



Peralta Community College District

REQUEST FOR PROPOSAL

Proposal No.: 14-15/37 District Wide Two-Way Radio System

The Peralta Community College District (PCCD), Oakland, California, through the Office of Purchasing, is hereby requesting proposals for Elevator Inspection and Maintenance Program

The successful vendor will be required to furnish all labor, material, equipment, supplies, applicable taxes, insurance, bonding, and licenses to provide Elevator Inspection and Maintenance Program.

Proposal Information

Proposal Description	Two-Way Radio System
Proposal Type	Equipment/Service/Prevailing Wage
Proposal Number	14-15/37
Proposal Issued	May 27, 2015
Department	General Services
License Requirement	C-7
Mandatory Pre-proposal Meeting	June 3, 2015 at 9:00 AM 333 8th Street, Oakland, CA 94606 (Conference Room , General Services)
Scheduled Publication Dates	May 27, 2015; June 3, 2015
Proposal Due Date	June 15, 2015 at 11:00 a.m.

Instructions for Submitting Proposals

Submittal Address	Peralta Community College District Purchasing Department Attn: John Hiebert 501 5 th Avenue Oakland, CA 94606
Submittal Copies	One (1) Original copy clearly marked "Original" and three (3) Copies marked "copy".
Submittal Envelope Requirements	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">• Proposal Number• Name of Your Company• Address• Phone Number
Late Submittals	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 th Avenue Oakland, CA 94606 Monday through Friday 8:30 AM to 4:00 PM (510) 466-7225
Yes	By visiting our website at: www.peralta.edu and clicking on "Business Opportunities" under "Quick Links", to download the bid packet.

Questions about the Proposal

Primary Contact	John Hiebert Fax: (510) 587-7873 Email: jhiebert@peralta.edu
Question/RFI Due Date	June 8, 2015 at 4:00 p.m. 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.
Response Date	June 10, 2015 All pertinent questions will be responded to via addendum 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

Table of Contents

- I. Project Overview
- II. Scope of Services
- III. Submission Requirements
- IV. Additional Requirements
- V. Evaluation Criteria

Attachments:

Title		Must Be Returned with Proposal
1	Vendor Questionnaire and Certificate by Compliance	Yes
2	Certificate Regarding Workers' Compensation	Yes
3	Statement of Equal Employment Opportunity	Yes
4	Small Local Business Enterprise/Small Emerging Local Business Enterprise Program	
5	SLBE/SELBE Self Certification Affidavit	Yes, If applicable
6	Non-Collision Affidavit	Yes
7	Environmentally Sustainable Procurement	Yes
8	General Provisions	
9	Bid Form	Yes
10	PCCD Contract	Yes
11	Exhibit A – Price Sheet	Yes

I. Project Overview

Vendor to provide a quote for a turnkey two way radio system for radio coverage in and between the District sites that meet District and FCC requirements. The proposed two way radio system will include the MOTOTRBO Linked Capacity Plus system to provide reliable, efficient, radio and network functionality, and two way radio communication system for Peralta Community College District (PCCD) that shall accommodate all communications between all District college sites, departments, services, and security.

II. Scope of Services

A. Professional Services

1. Service Provider
Must be an authorized Motorola Distributor, licensed by Motorola to service and repair Motorola radio equipment, and be a Motorola Elite Partner.
2. FCC Licensing
Upon receiving contract, vendor must complete the Federal Communication Commission (FCC) review and application form, submit form, pay all application fees, and then obtain the renewed licensing that modifies the District's existing FCC licenses for all of the Peralta Community College District that converts our existing analog FCC license to a digital license for all proposed equipment that will be purchased and installed. All administrative work, fees, and other will be provided in the bid package.
3. District Survey And Summary Report
Complete a Districtwide survey of existing equipment, and locations to understand the District facilities, construction, and distances between sites to verify that the proposed two way radio system that is being proposed will perform to meet our expectations. If not, then advise the District for right equipment, and submit a change order as needed.
4. Installation
Provide all labor, equipment, and material needed to install, program, and test the new two way radio system to meet or exceed local, county, State and FCC codes. Work with PCCD IT Department to get the proposed **MototrBO Linke Capacity Plus** working to manufactures specifications and functionality.
5. Demolition
Once the new equipment has been installed and functioning, then remove and collect all the old equipment to turn it into the Departmental Services.
6. Capital Asset
Provide the District with electronic Excel file of all proposed equipment with equipment name, model number, serial number. Equipment needs to be inscribed with, "Property of PCCD" and department name that it will be assigned to
7. Training
Provide five separate one hour training classes at five sites. Training times and dates could be during the day, swing, and/or graveyard shifts, Monday thru Friday based on the needs and schedule of the District.

