result in rejection for reasons of non-responsiveness.

**P. Award and Length of Contract**

The Board of Trustees shall not be bound to accept the lowest-quote fee. The Board will award the contract the firm select through the competitive process outlined in this RFP and recommended by the Vice Chancellor of General Service.

**Q. Representations**

No representations or guarantees of any kind, either made orally, or expressed or implied, are made with regard to the matters contained in this document, including any attachments, letters of transmittal, or any other related documents. The Vendor's must rely solely on its own independent assessment as the basis for the submission of any offer made.



Explain whether current workforce is racially and ethnically proportionate to the area from which the workforce is drawn (national, state, or local). Use separate sheet if necessary.

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Detail steps taken by vendor since inception to assure non-discriminatory recruiting, hiring, and apprenticeship, placement, promotion, demotion, layoff and termination practices. Use separate sheet if necessary.

--

What are you interested in providing the District? (e.g., construction, consulting, goods or services).

--

<b>Main Headquarters Office(s) Address/Telephone</b>  (List all as applicable)	1.  2.  3.
--	------------------------

Total # of Employees \_\_\_\_\_

<b>Local Office(s) Address/Telephone</b>  (List all as applicable)	1.  2.  3.
--	------------------------

Total # of Employees \_\_\_\_\_

<b>Name and list residential zip code for each employee, subcontractor, or apprentice for awarded contract</b>  (Please use the Zip+4®) Use separate sheet as necessary	1. 2. 3. 4. 5. 6.
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## **Peralta Community College District**

### **CERTIFICATE REGARDING WORKERS' COMPENSATION**

Labor Code Section 3700 in relevant part provides:

"Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.
- (b) Be securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees."

I am aware of the provisions of Section 3700 of the 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 and will require all subcontractors to do the same.

\_\_\_\_\_  
Contractor

By: \_\_\_\_\_

(In accordance with Article 5 [commencing at Section 1860], Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this Contract.)



## Peralta Community College District

### Statement of Equal Employment Opportunity

I hereby certify that \_\_\_\_\_  
(Legal Name of Vendor/Consultant/Contractor)

Will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin and shall insure compliance with all provisions of Executive Order No. 11246 (as amended by Executive order No.11375).

The vendor's questionnaire requests information for record keeping purposes only. The information requested will not be used as a basis for contract award.

However, after a contract is awarded to your company, the District requires your company to report:

- a. Actual racial, gender and residential workforce composition of your company for the contract work.
- b. Actual racial, gender and residential workforce composition of subcontractors for the contract work.
- c. Number of apprenticeship workforce for the contract work.

This report must be submitted to the District Department of General Services on a quarterly basis.

I declare under penalty of perjury under the laws of the state of California that the information I have provided herein is true and correct and is of my own personal knowledge.

BY: \_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name



## Peralta Community College District

### **SMALL LOCAL BUSINESS ENTERPRISE and SMALL EMERGING LOCAL BUSINESS ENTERPRISE PROGRAM**

The District is committed to ensure equal opportunity and equitable treatment in awarding and managing its public contracts and has established an annual overall program goal of twenty-five percent participation for small local businesses. To facilitate opportunities for small local business, the District will use a maximum 5% bidding preference for SLBE and SELBE firms. The preference is only used for computation purposes to determine the winning bidder, the contract is awarded at the actual bid amount. Please review the following guidelines to see if your firm qualifies for the preference.

The 5% bidding preference for an SLBE and SELBE firms are for construction, personal and professional services, goods and services, maintenance, repairs, and operations where responsibility and quality are equal. The preference will be 5% of the bid amount of the lowest responsive responsible bidder, and may not exceed \$50,000.00 for any bid.

A Non-SLBE/SELBE Prime Contractor who utilizes 25% of total bid amount, with SLBE or SELBE subcontractors (who meet the District's Definition of an SLBE and SELBE), can also receive a maximum of 4% bidding preference, not to exceed \$50,000.00 for any bid. (See below Subcontractor section.)

#### **Definitions:**

**SLBE:** A Small Local Business Enterprise is a business that has not exceeded gross annual revenue of 8.5 million dollars for a construction firm, or 6 million dollars for goods and non-professional services firm, or 3 million dollars for architecture, engineering and professional services firm, for the past three consecutive years and meets the below geographic location requirements.

**SELBE:** A Small Local Emerging Business Enterprise is a business that has not exceeded gross annual revenue of 1.5 million dollars for the past three consecutive years and meets the below geographic location requirements.

**Commercially Useful Function:** Shall mean a business is directly responsible for providing the materials, equipment, supplies or services to the District as required by the contract solicitation. The business performs work that is normal for its business services and carries out its obligation by actually performing, managing, or supervising the work involved. The business is **not** Commercially Useful if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of SLBE or SELBE participation.

#### **Geographic Location Requirements:**

- The business must be located at a fixed, established commercial address located in the District's market area of Albany, Alameda, Berkeley, Emeryville, Oakland, or Piedmont, and not a temporary or movable office, a post office box, or a telephone answering service.
- If the business has an office outside of the District's market area as well as an office within the market area, the office within the District's market area must be staffed on a full time permanent basis with someone employed by the business.
- If requested, the business that has an office outside of the District's market area must provide proof of one or more past contracts citing the business address (such as contracts to perform work, to rent space or equipment, or for other business services) was within the District's market area at least one (1) year prior to the date of contract award. The one-year requirement does not apply to businesses whose sole establishment is located within the District's market area.

## **Subcontractors:**

Non-SLBE/SELBE Prime Contractors who use subcontractors, who meet the district definitions of SLBE and SELBE, may receive a maximum of 4% bidding preference if the following conditions are met:

1. 25% of total bid amount is with Subcontractors who meet the District's definition of an SLBE and SELBE. The Prime Contractor must list each Subcontractor on the Subcontractor List form, clearly identifying the SLBE and SELBE status and the Dollar Amount of work each subcontractor will perform.
2. The Subcontractors must provide a Commercially Useful Function.
3. The Prime Contractor must maintain the Subcontractor percentages (based on the quoted dollar amounts) indicated in the Subcontractor List form at the time the Contract is awarded and throughout the term of the Contract.
4. The Prime Contractor must fill out sign the SLBE/SELBE Self Certification Affidavit and return it with the bid documents, and 48 hours after the bid opening the Prime Contractor must submit signed SLBE/SELBE Self Certification Affidavit from each of the SLBE and SELBE subcontractors listed in the Subcontractor form. The Subcontractor must agree to provide the requested documentation to verify the SLBE/SEBLE status.
5. No Substitutions can be made to the SLBE and SELBE subcontractor without the prior written approval of the District. The District will approve a subcontractor substitution on the following conditions:
  - a. A written statement from the subcontractor agreeing to the substitution.
  - b. When the subcontractor has been given a reasonable opportunity to execute the subcontract, yet fails to, or refuses to execute the subcontract, or refuses to satisfy contractual obligations.
  - c. When the subcontractor becomes insolvent.
  - d. When the District determines the work performed by the subcontractor is not in accordance with the contact agreement, or the subcontractor is substantially and unduly delaying or disrupting the progress of work.

Firms that meet the District criteria for an SLBE and SELBE can complete the below self-certification affidavit signed under penalty of perjury. Firms claiming SLBE and SELBE status in the self-certification affidavit will be required to submit proof of residency and revenue 48 hours after bid opening. Such proof shall consist of a copy of a contract to perform work, to rent space or equipment, or for other business services, executed from their local address, and the firm's tax returns for the past three consecutive years.



# Peralta Community College District

## SLBE/SELBE SELF CERTIFICATION AFFIDAVIT

I certify under penalty of perjury that my firm meets the District’s definition of a Small Local Business Enterprise or a Small Emerging Local Business Enterprise and resides in the geographic location of the District’s market area and qualifies for the below preference. The maximum preference will be five percent of the bid amount of the lowest responsible bidder, and may not exceed \$50,000.00 for any bid. The preference is only used for computation purposes to determine the winning bidder; the contract is awarded at the actual bid amount. The District’s Contract Compliance Office will determine whether this requirement has been fulfilled. Bidders may only claim one of the below preferences.

Certification Status	Preference	Preference Claimed (check only one)
SLBE	5% of lowest bid	
SELBE	5% of lowest bid	
25% of Subcontractors are SLBE/SELBE	4% of lowest bid	
Not Applicable	None	

1. I acknowledge and am hereby advised that upon a finding of perjury with the claims made in this self certification affidavit the District is authorized to impose penalties which may include any of the following:
  - a) Refusal to certify the award of a contract
  - b) Suspension of a contract
  - c) Withholding of funds
  - d) Revision of a contract for material breach of contract
  - e) Disqualification of my firm from eligibility for providing goods and services to the Peralta Community College District for a period not to exceed five (5) years
  
2. I acknowledge and have been advised and hereby agree that my firm will be required to provide proof (and if applicable, my SLBE and SELBE Subcontractors will provide proof) of the status claimed on this self-certification affidavit 48 hours after bid opening. Proof of status claimed includes tax returns from the previous three years and past contracts to determine the size and geographical location of my firm.
  
3. I declare that the above provisions are attested to under penalty of perjury under the laws of the State of California.

Bid Number: \_\_\_\_\_ Bid Name: \_\_\_\_\_

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed or typed name

\_\_\_\_\_  
Title

\_\_\_\_\_



## Peralta Community College District

### NON-COLLUSION AFFIDAVIT

(To be executed by Vendor and submitted with RFP)

**14-15/09** Employee Benefits Insurance Broker and Consulting Services

State of California, County of \_\_\_\_\_

(Name) \_\_\_\_\_, being first duly sworn, deposes and says that he or she is (title) \_\_\_\_\_ of (company) \_\_\_\_\_ the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

## **GENERAL PROVISIONS**

Definition: The words **Contractor** means any Bidder, Vendor or Proposer who provides a good, service or construction to Peralta Community College District (PCCD).

