



Peralta Community College District

RFP/RFQ NO: 15-16/12

PAINTING SERVICES FOR COA BLDGS., E F, L, A AND B

FEE PROPOSAL

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

Respondent: _____

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

1. Proposed Lump Sum Fixed Price. Painting Services for COA Bldgs., E, F, L, A AND B and all 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 as described (if required) in the RFP/RFQ as follows: **(Items 1.1 through 1.7. are not required)**

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 6.

_____ 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 services:

_____ YES _____ NO

If the Lump Sum Fixed Price proposed in Paragraph 1 does not include all fees, costs or expenses incurred for painting 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.

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

(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 Painting Services for COA Bldg., E, F, L, A and B. The Respondent certifies that all proposed personnel are duly certified, licensed, approved and otherwise qualified to complete obligations under the Contract and to provide Painting 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

CONTRACT FOR SERVICES

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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 INDENTIFIED 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 3rd party claim materially impairs performance of the SERVICES, then CONSULTANT, at its sole expense, shall timely procure the right from said 3rd 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 ¹ (W.C.)	<i>Statutory</i>	
b	Employer's Liability ² (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 ³ (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 ⁴ (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)

¹ 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.

² Coverage shall include all partners, proprietors, and executive officers.

³ 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.

⁴ 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 ⁵	<i>N / A</i>

⁵ In excess of W.C., C.G.L., and A.L.

EXHIBIT D: AUTHORIZED AGENTS

DISTRICT'S AUTHORIZED AGENTS

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

Telephone	(510) 466-7202	Telephone	_____
Facsimile	(510) 268-0604	Facsimile	_____
		Other	_____

CONSULTANT'S AUTHORIZED AGENTS

Name	_____	Name	_____
Title	_____	Title	_____
Address	_____	Address	_____
	_____		_____
	_____		_____
Telephone	_____	Telephone	_____
Facsimile	_____	Facsimile	_____
Other	_____	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 _____