B. Two Way Radio System Requirements, Features, and Functions

The proposed Radio System and protocol shall support the following features and functions:

1. Supports data applications such as text messaging, and GPS-location tracking

2. Provides clear voice communication by rejecting static and noise
3. Enables added functionality such as dispatch data and enhanced signal calling
4. The system and/or equipment must support digital transmissions on 6.25 equivalent, 12.5 kHz TDMA channel. The system and/or user equipment must also support analog transmission on 12.5 kHz channels.
5. The Motorola repeater/base station equipment must be able to manage two independent time slots on a single 12.5 kHz frequency using Time Division Multiple Access (TDMA) technology transmissions.
6. All portable radios must incorporate increased digital battery life over analog by operating in a TDMA digital mode.
7. All portable radios must include battery technology for automatic maintenance and reconditioning.
8. All radio equipment must support the use of radio subscriber accessories for automatic gain control and noise suppression.
9. The system and/or user equipment must include imbedded digital forward error connection technology to increase clarity throughout the range.
10. The system and/or user equipment must include imbedded software based privacy or scrambling to protect user privacy during communications. This imbedded scrambling must support at least 40 bit protection with multiple keys.
11. All radios must include Emergency Declaration capability with single button activation. The Emergency Declaration shall provide visual and audible status notification to specified radios. The Vendors proposal shall include a detailed description of the Emergency Declaration features and programing options.
12. The system and/or user equipment must include imbedded GPS receivers in both the portable and mobile radios. Any additional external receivers or accessories shall not be required to receive or send GPS information. GPS shall be supported in the repeater mode. GPS antennas are not required at this time since the GPS function will be activated at a later date.
13. The system and/or user equipment must include imbedded text messaging capabilities. Any additional external receivers or accessories shall not be required to receive or send text message information. The user equipment must support unit to unit canned and user creatable test messaging capability. The user equipment must support a t least 140 scrolling characters. Text messaging shall be supported in a repeater and/or talk around mode.
14. The system and/or user equipment must include imbedded telemetry capabilities. Any additional external receivers or accessories shall not be required to receive or send telemetry information. Telemetry shall be supported in a repeater mode. It is assumed that telemetry from a vehicle will be by exception. Further support will be required to implement any telemetry connections.
15. The system and/or user equipment must include intelligent channel steering capabilities to revert GPS traffic to alternate channels to control and manage data traffic more efficiently on the system
16. Voice shall take priority over data transmissions on radios transmitting both voice and data information
17. The system user shall have the option of applying for licensure to detailed radio interface information. This information shall allow the radio user to develop custom applications
18. The system shall provide a software application that allows the system administrator the ability to monitor and control the radio repeaters within the system.

19. The proposed two way radio system & radios must have the hardware, software, paid one time licensing fees, and pre-programmed so to operate on the **MOTOTRBO Linked Capacity Plus** emergency backup system with a local carrier such as Fisher Wireless, RFC or Lawnet.
20. Each repeaters shall have a three hour battery UPS system in case of a PG&E power failure
21. Deliverables
 - a. Equipment manuals
 - b. FCC license certificates indicating that FCC licenses have been updated and permitted for the new system
 - c. As Built drawings of the two way radio system in hard copy and electronic
22. The system shall provide a software application that allows the system administrator the ability to monitor and control the radio repeaters within the system. The Repeater Diagnostics and Reporting system shall provide the following capabilities:
 - a. Repeater Diagnostics
 - b. Repeater controls
 - c. Repeater Alarm reporting
 - d. The application operates over the IP network or locally via USB or GPIO connection
 - e. Repeaters Alarms – receiver lock failure, transmit lock detect, temperature, power an fan

C. Motorola MOTOTRBO Linked Capacity Plus Turnkey Conventional Capabilities

1. The system shall be a UHF multi-site, multi-channel radio network capable to supporting multiple interconnected user groups. Various entities ad work groups must be able to communicate without regard to geographic locations within the coverage area.
2. The system design must allow connection of any site in the network to any site in the network over IP (Internet Protocol) to achieve the required network connectivity between sites. The network to infrastructure should allow the system operator the flexibility of being able to configure the network in a linear, star, or mesh type of network configuration.
3. The system shall have the ability to remotely disable and enable a radio from a central location
4. The system shall be capable of supporting data communications that include GPS location services, text messaging, and a data interface for other customer specific and supplied applications including telemetry system performance management, VoIP dispatch, AVL, work-order management, and email connectivity.
5. In the event of a wide area link failure, the system shall continue to maintain its local repeater operation.