1. **ASSIGNMENT/DELEGATION:** Neither party hereto shall assign, sublet or transfer any interest in this Agreement or any duty hereunder without written consent of the other, and no assignment shall be of any force or effect whatsoever unless and until the other party shall have so consented.

2. **STATUS OF CONTRACTOR:** The parties intend that CONTRACTOR, in performing the services herein specified, shall act as an independent contractor and shall have control of the work and the manner in which it is performed. CONTRACTOR is not to be considered an agent or employee of DISTRICT and is not entitled to participate in any pension plans, insurance, bonus or similar benefits DISTRICT provides its employees.

3. **INDEMNIFICATION:**

(a) CONTRACTOR agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release DISTRICT, its officers, agents and employees, from and against any and all actions, claims, damages, disabilities or expenses including attorney's fees and witness costs that may be asserted by any person or entity, arising out of or in connection with the tortious acts or errors or omissions of CONTRACTOR hereunder, whether or not there is concurrent passive or active negligence on the part of DISTRICT, but excluding liability due to the sole negligence or willful misconduct of DISTRICT. 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 CONTRACTOR or its agents under workers' compensation acts, disability benefit acts, or other employee benefit acts.

(b) CONTRACTOR shall be liable to DISTRICT for any loss or damage to DISTRICT property arising from or in connection with CONTRACTOR'S performance hereunder.

4. **INSURANCE:** With respect to the performance of work under this Agreement, CONTRACTOR shall maintain and shall require all of its subcontractors to maintain insurance as described below:

(a) Worker's compensation insurance with statutory limits as required by the Labor Code or the State of California. Said policy shall be endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the DISTRICT".

(b) Commercial or Comprehensive General Liability insurance covering bodily injury and property damage utilizing an occurrence policy form, in an amount no less than \$1,000,000 combined single limit for each occurrence and \$2,000,000 in the aggregate. Said insurance shall include, but not be limited to: premises and operations liability, independent contractors liability, and personal injury liability.

(c) Automobile liability insurance covering bodily injury and property damage in an amount no less than \$1,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

(d) Each said comprehensive or commercial general liability and automobile liability insurance policy shall be endorsed with the following specific language:

(1) DISTRICT, its officers and employees, is named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.

(2) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(3) The insurance provided herein is primary coverage to DISTRICT with respect to any insurance or self-insurance programs maintained by DISTRICT and no insurance held or owned by DISTRICT shall be called upon to contribute to a loss.

(4) This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to DISTRICT.

(e) **Professional Liability (Errors & Omissions):** In the event any contract specifications requires your firm to provide professional services, such as but not limited to, architectural, engineering, construction management, surveying, design, etc., a certificate of insurance must be provided prior to commencing work evidencing such coverage with a limit of not less than \$1,000,000. Any material change in limits, coverage or loss of aggregate limit due to outstanding claims must be reported to the District within 30 days of any such event

(f) **Documentation:** The following documentation shall be submitted to the DISTRICT:

(1) Properly executed Certificates of Insurance clearly evidencing all coverage's, limits, and endorsements required above. Said certificates shall be submitted prior to the execution of this Agreement.

(2) Signed copies of the specified endorsements for each policy. Said endorsement copies shall be submitted within thirty (30) days of execution of this Agreement.

(3) Upon DISTRICT'S written request, certified copies of insurance policies. Said policy copies shall be submitted within thirty (30) days of DISTRICT'S request.

(g) **Policy Obligations:** CONTRACTOR'S indemnity and other obligations shall not be limited by the foregoing insurance requirements.

(h) **Material Breach:** If CONTRACTOR, for any reason, fails to maintain insurance coverage that is required pursuant to this Agreement, the same shall be deemed a material breach of contract. DISTRICT, at its sole option, may terminate this Agreement and obtain damages from the CONTRACTOR resulting from said breach. Alternatively, DISTRICT may purchase such required insurance coverage, and without further notice to CONTRACTOR, County may deduct from sums due to CONTRACTOR any premium costs advanced by DISTRICT for such insurance. These remedies shall be in addition to any other remedies available to DISTRICT.

5. **METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS AND MAKING PAYMENTS:**

A purchase order number must appear on all invoices and notices, bills and payments. All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notice, bills and payments sent by mail shall be addressed as follows:

DISTRICT:

Peralta Community College District  
333 East 8<sup>th</sup> Street  
Accounts Payable Department  
Oakland, CA 94606

CONTRACTOR:



and when so addressed, shall be deemed given upon receipt via United States Mail, postage prepaid, provided it is forwarded "certified", or "registered" with proof of receipt. In all other instances, notices, bills, and payments shall be deemed given at the time of actual personal delivery. Changes may be made in names and addresses of the person to who notices, bills and payments are to be given by giving notice pursuant to this paragraph.

6. **MERGER:** This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

8. **TRANSFER OF RIGHTS:** CONTRACTOR assigns to DISTRICT all rights throughout the work in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications now or later prepared by CONTRACTOR in connection with the project, if any. CONTRACTOR agrees to take such actions as are necessary to protect the rights assigned to DISTRICT in this Agreement, and to refrain from taking any action which would impair those rights. CONTRACTOR'S responsibilities under this contract include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as CONTRACTOR may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of DISTRICT.

9. **NONDISCRIMINATION:** CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, sexual orientation, marital status, age, medical condition, disability, transgender status or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.

10. **EXTRA (CHANGED) WORK:** Only the Chancellor or designee may authorize extra (and/or changed) work. The parties expressly recognize that DISTRICT and College personnel are without authorization to either order extra (and/or changed) work or waive contract requirements. Failure of the CONTRACTOR to secure proper authorization for extra work shall constitute a waiver of any and all right to adjustment in the contract price or contract time due to such unauthorized extra work and the CONTRACTOR thereafter shall be entitled to no compensation whatsoever for the performance of such work.

11. **CONFLICT OF INTEREST:** CONTRACTOR represents that it presently has no interest which would conflict in any manner or degree with the performance of services contemplated by this Agreement. CONTRACTOR further represents that in the performance of this Agreement, no person having such interest will be employed.

12. **OWNERSHIP OF WORK PRODUCT:** DISTRICT shall be the owner of and shall be entitled to immediate possession of accurate reproducible copies of any design computations, plans, correspondence or other pertinent data and information gathered or computed by CONTRACTOR prior to termination of this Agreement by DISTRICT or upon completion of the work pursuant to this Agreement.

13. **CONTRACTOR'S WARRANTY:** DISTRICT has relied upon the professional ability and training of CONTRACTOR as a material inducement to enter into this Agreement. CONTRACTOR hereby warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of CONTRACTOR'S work by DISTRICT shall not operate as a waiver or release.

14. **TAXES:** CONTRACTOR agrees to file federal and state tax returns and pay all applicable state and federal taxes on amounts paid pursuant to this Agreement. In case DISTRICT is audited for compliance regarding any applicable taxes, CONTRACTOR agrees to furnish DISTRICT with proof of payment of taxes on those earnings.

15. **DUE PERFORMANCE:** Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may, in writing, demand

adequate assurance of due performance and until such written assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received.

16. **NO THIRD-PARTY BENEFICIARIES:** There are no intended third-party beneficiaries of this Agreement.

17. **NO WAIVER OF BREACH:** The waiver by DISTRICT of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.

**End of Section**



# Peralta Community College District

## RFP Acknowledgement and Signature Form

### 14-15/09 Employee Benefits Insurance Broker and Consulting Services

The undersigned having carefully examined the location of the proposed work, the local conditions of the place where the work is to be done, the Invitation, the General Conditions, the Specifications and all of the documents for this project, and accurately completed the Bidder's Questionnaire, proposes to enter into a contract with Peralta Community College District to perform the work listed in this RFP, including all of its component parts, and to furnish any and all required labor, materials, equipment, insurance, bonding, taxes, transportation and services required for this project in strict conformity with the plans and specifications prepared, including any Addenda, within the time specified.

### Addendum Acknowledgement

The following addendum(s) are acknowledged in this RFP: \_\_\_\_\_

### Acknowledgement and Signature:

1. No Proposal is valid unless signed in ink by the person authorized to make the proposal.
2. I have carefully read, understand and agree to the terms and conditions on all pages of this proposal. The undersigned agrees to furnish the services stipulated on this proposal.

Vendor Name: \_\_\_\_\_ Title: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Contractor License #: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Federal Tax Identification Number: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### Decline Proposal:

We **do not** wish to submit a Proposal on this Project. Please state your reason below. Please also indicate if you would like to remain on our vendor list.

Reason: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Company: \_\_\_\_\_ Address: \_\_\_\_\_

Name: \_\_\_\_\_ Signature \_\_\_\_\_ Date: \_\_\_\_\_



**Peralta Community College District**

**RFP NO: 14-15/09**

**Employee Benefits Insurance Broker and Consulting Services**

**FEE PROPOSAL**

(Incorporate completed and executed form of Fee Proposal into the RFP response)

Respondent: \_\_\_\_\_

The above-identified Respondent proposes the following pricing to complete Implementation Services:

**1. Proposed Lump Sum Fixed Price.** For Broker and Consulting Services and other obligations under the Contract, the Respondent proposes a lump sum fixed price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) ("Price Proposal"). The proposed Lump Sum Fixed Price broken down between services as provided to the District and its population as described (if required) in the RFP as follows:

1.1. General Services. The lump sum fixed price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) is proposed for completion of Task 1.

1.2. Financial Services. The lump sum fixed price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) is proposed for completion of Task 2.

1.3. Customer Service. The lump sum fixed price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) is proposed for completion of Task 3.

1.4. Legal/Compliance. The lump sum fixed price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) is proposed for completion of Task 4.

1.5. Administrative. The lump sum fixed price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) is proposed for completion of Task 5.

1.6. Service Fees & Commission Structure. The lump sum fixed price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) is proposed for completion of Task 7.