D. Equipment Type

All user radio equipment shall fully support all features and functions available for user radios in the Motorola **MOTOTRBO Linked Capacity Plus** system. The pricing for user radios shall include programming and installation services required for operation. At the appropriate time during the implementation process the IT Department will be expected to develop detailed programming personalities and talk group configurations with input and assistance from the user. User radio programming shall not be performed until PCCD IT has approved the programming

personalities and issued a written notice to proceed with radio programming. Equipment summary list is attached in Exhibit "A".

1. Portable Radios,

The proposed Motorola portable radios need to be rugged, reliable and provide the following:

- Emergency button
- 12.5 kHz analog channel bandwidth
- 12.5 kHz TDMA digital channel bandwidth
- Digital signaling
- Analog signaling
- 16 position channel selector
- External microphone and speaker connections
- Standard Li-on battery
- Full line of optional accessories
- 6 programmable buttons
- Radios are to be programmed by the vendor
- Meet IP57 submersible requirements
- Radios shall conform to applicable Portable Military Standards 810C, 810D and 810E
- Must meet or exceed 450-470 MHZ frequency range, 4 watt RF power output, 12.5 kHz channel spacing, 3% audio distortion
- Battery Chargers need to stop charging the battery when the battery has been fully charged (Motorola Impress Technology with Lithium batteries)
- Alphanumeric display radio. XPR7750
- Non-display radio. XPR330
- Mobile speaker microphones
- Ear piece
- Spare Impress standard batteries

2. Mobile Radios

Programming and installation ten (10) mobile radios in ten District vehicle. The Motorola mobile radios need to be rugged, reliable, and provide the Two Way Radio requirements mentioned above for the mobile radios to work as one system:

- Provide and install four new mobile radios. XP5550
- Visor microphone
- High power unit of 40 watts
- Four programmable buttons
- Digital talk-around
- Install a new antenna per vehicle
- Alphanumeric display and enhanced palm microphone
- Power supplies as needed for proper operation

3. Motorola Desktop Control Station Radios

The Maintenance & Operations front desk at DGS will require on control station with an included option to attach it to a TRBOVUI server. This base station will include the same requirements as the portable radios and:

- 12 volt power supply
- Yagi Antenna and ½" super flex. AC and Coaxial suppression is required
- Supply truckers (desk top) microphone for each

4. Motorola XPR8400 Repeater With UPS
Vendor will provide and install four Motorola XPR8400 repeaters and four (4) three hour UPS battery backup systems at four college sites (Berkeley City College, College of Alameda, Laney College, & Merritt College). District will approve final location based on the vendor's recommendations. UPS will provide backup power for three hours. Vendor to reuse or provide new rack equipment as needed. Proper AC and Coaxial surge suppression will be provided by vendor, and the District will provide 120 volt ac power. Base station transmitter and receiver shall conform to the minimum standards specified by TIA/EIA-603, Section 4.1 & 4.2, and the Code of Federal Regulations 47, Part 90, Subpart I.

5. Site Assembled Rack Equipment And Antenna– At Sites
It is expected that the vendor will design, prepare and assemble each system network site's equipment into a compact, industrial rated, equipment rack, and install vendor supplied antenna that is sized to match to meet the specs of the Repeaters. Proper lightning suppression is required including coaxial surge suppression and ground halo per Motorola R-56 standards. Coax must be run into building with rubber boot entry. The coaxial suppressor will be grounded.

E. Proposed Equipment Type And Quantity (see attached spread sheet in Exhibit "A")

F. College Site Addresses That Need A Districtwide Two Way Radio System Coverage

- | | |
|-----------------------------------|--|
| 1. District Administration Center | 333 E. 8 th Street, Oakland, CA |
| 2. Laney College | 900 Fallon Street, Oakland, CA |
| 3. Merritt College | 12500 Campus Drive, Oakland, CA |
| 4. Berkeley City College | 2050 Center Street, Berkeley, CA |
| 5. College of Alameda | 555 Ralph Appezzato Mem. Pky, Alameda, CA |
| 6. 860 Atlantic | 860 Atlantic Blvd, Alameda, CA |
| 7. Air School | 970 Harbor Bay Pky, Oakland, CA |

G. Bid Exclusions

1. Please list all exclusions that are not included in your bid.

H. Additive Alternates

1. Provide a unit price to extended the manufactures equipment warranty for one additional year after the manufacturer's warranty has expired
2. Please provide an annual price for a Service Maintenance Agreement for the total proposed two way radio system with details what the Service Agreement includes and excludes.
3. Please provide an annual unit price for each radio to be connected to an external San Francisco Bay Area wireless backup system in case we lose our PG&E power and/or our District network system.
4. Please provide a unit price for manufacturer's rebate per radio
5. Program and install four additional repeaters, XPR 8400 with additional rack material as needed, and four UPS three hour battery backup per repeater

I. Miscellaneous

1. Vendor must have the appropriate contractor's license to install the radio system
2. Vendor must scribe the words "Property of PCCD" on all equipment before turning it over to the system over to the District to deter theft
3. Vendor will provide a digital excel spread sheet of all equipment inventory purchased and installed with brand, model #, serial #, what department and who the equipment was assigned too, and District asset number
4. Radios need to be marked with a color that is coded for each department such as maintenance, custodial, security, grounds,)
5. Vendor needs to specify what is not included in their proposal
6. Provide a unit cost for each item that is included in the RFP – Exhibit "A"
7. The District will not be utilizing the GPS function at this time
8. The District is not planning to re-use any existing equipment
9. The District will supply switch gear/hubs and I/P address at server room locations. Contract is responsible to run wire as needed.
10. Provide installation, manuals, tech support, and operator training for the proposed Maintenance Receptionist's desktop radio station, and I Pad
11. All manufacturers rebates will be paid/reimbursed up front

J. Performance Guarantee

The successful vendor will guarantee the Motorola MOTOTRBO single District system to provide mobile coverage with a reliability within and between all PCCD facilities and locations. The vendor is responsible to provide a complete working system. Any components necessary to complete the project, not anticipated by the vendor, will be the sole responsibility of the vendor to provide at no cost to the District.

K. Warranty

Radio System shall have a minimum of a one year manufacturer's warranty, with two years warranty for all two way radio batteries.

L. Completion Date

The mobiles, control stations, and repeaters and all other related system equipment are required to be installed no later than three months after receiving a signed contract which includes lead time to order material and equipment. If more time is needed, please state so on your bid.

M. District Responsibility

To provide site drawings that are currently available, and building access

III. 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.**

Submittal Format:

Responses may not be longer than 16 pages (one sided or 8 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 envelope.

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. 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 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 outlined 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: Provide your cost on the Exhibit A Spreadsheet for completing all requirements outlined in the Scope of Services. It is important that you provide your firm costs so that PCCD can evaluate your bid. Proposals submitted without the Exhibit A Spreadsheet 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 16 page maximum for your response.)**

IV. Additional Requirements:

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.

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.

False Statements

False statements in a proposal will disqualify the proposal.

Legal Relationship

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

Taxes

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

Grade of Service

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

The Vendor's Liability

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

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.

Award Consideration

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

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 returning a signed acknowledgement of each amendment issued. Signed copies must be received on or before the time set for receipt of offers. 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.

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.

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.

Award and Length of Contract

The Board of Trustees shall not be bound to accept the lowest-quote fee. The Board will award a one-year contract. PCCD will have the option to issue a one year annual renewable contract not to exceed a total period of 5 years (at the costs quoted in this proposal).

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.

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 on the next page.

(LEFT BLANK INTENTIONALLY)

Item	Criteria	Points
1	<p><u>Project Base Bid, Rebate, Add Alternate Pricing & On Going Expenses</u> RFP proposal itemized costs, total, and rebates. Negative points for reimbursable or line item costs that are in addition to the base bid.</p>	25
2	<p><u>Company Information, Background, And Best Fit For This Project</u> Vendor's company history, systems knowledge, level of expertise, capacity, local customer base, level of professionalism, external partnerships, quality control What is the company's relationship and certification with equipment manufacturer, and warranty program. What is the companies experience providing two way radio systems to School Districts? Does your firm have Environmentally and Sustainability best practices? How is the vendor certified by Motorola for installation and support services and repairs?</p>	20
3	<p><u>Deliverability</u> What is the contractor's track record for being organized, and ability to complete projects on time with minimal rework? What is the proposed turnaround time to receive equipment, set up, and complete the project compared to other proposals.</p>	15
4	<p><u>Company References & Recommendations</u> Review recent two way radio projects, size, complexity, the company & project references with contact information, and letter of recommendations. Have the any projects for educational institutions?</p>	15
5	<p><u>Key Personnel</u> What personnel will be available to work on this project from design, design review, installation, training, and project coordination? What are each employee's experience, knowledge, and availability to work on this project?</p>	10
6	<p><u>Warranty And On Going Support Services</u> What warranty is being offered, and how can the vendor provide good customer support services after the system has been installed, and after the warranty has expired. What is the vendor's projected ongoing cost for system upgrades, and radio repairs.</p>	5
5	<p><u>SLBE</u> Does your company meet the District definition of an SLBE or SELBE?</p>	5
	Total	100



Peralta Community College District

VENDOR'S QUESTIONNAIRE AND CERTIFICATE BY COMPLIANCE

The following information is requested for information purposes only. It will not be used in determining bid award.