1.7. Additional Tasks. The Respondent's RFP Response proposes additional or different Tasks than those described in the RFP:

\_\_\_\_\_ YES \_\_\_\_\_ No

1.7.1. Price Proposal for Different/Additional Tasks. The proposed lump sum fixed price set forth in Paragraph 1 incorporates fees, costs and expenses for completing all additional or different Tasks proposed by the Respondent:

\_\_\_ YES                      \_\_\_ NO

1.7.2. Price Proposal Adjustment. If the response to Paragraph 1.4.1 is "No" the Respondent proposes the following adjustment to the lump sum fixed price proposed in Paragraph 1 as follows (check appropriate statement and set forth the proposed adjustment for the proposed additional/different tasks):

\_\_\_ Deduct \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
from the lump sum fixed price proposed in Paragraph 1.

\_\_\_ Add \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) to  
the lump sum fixed price proposed in Paragraph 1.

**2. Reimbursable Expenses.** The Lump Sum Fixed Price proposed in Paragraph 1 incorporates all fees, costs or expenses that the Respondent may incur for broker and consulting services:

\_\_\_ YES                      \_\_\_ NO

If the Lump Sum Fixed Price proposed in Paragraph 1 does not include all fees, costs or expenses incurred for Broker and Consulting Services the Respondent proposes billing the District for the following fees, costs or expenses incurred as follows:

2.1. Travel (**Travel expenses and related fees shall be paid in Accordance to the District's Travel Policy**).

2.1.1. Privately Owned Automobile Travel; Costs Per Mile. If personnel travel by a privately owned automobile, the charge per mile traveled is \_\_\_ cents (\_\_\_¢) per mile ("Mileage Charge").

2.1.2. Mileage Charges. The Mileage Charge billed to the District for travel by privately owned automobile will be for:

\_\_\_ Round Trip Travel  
\_\_\_ One Way Travel

2.1.3. Airfare. If travel is by air, the charge is the actual costs of economy class airfare without mark-ups.

\_\_\_ Yes  
\_\_\_ No, billings will be for costs plus \_\_\_ percent (\_\_\_%) mark-up

2.1.4. Rental Car. If travel is by a rental car, the billing is the actual costs for an economy class rental car without mark-ups.

\_\_\_ Yes  
\_\_\_ No, billings will be for costs plus \_\_\_ percent (\_\_\_%) mark-up

2.1.5. Per Diem Expenses. If travel and overnight stay or more is required the per diem charge (excluding mileage, airfare charges or rental car charges) for lodging, meals and incidental expenses is:

Lodging \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per day.  
Meals \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per day.

Incidental Expenses \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per day.

2.1.6. Charges for Personnel Travel Time. If personnel travel, Respondent proposes to bill the District for travel time of personnel as follows:

\_\_\_\_\_ No travel charges for personnel travel (travel time included in Price Proposal).

\_\_\_\_\_ Flat rate travel charge for personnel travel of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per person travelling.

\_\_\_\_\_ Hourly rate charge for personnel travel at \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per hour per person travelling.

If an hourly rate is charged for LOR personnel travel to an Off-Site Location, the billings are for:

\_\_\_\_\_ Round Trip Travel

\_\_\_\_\_ One Way Travel

\_\_\_\_\_ Not Applicable, no travel charge proposed for personnel travel time.

2.1.7. Communications.

2.1.7.1. Phone/Fax Charges: \_\_\_\_\_

2.1.7.2. United States Mail Charges: \_\_\_\_\_

2.1.7.3. Private Courier/Overnight Service: \_\_\_\_\_

2.1.7.4. Other Communications Charges: \_\_\_\_\_

2.1.8. Production.

2.1.8.1. CAD/Plotting: \_\_\_\_\_

2.1.8.2. Reproduction.

Up to 11" x 14" size reproductions: \_\_\_\_\_

Quarter sheet reproductions: \_\_\_\_\_

Half-sheet reproductions: \_\_\_\_\_

Full sheet reproductions: \_\_\_\_\_

2.2. Additional Services. Set forth below the proposed hourly billing rates for Additional Consultant Services if the District and the Respondent are unable to reach mutual agreement to establish a lump sum fixed price for District authorized Additional Consultant Services.

<b>Respondent Personnel Proposed Additional Services Hourly Billing Rates</b>		
<b>Name</b>	<b>Position/Title</b>	<b>Proposed Hourly Rate</b>

(Duplicate as necessary for additional proposed personnel)

Sub-Consultant Personnel Proposed Additional Services Hourly Billing Rates		Sub-Consultant Name: _____
Name	Position/Title	Proposed Hourly Rate

(Duplicate as necessary for additional Sub-Consultants and/or additional propose personnel )

**3. Acknowledgment and Confirmation.** The Respondent has a full and complete understanding of the Broker and Consulting Services. The Respondent certifies that all proposed personnel are duly certified, licensed, approved and otherwise qualified to complete obligations under the Contract and to provide Broker and Consultant Services to the District and assigned to such personnel, if the Contract is awarded to Respondent. The undersigned: (i) has reviewed and verified the accuracy and completeness of the foregoing Price Proposal and (ii) is authorized to bind and commit Respondent to the foregoing Price Proposal.

By: \_\_\_\_\_  
(Signature of Respondent's Authorized Officer  
or Representative)

\_\_\_\_\_  
(Typed or Printed Name)

Title: \_\_\_\_\_





# **PERALTA COMMUNITY COLLEGE DISTRICT CONTRACT FOR SERVICES**

**Updated as of September, 2013**

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## ARTICLE 1. PREFACE

1.1. EFFECTIVE DATE and PARTIES. This is an agreement (“AGREEMENT”) dated as of \_\_\_\_\_, 20\_\_ (“EFFECTIVE DATE”), between Peralta Community College District (“DISTRICT”) located at 333 E. 8th Street, Oakland, CA 94606 and \_\_\_\_\_, including its officers, employees, consultants, Sub-Consultants, and agents (“CONSULTANT”), a \_\_\_\_\_, with its principal office at \_\_\_\_\_ (collectively, “PARTIES”).

1.2. Documents Incorporated. The AGREEMENT comprises the general provisions set out in these articles as well as all exhibits:

- (a) Exhibit A: Scope of Services/Deliverables.
- (b) Exhibit B: Pricing and Payment Schedule.
- (c) Exhibit C: Required Insurance Coverage from Consultant.
- (d) Exhibit D: Authorized Agents.
- (e) Exhibit E: Notice Contacts.

If terms in the Exhibits conflict with any general provision terms in these articles, then the terms in these articles shall prevail.

1.3. Recitals.

**Whereas**, the District issued a Request for Qualifications as RFQ No. 12345 (“RFQ”) requesting proposals to provide Projects Planning Review for Laney College, Student Center Renovations & Library/LRC, Merritt College, Allied Health Building, Alameda College Buildings C & D (Science) (“Services”).

**Whereas** CONSULTANT submitted a proposal responding to the RFQ.

**Whereas** CONSULTANT and its employees and Sub-Consultants, if any, are experienced, qualified, capable and if applicable, licensed, to provide the Services under this Agreement.

**Whereas** the District has taken action to award this Agreement to the Consultant.

**Whereas** CONSULTANT wishes to enter into a contract with DISTRICT in which CONSULTANT will furnish the Services subject to this Agreement for in accordance with the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual agreement set forth in the AGREEMENT, the parties agree as follows:

## ARTICLE 2. SERVICES

- 2.1. SERVICES. CONSULTANT shall complete the SERVICES as specified in Exhibit A Scope of Services/Deliverables (collectively, "SERVICES").
- 2.2. Standard of Performance. CONSULTANT represents that it is qualified to perform the SERVICES and that it possesses and will continue to possess, at its sole cost and expense, all licenses, registrations, permits, necessary to provide the SERVICES. CONSULTANT's personnel completing any portion of the SERVICES shall be qualified and licensed, if applicable, for the SERVICES performed. CONSULTANT also represents that it has extensive knowledge of, and will comply with, all codes, laws, regulations, and ordinances applicable to the SERVICES or this Agreement and will at all times while performing SERVICES comply therewith. CONSULTANT shall complete the SERVICES in accordance with applicable standards of care for other professionals providing work and services similar to the SERVICES.
- 2.3. Sub-Consultants. CONSULTANT may enter into subcontracts under this AGREEMENT, provided that: (i) advance NOTICE is provided to the DISTRICT (as described in the following sentence), (ii) that said Sub-Consultant has the appropriate qualifications to perform the subcontracted work and (iii) that CONSULTANT has obtained the Sub-Consultant agreement to be bound to the same duties and obligations of CONSULTANT hereunder. For each Sub-Consultant, CONSULTANT shall provide NOTICE to the DISTRICT of its intent to subcontract some portion of the SERVICES to provided hereunder, which NOTICE shall specify: (i) the SERVICES to be subcontracted, (ii) the term of said subcontract (iii) a representation by the CONSULTANT that said Sub-Consultant will provide the subcontracted SERVICES in the manner set forth in this AGREEMENT, that said Sub-Consultant acknowledges and agrees that the subcontracted SERVICES will be the exclusive property of the DISTRICT (consistent with Section 2.4 below), and (iv) that CONSULTANT will direct and supervise the Sub-Consultant performance. The DISTRICT may disapprove of any Sub-Consultant at any time. Neither the DISTRICT's approval nor failure to disapprove of any Sub-Consultant nor anything in Sub-Consultant agreement between the CONSULTANT and the Sub-Consultant shall create any contractual relationship between the DISTRICT and any Sub-Consultant. CONSULTANT agrees to be fully responsible to the DISTRICT for subcontracted SERVICES and to indemnify the DISTRICT from any acts or omissions of any of its Sub-Consultants and any persons or agents related thereto and for any claims by any Sub-Consultant against the DISTRICT arising from the Sub-Consultant agreement or the subcontracted SERVICES. The obligation to pay Sub-Consultants is the independent obligation of the CONSULTANT separate from the DISTRICT's obligation to pay CONSULTANT. The DISTRICT shall have no obligation to pay or secure payment of any moneys payable to any Sub-Consultant and the CONSULTANT shall indemnify, defend and hold harmless the District from any claims of payment of any Sub-Consultant for any SERVICES completed by a Sub-Consultant.
- 2.4. Ownership of Work Product. The SERVICES (and all related materials, rights, title and interest) provided under this AGREEMENT, regardless of the medium, including but not limited to, any designs, computations, studies, software, graphics, memorandum, plans, customer lists, business, financial, or marketing plans, (collectively, the "Work Product") shall, as applicable, be deemed "works made for hire," or "specially commissioned works," as those terms are defined in the U.S. Copyright Act (17 U.S.C. 101), and shall, in all cases, be owned exclusively by the DISTRICT. To the extent that the foregoing