Date _____

Firm Name _____ Telephone _____

Business Fax _____ Email Address _____ Website _____

Street Address _____ City/State _____ Zip Code+ 4® _____

Mailing Address _____ City/State _____ Zip Code + 4® _____

Type of Organization (Check one) Individual Partnership Corporation

Name of Owner(s) _____ State of Incorporation (if applicable) _____

Name of Partners _____ (I) Indicate (G) General (L) Limited _____

Local Address _____

Amount of Annual Business _____

The District is identifying vendor ownership as follows:

	Asian-American (Chinese, Japanese, Korean, Vietnamese)	Black or African- American	Filipino	Latino (other than Mexican or Mexican- American)	Mexican or Mexican- American	Native – American	Pacific Islander, other Asian	White	Disabled	Veteran	Women	Subcontractor	Employee	Apprentice
Total #														
% of assets														

The District is identifying vendor workforce as follows:

	Asian- American (Chinese, Japanese, Korean, Vietnamese)	Black or African- American	Filipino	Latino (other than Mexican or Mexican- American)	Mexican or Mexican- American	Native – American	Pacific Islander, other Asian	White	Disabled	Veteran	Women	Subcontractor	Employee	Apprentice
Total #														
% of assets														

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.

--

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).

--

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

Total # of Employees _____

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

Total # of Employees _____

Name and list residential zip code for each employee, subcontractor, or apprentice for awarded contract (Please use the Zip+4®) Use separate sheet as necessary	1. 2. 3. 4. 5. 6.
--	----------------------------------



Peralta Community College District

RFP: 14-15/37 District Wide Two-Way Radio System

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

**RFP: 14-15/37 District Wide Two-Way Radio System
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 over 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

**RFP: 14-15/37 District Wide Two-Way Radio System
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

Name of Company Telephone Fax



Peralta Community College District

**RFP: 14-15/37 District Wide Two-Way Radio System
NON-COLLUSION AFFIDAVIT**

(To be executed by Vendor/ Bidder and submitted with Bid/Proposal)

State of California)
) ss
County of _____)

_____, being first duly sworn, deposes and says that he or she is _____ of _____ 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 _____

State of _____
County of _____

On _____ before me, _____, personally appeared _____

personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public



Peralta Community College District

RFP: 14-15/37 District Wide Two-Way Radio System

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. The District recognizes that environmentally responsible purchasing will help create and sustain markets for environmentally sustainable products, and is committed to encouraging the procurement of environmentally sustainable products, such as products with high recycled content, remanufactured products, FSC certified lumber, Energy Star rated equipment, low and no VOC paints, low-toxicity cleaning supplies and Green Seal approved chemicals, locally sourced organic/sustainably grown foods, compostable utensils, non-polystyrene food containers, non-petroleum based inks, and will promote contracting with businesses in close proximity, to reduce our carbon footprint and to promote the District's SLBE program.

The District's formal Environmental Sustainability Policy 2.40 is available for download at: http://www.peralta.edu/projects/4/Purchasing%20Procedures/BP_2_40_Environmental_Sustainability_Policy_FINAL_3-31-08.pdf.

Vendor Statement and Signature

The long-term goal of the District is to purchase products with zero waste, high recycled content, produced and delivered in an environmentally sustainable manner. Does your product or service promote the District's Environmentally Sustainable Procurement goal?

_____Yes* _____No

***If yes, you are required to describe how your product or service that you are providing to the District will promote the District's Environmentally Sustainable Procurement goal.**

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

Contractor Name: _____ Title: _____

Authorized 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 tortuous 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 contractor's 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** Not Applicable

(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 8th 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

BID FORM (PAGE 1 OF 2)

Bid No.: 14-15/37 Two Way Radio System

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 for Bid, the General Conditions and Instructions to Bidders, the Scope of Work/Product Specifications, and all of the contract documents for this project, and proposes to perform the contract, including all of its component parts, and to furnish any and all required labor, materials, equipment, insurance, bonding, transportation and services required for the installation of the project or delivery of Goods and Services, in strict conformity with manufacturers & District's plans and specifications, including any Addenda, within the time specified for the lump sum price of (including all taxes which will be lined itemed on all invoices):

Total Bid Price

The price quoted is the total price including all labor, travel time, design, design review, drawings, programing, pre-construction meetings, training, taxes, equipment, delivery, installation, connections, placement, assembly, disposal of old equipment & packaging material, and equipment manuals for a Districtwide Two Way Radio Motorola System or District approved equal. Completion date by June 30, 2015 or sooner.