sentence is insufficient to convey exclusively ownership in the Work Product, CONSULTANT, including any of Sub-Consultants, hereby assigns to the DISTRICT as its sole and exclusive property all CONSULTANT and Sub-Consultant's right, title and interest in any part, or all of the Work Product and all proprietary and intellectual property rights related thereto, whether or not patentable or protectable under copyright, trademark or other similar statutes. CONSULTANT agrees to take such actions as are necessary to protect the DISTRICT's rights in the Work Product (such as affixing proper copyright, patent or trademark notice where applicable) and to refrain from taking any action that would impair said rights. Upon the conclusion of this AGREEMENT, CONSULTANT (and any of its Sub-Consultants) shall return all copies or versions of the Work Product that CONSULTANT or any Sub-Consultant may at that time possess. CONSULTANT (and its Sub-Consultants) shall not have any rights to use or disclose the Work Product, except with the prior written consent of the DISTRICT.

### **ARTICLE 3. PAYMENT**

- 3.1. Schedule of Payments. DISTRICT shall pay CONSULTANT according to the schedule of payments attached as Exhibit B Pricing and Payment Schedule. CONSULTANT shall invoice DISTRICT for payments as set forth in the schedule of payments. Late payment by DISTRICT shall not constitute a material breach of the AGREEMENT.
- 3.2. Payment Not Acceptance. No payment made to CONSULTANT shall be construed as an acceptance or approval of any of the SERVICES or constitute a waiver of any claim or right that DISTRICT may then or thereafter have against CONSULTANT. Payments shall be subject to correction or adjustment in subsequent reviews and payments.
- 3.3. Payments Withheld. DISTRICT may withhold payment on or offset against an invoice or a portion thereof in an amount and to such extent as may be reasonably necessary to protect DISTRICT from loss because of:
  - (a) CONSULTANT'S failure to complete the SERVICES in accordance with the AGREEMENT;
  - (b) third-party claims, suits, or liens arising out of or relating to CONSULTANT'S SERVICES or this Agreement; or
  - (c) CONSULTANT'S failure to pay money to DISTRICT when due.
- 3.4. No Obligation to Make Payment. Notwithstanding any provision to the contrary, DISTRICT shall have no obligation to make any payment to CONSULTANT at any time, after NOTICE to CONSULTANT when:
  - (a) CONSULTANT is in material breach of the AGREEMENT; or
  - (b) CONSULTANT fails to furnish and maintain evidence of current insurance in accordance with the requirements of the AGREEMENT.
- 3.5. Taxes. CONSULTANT agrees to file local, county, state, and federal tax returns and pay all applicable local, county, state and federal taxes on amounts paid pursuant to the AGREEMENT. In case DISTRICT is audited for compliance regarding any applicable taxes, CONSULTANT agrees to furnish DISTRICT with proof of payment of taxes on those earnings. CONSULTANT acknowledges that DISTRICT will report all earnings to the California State Franchise Tax Board and the Internal Revenue Service as required by law.
- 3.6. Most Favored Customer. CONSULTANT certifies that the pricing detailed in Exhibit B is comparable to or more favorable to DISTRICT than that offered to CONSULTANT'S

other customers for similar SERVICES in similar volumes within the period of this AGREEMENT PERIOD. If CONSULTANT subsequently extends more favorable pricing to another customer, CONSULTANT is obligated to provide NOTICE to DISTRICT within five (5) calendar days and extend the new pricing to DISTRICT, to accept at DISTRICT'S sole option, retroactive to the date of the agreement between CONSULTANT and the other customer. Such pricing difference shall be credited to the DISTRICT.

#### **ARTICLE 4. DELAYS**

- 4.1. Excusable Delays (Force Majeure). CONSULTANT is entitled to a reasonable extension of the delivery date for the SERVICES in the event of an action or omission that: (i) was not contemplated at the time this AGREEMENT was executed; (ii) was not reasonably foreseeable; (iii) directly impairs or inhibits the CONSULTANT's ability to provide the SERVICES on the schedule delivery date; and (iv) was not the result an act or omission by CONSULTANT (the "EXCUSABLE DELAY EVENTS"). EXCUSABLE DELAY EVENTS may include, for example, acts due to the gross negligence or intentional misconduct of the DISTRICT (and unrelated to any action taken by the CONSULTANT), natural disasters, labor strikes, or government action. In the event of an EXCUSABLE DELAY EVENT, CONSULTANT shall provide DISTRICT with NOTICE of said delay and the impact of said delay on the timetable set forth in Exhibit A. Said NOTICE shall be provided no more than two (2) calendar days after CONSULTANT becomes aware of such event. CONSULTANT shall then be entitled to a day for day extension corresponding to the number of days of delay demonstrated by CONSULTANT to be directly caused by the EXCUSABLE DELAY EVENT, to the extent that that number of days (and not fewer days) is necessary to delivery of the SERVICES.
- 4.2. Non-Excusable Delays. If a delay does not meet the definition of an Excusable Delay Event (a "NON-EXCUSALBE DELAY"), then CONSULTANT shall not, without the DISTRICT's prior written consent (which may be withheld), be entitled to an extension of the delivery date for the SERVICES then due. If the CONSULTANT does not obtain the DISTRICT's consent to a NON-EXCUSABLE DELAY, then it shall be responsible for any additional costs it incurs in its efforts to meet the delivery deadline. Notwithstanding that the DISTRICT may consent to an extension of the delivery date due to a NON-EXCUSABLE DELAY, the CONSULTANT will be required to pay any actual damages incurred by the DISTRICT as a result of such delay, by either offset against the amount due by the DISTRICT to the CONSULTANT or by submission by the DISTRICT of an invoice indicating the amount of the damages.
- 4.3. Compensation in the Event of Delay. Regardless of whether the CONSULTANT obtains the DISTRICT's consent to a NON-EXCUSED DELAY, and in the case of an EXCUSABLE DELAY EVENT that is not the related to an unanticipated and unforeseeable act or omission by the DISTRICT, the CONSULTANT shall be responsible for any additional costs it incurs in its efforts to meet the delivery deadline. In the event of any delay of the delivery of the SERVICES for any reason, the DISTRICT shall be entitled to suspend any payment obligations related to such SERVICES until such time as the delivery of the SERVICES to, and acceptance by, the DISTRICT.

#### **ARTICLE 5. CONSULTANT REPRESENTATIONS**

- 5.1. CONSULTANT Representations. CONSULTANT represents and warrants that:

- (a) the SERVICES shall be in compliance with all laws, standards, and codes;
- (b) ;
- (c) the SERVICES shall be in accordance with the provisions of the AGREEMENT, including but not limited to the specifications set forth in Exhibit A;
- (d) the CONSULTANT shall have, where applicable, all necessary licenses, permits, and other documentation and permissions necessary for CONSULTANT to provide the SERVICES under this AGREEMENT in full compliance with all applicable laws;
- (e) all of the SERVICES shall be done in a professional and workmanlike manner in accordance with the standard care for other professionals providing services similar to the SERVICES subject to this Agreement;
- (f) all SERVICES will be original, and if not, CONSULTANT will obtain all necessary third party consents and releases necessary to give DISTRICT unrestricted rights in such SERVICES, and that any agreement CONSULTANT enters into with third parties shall provide that the SERVICES is the sole property of DISTRICT and that DISTRICT shall have the unrestricted right to use the SERVICES in the manner in which, and so long as, it desires.
- (g) it will employ its best efforts to refrain from engaging in any conduct that will impair the reputation of DISTRICT.

5.2. Due Performance. If events arise that cause the DISTRICT to reasonably question CONSULTANT'S performance or CONSULTANT's ability to continue performance, DISTRICT may demand in writing sufficient assurance of due performance. Until assurance is received that is satisfactory to DISTRICT, DISTRICT may suspend payment and/or all SERVICES to be provided/performed hereunder.

5.3. Breach of Representations. Breach of any representation by CONSULTANT or a failure by it to provide satisfactory assurances of its ability to perform hereunder constitutes a material breach of this AGREEMENT.

## **ARTICLE 6. INSURANCE**

6.1. Insurance Requirement. CONSULTANT shall provide and maintain insurance with coverages and limits of liability not less than those specified in Exhibit G Required Insurance Coverage from Consultant. Insurance shall be maintained throughout the term of the AGREEMENT (including the WARRANTY PERIOD). All such insurance shall be primary to any insurance maintained by DISTRICT and name the IDENTIFIED as additional parties insured. Limits may be arranged through any combination of underlying and excess or umbrella policies. CONSULTANT shall pay all deductible amounts associated with the required insurance. In the event any policy of insurance does not comply with these requirements or is canceled and not replaced, DISTRICT has the right but not the duty to obtain the insurance it deems necessary, and CONSULTANT will promptly reimburse any cost to DISTRICT.

6.2. Workers' Compensation. CONSULTANT certifies that it is aware of California Labor Code Section 3700, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code. CONSULTANT further certifies that it does and will comply with such provisions before commencing performance of the AGREEMENT and for the duration of the AGREEMENT.