This Total Bid Price is composed of the sum of all the Bid Elements from the scope of work. Please make sure the TOTAL on the Bid elements adds up to the Total Base Bid Price indicated below.

Total lump sum base bid price of	\$ _____ (Numeric amount)
_____ (Written amount)	
Written amount prevails if any discrepancy exists.	

Add Alternate Bid Pricing:

1. Extend the manufacturer's system warranty for one year \$ _____
2. Annual total system Service Maintenance Agreement \$ _____
3. Annual unit price per radio for wireless backup connection \$ _____ each
4. Unit radio price for manufacturer's rebate with upfront reimbursed \$ _____ each
5. Four additional repeaters, and four UPS batteries \$ _____

BID FORM (PAGE 2 OF 2)

Bid No.: 14-15/37 Two Way Radio System

Agreement Terms

1. If awarded the contract, the undersigned hereby agrees to sign a contract with Peralta Community College District, and furnish the necessary Certificates of Insurance within 10 calendar days after the Notice of the Award of this contract and agrees to commence service or provides goods within 120 calendar days after the Notice to Proceed is issued by the District.
2. The undersigned has checked carefully all the above figures and understands that the District will not be responsible for any errors or omissions on the part of the undersigned in making up this bid for a Districtwide Two Way Radio System
3. Peralta Community College District reserves the right to reject any or all bids, to waive any irregularities or informalities not affected by law, to evaluate the bids submitted and to award the contract according to the proposal based on best value for the District.
4. The undersigned Bidder understands that the Peralta Community College District reserves the right to reject this Bid.

Addendum Acknowledgement

The following addendum(s) are acknowledged in this bid:

Bidder Information and Signature

Vendor Name: _____ Title: _____

Contact Person: _____

Address: _____

Telephone: _____ Email: _____

Contractor License #: _____ Expiration Date: _____

DIR Registration #: _____ Federal Tax Identification #: _____

Authorized Signature: _____ Date: _____

PERALTA COMMUNITY COLLEGE DISTRICT

CONTRACT FOR PURCHASE OF GOODS AND SERVICES

<u>ARTICLE 1</u>	<u>PREFACE</u>
1.1	Effective Date and Parties
1.2	Documents Incorporated
1.3	Recitals
<u>ARTICLE 2</u>	<u>WORK</u>
2.1	Work
2.2	Standard of Performance
2.3	Subcontractors
2.4	Ownership of Work Product
<u>ARTICLE 3</u>	<u>PAYMENT</u>
3.1	Schedule of Payments
3.2	Payment Not Acceptance
3.3	Payments Withheld
3.4	No Obligation to Make Payment
3.5	Taxes
3.6	Most Favored Customer
<u>ARTICLE 4</u>	<u>DELIVERY OF GOODS</u>
4.1	Method of Delivery
4.2	Delivery Complete
4.3	Passage of Title
4.4	Risk of Loss
4.5	Removal of Rejected Goods
<u>ARTICLE 5</u>	<u>DELAYS</u>
5.1	Excusable Delays (Force Majeure)
5.2	Non-Excusable Delays
5.3	Compensation in the Event of Delay
<u>ARTICLE 6</u>	<u>LIQUIDATED DAMAGES</u>
6.1	Liquidated Damages for Delay in the Delivery of the Work
6.2	Liquidated Damages for Failure to Meet Performance Guarantees
6.3	Damages in the Event of an Uncured Breach of Warranty
<u>ARTICLE 7</u>	<u>WARRANTIES / OPPORTUNITY TO CURE</u>
7.1	Warranties
7.2	Incorporation of Products or Materials of Third Parties
7.3	Due Performance
7.4	Breach of Warranties
7.5	Opportunity to Cure
7.6	District May Repair
7.7	Quality Assurance/Quality Control
<u>ARTICLE 8</u>	<u>INSURANCE</u>
8.1	Insurance Requirement
8.2	Workers' Compensation
8.3	Certificates
8.4	Coverage for INDEMNIFIED PARTIES
<u>ARTICLE 9</u>	<u>INDEMNITY</u>
9.1	Indemnification of the DISTRICT
9.2	Continuing Performance
<u>ARTICLE 10</u>	<u>COMPLIANCE WITH LAWS</u>
10.1	Compliance with Laws
10.2	Hazardous Substances
10.3	Technology Accessibility
10.4	Equal Opportunity in Contracting
10.5	Non-Discrimination
10.6	Posting