6.3. Certificates. Prior to commencing performance under the AGREEMENT, CONSULTANT shall furnish DISTRICT standard insurance certificates executed by an authorized representative of CONSULTANT'S insurer, evidencing the applicable



policies, coverages, and limits. DISTRICT'S receipt of or failure to object to any insurance certificates or policies submitted by CONSULTANT does not release or diminish in any manner the liability or obligations of CONSULTANT or constitute a waiver of any of the insurance requirements under the AGREEMENT. Replacement certificates of insurance evidencing continuation of CONSULTANT'S coverage shall be furnished to DISTRICT prior to the expiration of the current policies.

- 6.4. Coverage for INDEMNIFIED PARTIES. Each CONSULTANT insurance policy shall be endorsed to provide a waiver of each insurer's rights of subrogation against the INDEMNIFIED PARTIES. Policies shall name the INDEMNIFIED PARTIES as additional insureds for liability arising with respect to the SERVICES and shall include a cross-liability and severability of interests clause. Each CONSULTANT policy shall provide for NOTICE by the insurer to DISTRICT prior to the cancellation, non-renewal, or material change of any insurance referred to herein.

## **ARTICLE 7. INDEMNITY**

- 7.1. CONSULTANT INDEMNIFICATION. CONSULTANT shall indemnify, defend and hold harmless the DISTRICT and the District's Board of Trustees (including each individual member of the Board of Trustees), officers, agents, employees, volunteers and contractors (the "INDEMNIFIED PARTIES") from any and all third party actions, claims, losses, damages, demands or expense (including without limitation all court and/or arbitration costs and reasonable attorney's fees on account thereof) suffered or incurred by the INDEMNIFIED PARTIES arising from or relating to the SERVICES, CONSULTANT'S performance of SERVICES under this AGREEMENT, or any other act or omission of the CONSULTANT, including, but not limited to:
- (a) claims by CONSULTANT's officers, agents or employees arising from or relating to their employment or contractual relationship with CONSULTANT, including any benefits to which they are entitled as a result thereof;
  - (b) claims of infringement or improper use of any patent, trade secret, proprietary right, copyright or any other intellectual property right relating to the SERVICES;
  - (c) claims arising out a failure by CONSULTANT or its officers, agents, or employees to comply with the laws and policies set forth in Article 11;
  - (d) acts or omissions of CONSULTANT's Sub-Consultants as provided in Section 2.3; and
  - (e) claims that arise out of, pertain to, or relate to negligent, grossly negligent, reckless, or intentional conduct of the CONSULTANT, any Sub-Consultant or their respective employees, officers, agents or representatives.

The CONSULTANT'S indemnification obligations pursuant to the foregoing shall survive the termination or expiration of this AGREEMENT or the CONSULTANT'S completion of SERVICES under this AGREEMENT until barred by the applicable Statute of Limitations.

- 7.2. Continuing Performance. If any 3<sup>rd</sup> party claim materially impairs performance of the SERVICES, then CONSULTANT, at its sole expense, shall timely procure the right from said 3<sup>rd</sup> party to continue its performance of its obligations under the AGREEMENT. Further, if an INDEMNIFIED PARTY should be enjoined from the use of any materials, combinations, or processes provided or to be provided under this AGREEMENT, then CONSULTANT shall promptly either:

- (a) secure termination of any injunction and procure for the affected INDEMNIFIED PARTY the right to use such material, combination, or process, without obligation or liability; or
- (b) replace such materials, combinations, or processes, or modify the same to become non-infringing,

all at CONSULTANT'S sole expense, but subject to all the requirements of the AGREEMENT.

## **ARTICLE 8. COMPLIANCE WITH LAWS**

- 8.1. Compliance with Laws. CONSULTANT shall fully comply with all laws, executive orders, regulations, DISTRICT Board Policies, and other legal requirements applicable to CONSULTANT and to the SERVICES. Failure to comply with this Article shall constitute a material breach of the AGREEMENT. (Board Policies can be found on the DISTRICT website.)
- 8.2. Hazardous Substances. CONSULTANT shall safely and properly handle, treat, and dispose of all hazardous substances where the release or presence of such substances in the environment gives rise to any liability or obligation to remove, clean-up, encapsulate, or otherwise remediate such release or presence under any law.
- 8.3. Technology Accessibility. CONSULTANT hereby warrants that the SERVICES to be provided under the AGREEMENT complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended, its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194, and California Government Code Section 11135 incorporating Section 508. CONSULTANT agrees to promptly respond to and resolve any complaint regarding accessibility of the SERVICES which is brought to its attention.
- 8.4. Equal Opportunity in Contracting. DISTRICT is committed to ensuring equal opportunity and equitable treatment in awarding and managing its public contracts. Therefore, it is the policy of DISTRICT to encourage and facilitate full and equitable opportunities for small local business enterprises and small emerging local business enterprises to participate in prime contracting and subcontracting with DISTRICT. DISTRICT policy prohibits discrimination in DISTRICT programs and services, including contracting, subcontracting, personal and professional services, goods and maintenance, repairs, and operations. CONSULTANT shall fully comply with the DISTRICT'S equal opportunity and equitable treatment policies and implementing procedures and shall not discriminate against or grant preferential treatment to any Sub-Consultant on the basis of race, color, religion, creed, national origin, sex, actual or perceived sexual orientation, transgender status at any stage, marital status, disability, medical status or conditions, age, ancestry, gender identity, political affiliation, veteran status, or other personal characteristic protected by law in the performance of the AGREEMENT.
- 8.5. Non-Discrimination. CONSULTANT agrees to comply with Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11246, DISTRICT Board Policy 4.03, and all applicable laws, rules, and regulations in regard to non-discrimination and equal opportunity. CONSULTANT agrees and assures that it will not discriminate against, permit discrimination against, harass, or permit harassment against any individual, including but not limited to employees, applicants for employment, or students, because of race, color, religion, creed, national origin, sex, actual or perceived sexual orientation,

transgender status at any stage, marital status, disability, medical status or conditions, age, ancestry, gender identity, political affiliation, veteran status, or other personal characteristic protected by law. CONSULTANT will, in all solicitations or advertisements for employees, placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to the aforementioned protected personal characteristics. CONSULTANT certifies that it does not and will not maintain segregated facilities.

- 8.6. Posting. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the non-discrimination provisions of this Article. CONSULTANT will send each labor union or representative of workers with which CONSULTANT has a collective bargaining agreement or other contract or understanding a notice, to be provided by the contracting officer, advising of CONSULTANT'S commitments under Executive Order 11246.
- 8.7. Sexual Harassment. CONSULTANT assures that it will not sexually harass or permit sexual harassment against any individual, including but not limited to employees, applicants for employment, or students. DISTRICT shall have the right to remove an alleged offender from performance of the SERVICES pending the results of a sexual harassment investigation.
- 8.8. Drug-free Workplace. CONSULTANT certifies that CONSULTANT will comply with the requirements of California's Drug-Free Workplace Act of 1990, California Government Code Section 8350 et seq., and will provide a drug-free workplace by taking the following actions:
  - (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in CONSULTANT'S workplace and specifying the actions that will be taken against employees for violations of the prohibition.
  - (b) Establishing a drug-free awareness program to inform employees about all of the following:
    - (1) the dangers of drug abuse in the workplace;
    - (2) CONSULTANT'S policy of maintaining a drug-free workplace;
    - (3) any available drug counseling, rehabilitation, and employee assistance programs; and
    - (4) the penalties that may be imposed upon employees for drug abuse violations.
  - (c) Requiring that each employee engaged in the performance of the AGREEMENT be given a copy of CONSULTANT'S drug-free policy statement and agree to abide by the terms of CONSULTANT'S statement as a condition of employment on the AGREEMENT.
- 8.9. N.L.R.B. Certification. CONSULTANT swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period because of CONSULTANT'S failure to comply with an order of the National Labor Relations Board.
- 8.10. DISTRICT Conflicts of Interest. CONSULTANT represents that it is familiar with California Government Code Sections 1090 et seq. and 87100 et seq., and that it does not know of any facts that constitute a violation of said sections or DISTRICT'S conflict of interest code, Board Policy 6.86. CONSULTANT represents that it has completely disclosed to DISTRICT, and if applicable will disclose in the future, all facts bearing upon

any possible interests, direct or indirect, which CONSULTANT believes any member of DISTRICT, or other officer, agent, or employee of DISTRICT or any department presently has, or will have, in the AGREEMENT, or in the performance thereof, or in any portion of the profits thereunder. If CONSULTANT subsequently becomes aware of any such facts, CONSULTANT shall promptly provide NOTICE to DISTRICT of same, along with a proposal for remedying the violation. DISTRICT, at its sole discretion, may determine whether the proposal or any other proposed resolution is satisfactory.

- 8.11. CONSULTANT Conflicts of Interest. CONSULTANT represents that it does not presently have, and shall not have during the AGREEMENT PERIOD, any direct or indirect interest that would conflict in any manner or degree with the performance of SERVICES required by the AGREEMENT. CONSULTANT further represents that it will not employ, subcontract to, or otherwise involve any person or entity having such conflicts of interest in the performance of the AGREEMENT. If CONSULTANT subsequently becomes aware of any such conflicts of interest, CONSULTANT shall promptly provide NOTICE to DISTRICT of same, along with a proposal for remedying the violation. DISTRICT, at its sole discretion, may determine whether the proposal or any other proposed resolution is satisfactory.
- 8.12. Fraud or Misappropriation. CONSULTANT certifies that none of its officers has been convicted of fraud or misappropriation of funds.
- 8.13. Disclosure of Legal Matters. CONSULTANT represents that it has completely disclosed to DISTRICT prior to the execution of the AGREEMENT, and if applicable will disclose in the future, with respect to CONSULTANT, its officers, current employees, and the past and present enterprises of its officers:
- (a) citations, civil judgments, criminal convictions, settlements, penalties, fines, and the like imposed by government entities;
  - (b) charges or investigations by government entities, including but not limited to S.E.C. and A.T.F. investigations and grand jury charges;
  - (c) suspensions and debarments;
  - (d) litigation in which CONSULTANT is a defendant;
  - (e) administrative agreements; and
  - (f) past contracts terminated for cause.

## **ARTICLE 9. CONFIDENTIALITY**

- 9.1. Duty to Keep Information Confidential. The DISTRICT shall furnish to CONSULTANT such information, proprietary data, access to the DISTRICT's personnel, equipment, and materials as may be reasonably necessary and appropriate for CONSULTANT to provide the SERVICES, the confidentiality of which gives the DISTRICT a competitive advantage in its business (all such information and access so furnished being the "INFORMATION"). As used herein, the term "INFORMATION" is to be broadly defined and includes, but is not limited to, (a) presentations, ideas, trade secrets, processes, systems, techniques, formulas, source and object code, data, programs, know-how, flowcharts, methods, compounds, diagrams, drawings, models, specifications, improvements, discoveries, developments, designs, and other works of authorship, whether patented or registered for trademark or copyright protections, if any, (b) information regarding marketing, sales, licensing, accounting, product development, competitive analyses, unpublished financial statements, budgets, forecasts, prices, costs, business plans, research and development plans, students, student marketing, research and any other confidential student, supplier, or employee information, and (c)

any other information of the type which the DISTRICT has a legal obligation to keep confidential or which the DISTRICT treats as confidential or proprietary, whether or not owned or developed by the DISTRICT. As a material condition to CONSULTANT providing the SERVICES, CONSULTANT acknowledges a continuing responsibility with respect to the Information and agrees:

- (i) that the INFORMATION is, shall be, and shall remain the exclusive property of the DISTRICT and CONSULTANT shall neither have nor acquire any right, title, or interest therein;
- (ii) to keep all INFORMATION confidential and not to copy, publish, transmit, or disclose to others or allow any other party to copy, publish, transmit, or disclose to others any INFORMATION, except in accordance with CONSULTANT's responsibilities to the DISTRICT pursuant to this AGREEMENT and in furtherance of the interests of the DISTRICT; and,
- (iii) to use the INFORMATION exclusively for the purpose of providing the SERVICES under this AGREEMENT.

(b) During the time that this AGREEMENT remains in effect and at all times thereafter, CONSULTANT agrees to keep the INFORMATION confidential and not to copy, publish, transmit, or disclose to others or allow any other party to copy, publish, transmit, or disclose to others, any INFORMATION without the DISTRICT's prior written approval.

(c) Upon termination of this AGREEMENT, CONSULTANT shall return to the DISTRICT any and all INFORMATION, Third Party INFORMATION (as defined below), and any other materials, notes and copies relating to the DISTRICT and/or any assignments ("DISTRICT Materials") in CONSULTANT's possession or under CONSULTANT's control and shall not subsequently use the INFORMATION, Third Party INFORMATION or DISTRICT Materials in any manner, whether adverse to the DISTRICT or otherwise.

(d) The foregoing confidentiality obligations of CONSULTANT shall not apply to any INFORMATION that (a) is a matter of public knowledge (from a source or sources other than CONSULTANT), (b) is independently developed by a person not a party to this AGREEMENT without the use, directly or indirectly, of INFORMATION, or (c) is required by law or the order of any court or governmental agency, or in any litigation or similar proceeding to be disclosed, provided that CONSULTANT shall, prior to making any such required disclosure, notify the DISTRICT in sufficient time to permit the DISTRICT to seek an appropriate protective order.

9.2. Third Party INFORMATION. CONSULTANT understands that the DISTRICT has received and in the future will receive from third parties confidential or proprietary information ("Third Party INFORMATION") subject to a duty of the DISTRICT to hold such information in confidence and to use it only for the limited, authorized purpose of performing its obligations to its students or employees. Both during and after the term of this AGREEMENT, CONSULTANT will hold all Third Party INFORMATION in the strictest confidence and will not disclose or use it, except as required by the SERVICES for the DISTRICT or expressly authorized in writing by an authorized officer of the DISTRICT. CONSULTANT represents that performance of this AGREEMENT shall not, does not, and will not breach any other agreement to which CONSULTANT prior to the commencement of this AGREEMENT. CONSULTANT further represents that CONSULTANT has not entered into, and agrees not to enter into, any agreement, either oral or written, in conflict herewith.

9.3. Breach of Confidentiality. Both parties agree that in the event of a breach, threatened breach, violation, or evasion of the terms of this Article 11, immediate and irreparable injury shall occur to the injured party, that such injury shall be impossible to measure or

remedy in monetary damages, and the DISTRICT shall be authorized to seek recourse to all equitable remedies, including injunctive relief or specific performance, provided however that such remedies shall not be exclusive of other legal or equitable remedies otherwise available under this AGREEMENT and/or at law.

- 9.4. Return of Information. Upon termination of this AGREEMENT or upon request by the DISTRICT, CONSULTANT will promptly deliver to the DISTRICT all drawings, notes, memoranda, presentations, brochures, specifications, programs, reports, and other documents and manifestations, with all copies and any other materials containing or disclosing any Third Party INFORMATION, INFORMATION or any other materials related to the DISTRICT, whether prepared by CONSULTANT or another party. CONSULTANT agrees not to retain any written or other tangible material containing any material concerning or disclosing any Third Party INFORMATION or INFORMATION of the DISTRICT and to maintain the confidentiality of this INFORMATION and materials in the future.
- 9.5. Duration of Obligation. The obligations of the PARTIES pursuant to this article shall extend indefinitely beyond the AGREEMENT PERIOD.

#### **ARTICLE 10. FINANCIAL STATUS, RECORDS, AND NOTICE**

- 10.1. Financial Solvency. By signing the AGREEMENT, CONSULTANT affirms financial stability and continued solvency. At the request of DISTRICT, CONSULTANT will provide written evidence of its financial stability and solvency.
- 10.2. Financial Misrepresentation in Response to Request for Proposal. CONSULTANT certifies that CONSULTANT'S response to the request for proposal is complete and accurate. Any misrepresentation or failure to reveal material information in said response may be deemed sufficient cause for DISTRICT to refuse to enter to or revoke the AGREEMENT.
- 10.3. Accounting Records and Auditing. CONSULTANT shall keep accurate and complete accounting records concerning performance of the AGREEMENT in accordance with generally recognized accounting principles and practices consistently applied. DISTRICT shall have the right at any reasonable time to examine, audit, and reproduce the records. If such records are not kept and maintained within a radius of 75 miles from DISTRICT'S main offices, CONSULTANT shall, upon request of DISTRICT, and at no cost to DISTRICT, make such records available to DISTRICT for inspection at a location within said 75 mile radius. Such records shall be available for five (5) years after the latest of: (i) delivery of the SERVICES; (ii) termination of the AGREEMENT; or (iii) resolution of any pending issues between DISTRICT and CONSULTANT with respect to the AGREEMENT. CONSULTANT agrees to allow interviews of any of its employees who might reasonably have information related to such records and to otherwise assist DISTRICT in its auditing procedures at no cost to DISTRICT. The provisions of this section shall be specifically enforceable.
- 10.4. Hazardous Materials Records. CONSULTANT shall maintain all records pertaining to hazardous materials for at least thirty (30) years.
- 10.5. Return Documents. If CONSULTANT has accepted any forms or other writings on DISTRICT'S behalf, those forms and writings shall be returned to DISTRICT at the end

of the AGREEMENT PERIOD or upon earlier termination of the AGREEMENT, at no cost to DISTRICT.

- 10.6. Evaluation. In accordance with procedures established by DISTRICT, CONSULTANT'S performance under the AGREEMENT will be evaluated. The evaluation shall include quality and adequacy of performance and whether performance is timely. Evaluation records shall be kept by DISTRICT and may be used in future selection of contractors.
- 10.7. NOTICE. PARTIES shall provide notice ("NOTICE") to each other in the form of a writing sent by certified mail with return receipt requested or by overnight courier or delivery service with signature required, to the notice contact specified in Exhibit I Notice Contacts. NOTICE will be deemed given on the date of receipt by the designated recipient.

## **ARTICLE 11. MODIFICATION OF AGREEMENT**

- 11.1. AUTHORIZED AGENTS. Each PARTY shall specify at least one agent with authority to modify the AGREEMENT ("AUTHORIZED AGENT") in Exhibit H Authorized Agents.
- 11.2. Modifications. No modification, including but not limited to amendments, limitations, waivers, change orders, and supplements, shall bind either PARTY unless it is in writing and signed by the AUTHORIZED AGENTS of both PARTIES. The PARTIES expressly recognize that DISTRICT personnel who are not AUTHORIZED AGENTS cannot order or approve additions, deletions, or revisions in the SERVICES ("CHANGES"). Failure of CONSULTANT to secure proper authorization for CHANGES shall constitute a waiver of any and all right to adjustment in payment or delivery timetable due to such unauthorized CHANGES, and CONSULTANT thereafter shall be entitled to no compensation or reimbursements whatsoever for the performance of such CHANGES.
- 11.3. Change Order Requests. No later than twenty (20) calendar days after CONSULTANT provides NOTICE of a request for a change order, CONSULTANT shall provide NOTICE to DISTRICT of the effect, if any, of the CHANGES on the payment, delivery timetable, and any right or obligation of the PARTIES under the AGREEMENT. As soon as reasonable after DISTRICT receives such NOTICE, DISTRICT and CONSULTANT shall meet and negotiate in good faith an equitable adjustment to the payment, delivery timetable, and any other rights and obligations of the PARTIES under the AGREEMENT.
- 11.4. Change Order Record Keeping. The cost of CHANGES as reported in the change order shall be determined on the basis of reasonable direct costs and savings of supplying the CHANGES. CONSULTANT shall keep and present, in such form as DISTRICT may prescribe, an itemized accounting of such costs and savings with appropriate supporting documentation.
- 11.5. Renewal. Upon the mutual agreement of PARTIES, this AGREEMENT may be renewed. Renewal of the AGREEMENT shall be authorized in writing by AUTHORIZED AGENTS of both PARTIES. Renewals shall include all terms of the AGREEMENT unless expressly modified in the renewal contract.
- 11.6. Provision of Reports. Notwithstanding any other provision in the AGREEMENT, CONSULTANT shall deliver any report requested by DISTRICT during the AGREEMENT PERIOD that CONSULTANT agrees, either orally or in writing, to provide. Failure by CONSULTANT to submit the report within the time frame agreed upon by

both PARTIES will be considered a breach of the AGREEMENT. CONSULTANT shall provide DISTRICT with status reports, at no cost to DISTRICT, upon NOTICE of a request by DISTRICT.