10.7	Sexual Harassment
10.8	Drug-free Workplace
10.9	N.L.R.B. Certification
10.10	DISTRICT Conflicts of Interest
10.11	VENDOR Conflicts of Interest
10.12	Fraud or Misappropriation
10.13	Disclosure of Legal Matters
<u>ARTICLE 11 CONFIDENTIALITY</u>	
11.1	Duty to Keep Information Confidential
11.2	Third Party INFORMATION
11.3	Breach of Confidentiality
11.4	Return of Information
11.5	Duration of Obligation
<u>ARTICLE 12 FINANCIAL STATUS, RECORDS, AND NOTICE</u>	
12.1	Financial Solvency
12.2	Financial Misrepresentation in Response to Request for Proposal
12.3	Accounting Records and Auditing
12.4	Hazardous Materials Records
12.5	Return Documents
12.6	Evaluation
12.7	Notice
<u>ARTICLE 13 MODIFICATION OF AGREEMENT</u>	
13.1	Authorized Agents
13.2	Modifications
13.3	Change Order Requests
13.4	Change Order Record Keeping
13.5	Renewal
13.6	Provision of Report
13.7	Assignment
<u>ARTICLE 14 TERMINATION</u>	
14.1	Termination for Cause
14.2	Payment Obligations
14.3	Suspension of Performance
14.4	Termination for Convenience
14.5	Termination for Illegality
<u>ARTICLE 15 DISPUTE RESOLUTION</u>	
15.1	Mediation
15.2	Arbitrations
15.3	Tort Claims Act
15.4	Forum Selection
15.5	Cumulative Remedies
15.6	No Special Damages
15.7	Reserve Right to Offset
15.8	Statutes of Limitation
15.9	Course of Dispute
<u>ARTICLE 16 INTERPRETATION</u>	
16.1	Integration
16.2	Defined Terms
16.3	Governing Law
16.4	Severability
16.5	Titles of Provisions
16.6	No Third-Party Beneficiaries
16.7	Time Is of the Essence
16.8	VENDOR Is Independent of DISTRICT
16.9	Sovereign Immunity Reserved
16.10	No Waiver of Performance
16.11	Independent Contractor Contract
<u>ARTICLE 17 EXECUTED</u>	
17.1	Authority
17.2	Executed

INDEX OF DEFINITIONS

EXHIBIT A	SCOPE OF SERVICES / DELIVERABLES
EXHIBIT B	PRICING AND PAYMENT SCHEDULE
EXHIBIT C	FIRM PROFILE
EXHIBIT D	REQUEST FOR PROPOSAL (R.F.P.)
EXHIBIT E	RESPONSE TO REQUEST FOR PROPOSAL (R.F.P.)
EXHIBIT F	LIQUIDATED DAMAGES RATES AND CAPS
EXHIBIT G	REQUIRED INSURANCE COVERAGE FROM VENDOR
EXHIBIT H	AUTHORIZED AGENTS
EXHIBIT I	NOTICE CONTACTS
EXHIBIT J	INDEPENDENT CONTRACTOR / CONSULTANT SERVICES CONTRACT

ARTICLE 1 PREFACE

1.1 **EFFECTIVE DATE and PARTIES.** This is an agreement (“AGREEMENT”) dated as of _____, 20__ (“EFFECTIVE DATE”), remaining effective until _____, 20__ (“AGREEMENT PERIOD”), between Peralta Community College District (“DISTRICT”) located at 333 E. 8th Street, Oakland, CA 94606 and _____, including its officers, employees, consultants, subcontractors, and agents (“VENDOR”), a California corporation, 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: Firm Profile.
- (d) Exhibit D: Request for Proposal (R.F.P.).
- (e) Exhibit E: Response to Request for Proposal (R.F.P.).
- (f) Exhibit F: Liquidated Damages Rates and Caps.
- (g) Exhibit G: Required Insurance Coverage from Vendor.
- (h) Exhibit H: Authorized Agents.
- (i) Exhibit I: Notice Contacts.
- (j) Exhibit J: Independent Contractor/Consultant Services Contract.