- 11.7. Assignment. CONSULTANT may neither assign the AGREEMENT, in whole or in part, nor any money payable under the AGREEMENT without DISTRICT'S prior written consent. Any such assignment without DISTRICT'S prior written consent shall be null, void, and of no force and effect whatsoever. DISTRICT reserves the right to assign the AGREEMENT to an affiliate of or contractor of DISTRICT with the prior written consent of CONSULTANT which shall not be unreasonably withheld, provided that at any time after CONSULTANT has been paid in full for work then provided, DISTRICT may, without the consent of CONSULTANT, assign the AGREEMENT to an affiliate or a contractor of DISTRICT upon NOTICE to CONSULTANT.

## ARTICLE 12. TERMINATION

- 12.1. Termination for Cause. DISTRICT may terminate performance under the AGREEMENT, in whole or in part and subject to the cure language in Section 8.4 Opportunity to Cure, should CONSULTANT commit a material breach. If DISTRICT elects to terminate the AGREEMENT for cause, DISTRICT shall provide NOTICE to CONSULTANT of its breach and of the extent to which performance shall be terminated. CONSULTANT shall immediately upon receipt of said NOTICE cease performance per the terms of the NOTICE and mitigate damages.
- 12.2. Payment Obligations. If DISTRICT terminates for cause CONSULTANT'S right to perform, then DISTRICT shall determine the cost to complete as soon as practicable, and:
- (a) if the cost to complete exceeds the unpaid balance from the schedule of payments at the time of termination, CONSULTANT shall pay DISTRICT the amount of such difference within thirty (30) calendar days following receipt of DISTRICT'S NOTICE setting out a demand for such payment; or
  - (b) if the cost to complete is less than the unpaid balance from the schedule of payments at the time of termination, DISTRICT shall pay CONSULTANT the amount of such difference within thirty (30) calendar days following determination of the cost to complete.

CONSULTANT shall not be entitled to receive any further payments under the AGREEMENT, except that, in the case of a partial termination of CONSULTANT'S right to perform, DISTRICT shall pay CONSULTANT, pursuant to the terms of Exhibit B Payment Schedule, for SERVICES which is not terminated.

- 12.3. Suspension of Performance. DISTRICT may suspend, delay, or interrupt performance, in whole or in part, for such periods of time as DISTRICT may determine in its sole discretion. CONSULTANT shall immediately upon receipt of NOTICE of such decision cease performance per the terms of the NOTICE and mitigate damages. Suspension, delay, or interruption of SERVICES shall be treated as an EXCUSABLE DELAY EVENT.
- 12.4. Termination for Convenience. DISTRICT may terminate performance of the AGREEMENT, in whole or in part, for convenience upon its determination that such termination is in DISTRICT'S best interests. CONSULTANT shall immediately upon receipt of NOTICE of such decision cease performance per the terms of the NOTICE and mitigate damages. For portions of performance that are terminated, CONSULTANT shall be entitled to be paid for SERVICES satisfactorily performed to the termination date



and for reasonable costs associated with the termination, but may recover no other cost, damage, or expense.

- 12.5. Termination for Illegality. DISTRICT may terminate performance of the AGREEMENT in whole or in part for illegality immediately upon its determination that an activity or operation supported by the AGREEMENT is no longer lawful for reasons including but not limited to court decision, legislative action, administrative decision, or advice of counsel. Upon receipt of NOTICE of termination or reduction based on a finding of illegality, CONSULTANT shall immediately cease performance of such activity and mitigate damages. CONSULTANT shall be entitled to be paid for SERVICES satisfactorily performed to the termination date and for reasonable costs associated with the termination, but may recover no other cost, loss, damage, or expense.

### **ARTICLE 13. DISPUTE RESOLUTION**

- 13.1. Mediation. If a dispute arises under this AGREEMENT, the parties agree to first attempt in good faith to resolve the dispute with a mutually agreed-upon mediator in Alameda County, California. A party may initiate mediation by sending the other party a written demand for mediation, which demand shall describe with specificity the nature of the dispute. Any costs and fees other than attorney fees associated with the mediation shall be shared equally by the parties. If the parties are unable to arrive at a mutually satisfactory solution through mediation, or if a mediator has not been chosen and a date set for mediation, within sixty (60) calendar days from the date of the demand for mediation, then the parties hereby agree to submit the dispute to a mutually agreed-upon arbitrator in Alameda County, California, pursuant to the terms of Section 1e.2, below.
- 13.2. Arbitrations. Any action to enforce or interpret this AGREEMENT, or to resolve disputes with respect to this AGREEMENT (other than claims for preliminary injunctive relief or other pre-judgment or equitable remedies), shall be settled by binding arbitration in Alameda County, California, in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association, if a mutually satisfactory resolution cannot be reached in mediation or if sufficient steps towards mediation have not been taken pursuant to Section 13.1, above. Arbitration shall be the exclusive dispute resolution process for all claims other than for preliminary injunctive relief or other pre-judgment or equitable remedies. Any party may commence arbitration by sending a written demand for arbitration to the other party and to the American Arbitration Association. Such demand shall set forth the nature of the matter to be resolved by arbitration.

A request for arbitration must be submitted within the same limitation periods that would be applicable in court and must be in writing. If either party fails to submit and serve a written request for arbitration within the applicable statute of limitations, that party agrees that it will have waived any right to raise said claim, in any forum, regarding the dispute. The arbitrator shall be one that is mutually agreeable to both parties. Both parties shall have the right to conduct normal civil discovery, including the taking of depositions, prior to the arbitration hearing, and specifically agree that the provisions of Section 1283.05 of the California Code of Civil Procedure are incorporated into and made applicable to any arbitration, *provided however* that the arbitrator will retain his or her statutory discretion under that section to limit the number, and scope of, the depositions. The substantive law of the State of California shall be applied by the arbitrator to the resolution of the dispute.

The arbitrator shall be empowered to award either party any remedy at law or in equity that the prevailing party would otherwise have been entitled to had the matter been litigated in court, including, but not limited to, injunctive relief or specific performance; provided however that the authority to award any remedy is subject to whatever limitations, if any, that exist in the applicable law on such remedies. The arbitrator shall issue a decision or award in writing, stating the essential findings of fact and conclusions of law. The arbitrator shall have no jurisdiction to issue any award contrary to or inconsistent with the law. Following the evidentiary portion of an arbitration hearing, both parties shall have the right to prepare and file with the arbitrator a post-hearing brief not to exceed twenty-five (25) pages in length. Any such brief shall be served on the arbitrator and the other party within thirty (30) days of the close of the evidentiary portion of the hearing, unless the parties agree to some other time period. Should any part of this arbitration provision be declared by a court of competent jurisdiction to be invalid, unlawful or otherwise unenforceable, the remaining part shall not be affected thereby and the parties shall arbitrate their dispute without reference to or reliance upon the invalid, unlawful or unenforceable part of the AGREEMENT.

The parties shall share equally all initial costs of arbitration. However, the prevailing party shall be entitled to reimbursement of attorney fees, costs, and expenses incurred in connection with the arbitration and in association with the enforcement of said judgment. All decisions of the arbitrator shall be final, binding, and conclusive on all parties. Judgment may be entered upon any such decision in accordance with applicable law in any court having jurisdiction thereof. The arbitrator (if permitted under applicable law) or such court may issue a writ of execution to enforce the arbitrator's decision.

- 13.3. Tort Claims Act. No provision of the AGREEMENT shall alter the requirements of the Tort Claims Act, California Government Code Section 810 et seq.
- 13.4. Forum Selection. The exclusive venue for all litigation arising from or relating to the AGREEMENT shall be in Alameda County, California.
- 13.5. Cumulative Remedies. The remedies provided in the AGREEMENT are cumulative. A PARTY who exercises a right or remedy will not be precluded from asserting any other right or from seeking any other remedies available to that party.
- 13.6. No Special Damages. Notwithstanding any other provision, in no event shall DISTRICT be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including but not limited to lost profits or revenue, arising out of or in connection with the AGREEMENT.
- 13.7. Reserve Right to Offset. DISTRICT reserves the right to offset the reasonable cost of all damages caused to DISTRICT against any outstanding invoices or amounts owed to CONSULTANT.
- 13.8. Statutes of Limitation. As between the PARTIES to the AGREEMENT, any applicable statute of limitations for any act or failure to act shall commence to run on the date of DISTRICT'S issuance of the final certificate for payment, or termination of the AGREEMENT, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.
- 13.9. Course of Dispute. Unless the DISTRICT gives NOTICE to stop work or of its intent to terminate this AGREEMENT, nothing in the AGREEMENT shall allow CONSULTANT to discontinue the SERVICES during the course of any dispute, and CONSULTANT'S

failure to continue the SERVICES during any and all disputes shall be considered a material breach of the AGREEMENT.

#### **ARTICLE 14. INTERPRETATION**

- 14.1. Integration. It is mutually understood and agreed that this AGREEMENT, the Exhibits, and any documents, provisions of law or District policies attached or referenced to herein are incorporated herein by this reference and together serve as the final, complete, and exclusive agreement of the PARTIES, setting out the entire intention of the PARTIES. Any and all prior agreements or representations are superceded herein.. No evidence of alleged prior dealings, usage of trade, or course of dealing or of performance not specifically and in terms set out herein shall be deemed in any sense relevant to supply any unexpressed term, to supplement or qualify this writing, or to engraft thereon any stipulation or obligation different from, or inconsistent with, law or with the express provisions hereof. No oral evidence of allegedly consistent additional terms be admissible without a specific preliminary finding by the court or arbitrator that this contract is ambiguous and in what respect. All oral contracts and representations have been reduced to writing and are included in the AGREEMENT.
- 14.2. Defined Terms. Each term that is defined in the AGREEMENT shall have the same meaning throughout the AGREEMENT.
- 14.3. Governing Law. The AGREEMENT shall be deemed to have been executed in the City of Oakland, Alameda County, California. Enforcement of the AGREEMENT, including arbitration, shall be governed by, and construed and enforced in accordance with, the local, state, and federal laws in effect in the City of Oakland, Alameda County, California, including but not limited to California Government Code Section 818, but excluding California's conflict of laws principles that would cause the application of laws of any other jurisdiction.
- 14.4. Severability. Should any provision, or part thereof, of the AGREEMENT be determined at any time to be unenforceable or in contravention of law, then the remaining provisions, and the remainder of such provision, shall be enforceable to the fullest extent permitted by law and construed to give effect to the intent of the AGREEMENT to the fullest extent possible.
- 14.5. Titles of Provisions. The titles given to the articles, sections, and subsections of the AGREEMENT are for ease of reference only and shall not be used in the construction or interpretation of the AGREEMENT or relied upon or cited for any other purpose.
- 14.6. No Third-Party Beneficiaries. Except as expressly provided, nothing in the AGREEMENT shall operate to confer rights or benefits on persons or entities that are not a party to the AGREEMENT.
- 14.7. Time Is of the Essence. For all performance under the AGREEMENT, time is of the essence.
- 14.8. CONSULTANT Is Independent of DISTRICT. CONSULTANT and its officers, agents, and employees are not to be considered agents or employees of DISTRICT; are not entitled to participate in any pension, insurance, bonus, or similar benefits DISTRICT

provides its employees; and shall not sign contracts on behalf of or otherwise bind the DISTRICT.

- 14.9. Sovereign Immunity Reserved. Nothing herein shall be construed to waive or limit DISTRICT'S sovereign immunity or any other immunity from suit provided by law.
- 14.10. No Waiver of Performance. The failure of DISTRICT to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of the AGREEMENT, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right as to further performance. No waiver, properly authorized and in writing, of any breach of any provision shall be construed as a waiver of any continuing or succeeding breach of such provision, a waiver or modification of the provision itself, or a waiver or modification of any right under the AGREEMENT, unless the waiver so states.
- 14.11. Independent Contractor Contract and All Other Exhibits. When the terms of Exhibit J Independent Contractor / Consultant Services Contract or terms of any other exhibits conflict with any provision of the AGREEMENT, this AGREEMENT controls.

#### **ARTICLE 15. EXECUTED**

- 15.1. Authority. Signing of the AGREEMENT has been done in compliance with Board approval as outlined in the Board Policies for the Peralta Community College District. An AUTHORIZED AGENT for each PARTY shall sign.
- 15.2. Executed. The PARTIES have caused the AGREEMENT to be executed effective as of the EFFECTIVE DATE.

CONSULTANT ACCEPTS AND AGREES:

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

DISTRICT ACCEPTS AND AGREES:

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: Chancellor, Peralta Community College District (Authorized Agent)

Date: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

Signature: \_\_\_\_\_

Print Name: Thuy Thi Nguyen  
Title: General Counsel, Peralta Community College District  
Date: \_\_\_\_\_

COLLEGE PRESIDENT APPROVAL (*for internal reference only*):

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: President, (College Name: \_\_\_\_\_)  
Date: \_\_\_\_\_

**EXHIBIT A: CONSULTANT SCOPE OF SERVICES/DELIVERABLES**

**EXHIBIT B: PRICING AND PAYMENT SCHEDULE**

**EXHIBIT C: REQUIRED INSURANCE COVERAGE FROM CONSULTANT**

INSURANCE POLICY		MINIMUM COVERAGE LIIMITS	
a	Workers' Compensation <sup>1</sup> (W.C.)	<i>Statutory</i>	
b	Employer's Liability <sup>2</sup> (E.L.)	Each accident	One Million Dollars (\$1,000,000)
		Disease policy limit	One Million Dollars (\$1,000,000)
		Disease each employee	One Million Dollars (\$1,000,000)
c	Commercial General Liability <sup>3</sup> (C.G.L.)	General aggregate	Two Million Dollars (\$2,000,000)
		Personal / advertising injury	One Million Dollars (\$1,000,000)
		Each occurrence	One Million Dollars (\$1,000,000)
		Fire damage (any one fire)	One Million Dollars (\$1,000,000)
		Medical expense (any one person)	One Million Dollars (\$1,000,000)
d	Products / Completed Operations Aggregate	One Million Dollars (\$1,000,000)	
e	Business Automobile Liability <sup>4</sup> (A.L.)	Bodily injury (per person)	One Million Dollars (\$1,000,000)
		Bodily injury (per accident)	One Million Dollars (\$1,000,000)
		Property damage	One Million Dollars (\$1,000,000)
		Or combined single limit	One Million Dollars (\$1,000,000)

<sup>1</sup> Coverage shall include U.S.L.&H., Jones Act, Outer Continental Shelf Land Act, if applicable. Coverage shall include all partners, proprietors, and executive officers. Coverage shall include California state coverage.

<sup>2</sup> Coverage shall include all partners, proprietors, and executive officers.

<sup>3</sup> Policy shall be endorsed to provide that aggregate limits apply on a per project basis. Coverage shall include: broad form property damage, independent contractor's liability, and coverage for hazards commonly referred to as X.C.U. Coverage will apply to CONSULTANT'S indemnity obligations to the extent the obligation arises from an otherwise insured event.

<sup>4</sup> Coverage shall include all owned, non-owned, and hired vehicles.



f	Professional Liability (Errors and Omissions)	One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate
g	Excess Umbrella Liability <sup>5</sup>	N / A

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<sup>5</sup> In excess of W.C., C.G.L., and A.L.

**EXHIBIT D: AUTHORIZED AGENTS**

DISTRICT'S AUTHORIZED AGENTS

**Name** José M. Ortiz  
**Title** Chancellor  
**Address** 333 E. 8th Street  
Oakland, CA 94606

**Telephone** (510) 466-7202  
**Facsimile** (510) 268-0604

**Name** \_\_\_\_\_  
**Title** \_\_\_\_\_  
**Address** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**Telephone** \_\_\_\_\_  
**Facsimile** \_\_\_\_\_  
**Other** \_\_\_\_\_

CONSULTANT'S AUTHORIZED AGENTS

**Name** \_\_\_\_\_  
**Title** \_\_\_\_\_  
**Address** \_\_\_\_\_  
\_\_\_\_\_

**Telephone** \_\_\_\_\_  
**Facsimile** \_\_\_\_\_  
**Other** \_\_\_\_\_

**Name** \_\_\_\_\_  
**Title** \_\_\_\_\_  
**Address** \_\_\_\_\_  
\_\_\_\_\_

**Telephone** \_\_\_\_\_  
**Facsimile** \_\_\_\_\_  
**Other** \_\_\_\_\_

**EXHIBIT E: NOTICE CONTACTS**

DISTRICT'S NOTICE CONTACT

**Name** \_\_\_\_\_  
**Title** \_\_\_\_\_  
**Address** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**Telephone** \_\_\_\_\_  
**Facsimile** \_\_\_\_\_  
**Other** \_\_\_\_\_

CONSULTANT'S NOTICE CONTACT

**Name** \_\_\_\_\_  
**Title** \_\_\_\_\_  
**Address** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**Telephone** \_\_\_\_\_  
**Facsimile** \_\_\_\_\_  
**Other** \_\_\_\_\_

# APPENDIX I

14-15/09 Employee Benefits Insurance Broker and Consulting Services

(See attached Peralta Benefits Everyone Newsletter: April 8, 2014; September 12, 2014)

## **A. Active Employees (current plan designs)**

1. Medical Insurance – Eligible benefitted employees may select from one of the following plans:
  - Self-Funded Traditional Plan
  - Self-Funded Lite Plan
  - Kaiser Permanente (HMO)
2. Dental Insurance:
  - Self-Funded Delta Dental
  - DMO United Health Care Dental
3. Vision Insurance - The District provides self-funded vision insurance through United Health Care Vision (as bundled with the self-funded medical plan) and through Kaiser HMO.
4. Life Insurance – The District contracts with VOYA (formerly known as Reliastar/ING). A voluntary Supplemental Life Insurance plan is also available through the Life Insurance of North America/CIGNA.
5. Long-Term Disability Insurance – The District contracts with VOYA (formerly known as Reliastar/ING) to provide long-term disability insurance. Benefits paid on this policy are based on the employee's classification.
6. Employee Assistance Program – The District contracts with Managed Health Care Network for employee assistance program (EAP) services.
7. Flexible Spending Account – the District contracts with Pension Dynamics to administer the following programs:
  - Dependent Care
  - Medical Reimbursement
  - Medicare Reimbursement
  - Pretax Commuting
  - Pretax Transportation

## **B. RETIREES**

### 1. Medical Coverage:

- If hired on or before June 30, 2004 the District will pay the medical premium for the retiree and spouse of record at the time of retirement. Upon age 65, the retiree and/or eligible dependent are expected to enroll in Medicare and the District becomes secondary in coverage. The District reimburses the Medicare premium for the retiree and eligible dependent.
2. Surviving Spouse – If the retiree precede in death the surviving spouse may remain on the plan but pay 100% of the premium.
  3. Retirees may elect to continue dental upon retirement, but must pay 100% of premium as allowed under COBRA.
  4. If hired on or before July 1, 2004, then the District will pay the medical premium for the retiree and spouse of record at the time of retirement, until the retiree reaches age 65. The District does not offer a wrap-around plan.
  5. AB528 – Academic Retirees may elect to continue their dental benefits for themselves and their spouse & eligible dependents, if applicable, but must pay 100% of their premium.