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, [provide brief history that led to contract]]

Whereas [state the DISTRICT’S/College’s mission and purpose]

Whereas [state the goods or services that vendor is in the business of providing]

Whereas [demonstrate that there has been a meeting of the minds between VENDOR and DISTRICT as to the terms of their contract]

Whereas [VENDOR wishes to enter into a contract with DISTRICT in which VENDOR will furnish _____ item(s) to be delivered as set forth in this contract for the total payment of _____.]

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

ARTICLE 2 WORK

2.1 WORK. VENDOR shall furnish those goods ("GOODS") and services ("SERVICES") as specified in Exhibit A Scope of Services/Deliverables (collectively, "WORK").

2.2 Standard of Performance. VENDOR represents that it is qualified to perform the WORK and that it possesses and will continue to possess, at its sole cost and expense, all licenses, registrations, permits, and personnel necessary to provide the work. VENDOR also represents that it has extensive knowledge of, and will comply with, all applicable building codes, laws, regulations, and ordinances.

2.3 Subcontractors. VENDOR may enter into subcontracts under this AGREEMENT, provided that advance NOTICE is provided to the DISTRICT (as described in the following sentence), that said subcontractor has the appropriate qualifications to perform the subcontracted work and that VENDOR has obtained the subcontractor's agreement to be bound to the same duties and obligations of VENDOR hereunder. For each subcontractor, VENDOR shall provide NOTICE to the DISTRICT of its intent to subcontract some portion of the goods or services to provided hereunder, which NOTICE shall specify the goods or services to be subcontracted, the term of said subcontract and a representation by the VENDOR that said subcontractor will provide the goods and services in the manner set forth in this AGREEMENT, that said subcontractor acknowledges and agrees that the subcontracted work will be the exclusive property of VENDOR (consistent with Section 2.4 below), and that VENDOR will direct and supervise the subcontractor's performance. The DISTRICT may disapprove of any subcontract at any time. Neither the DISTRICT's approval nor failure to disapprove of any subcontractor nor anything in the subcontractor's agreement between the VENDOR and the subcontractor shall create any contractual relationship between the DISTRICT and any subcontractor. VENDOR agrees to be fully responsible to the DISTRICT for the subcontracted work and to indemnify the DISTRICT from any acts or omissions of any of its subcontractors and any persons or agents related thereto and for any claims by subcontractor against the DISTRICT arising from the subcontractor agreement or the subcontracted work. VENDOR's obligation to pay its subcontractors is an independent obligation separate from the DISTRICT's obligation to pay VENDOR. The DISTRICT shall have no obligation to pay or secure payment of any moneys payable to any subcontractor.

2.4 Ownership of Work Product. The WORK (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, VENDOR, including any of subcontractors, hereby assigns to the DISTRICT as its sole and exclusive property all VENDOR and subcontractor's right, title and interest in any part, or all of the Work Product and all proprietary rights related thereto, whether or not patentable or protectable under copyright, trademark or other similar statutes. VENDOR 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, VENDOR (and any of its subcontractors) shall return all copies or versions of the Work Product that VENDOR or any subcontractor may at that time possess. VENDOR (and its subcontractors) 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 VENDOR according to the schedule of payments attached as Exhibit B Pricing and Payment Schedule. VENDOR 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 VENDOR shall be construed as an acceptance or approval of any of the WORK or constitute a waiver of any claim or right that DISTRICT may then or thereafter have against VENDOR. 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) VENDOR'S failure to supply the WORK in accordance with the AGREEMENT;

- (b) third-party claims, suits, or liens arising out of or relating to VENDOR'S supply of the WORK, except to the extent secured or provided for by insurance, bond, or otherwise to DISTRICT'S reasonable satisfaction; or
- (c) VENDOR'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 VENDOR at any time, after NOTICE to VENDOR when:

- (a) VENDOR is in material breach of the AGREEMENT; or
- (b) VENDOR fails to furnish and maintain evidence of current insurance in accordance with the requirements of the AGREEMENT.

3.5 Taxes. VENDOR 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, VENDOR agrees to furnish DISTRICT with proof of payment of taxes on those earnings. VENDOR 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. VENDOR certifies that the pricing detailed in Exhibit B is comparable to or more favorable to DISTRICT than that offered to VENDOR'S other customers for similar WORK in similar volumes within the period of this AGREEMENT PERIOD. If VENDOR subsequently extends more favorable pricing to another customer, VENDOR 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 VENDOR and the other customer. Such pricing difference shall be credited to the DISTRICT.

ARTICLE 4 DELIVERY OF GOODS

4.1 Method of Delivery. VENDOR shall, at VENDOR'S expense, arrange for shipment, delivery, and unloading of all GOODS to the delivery point, and per the timetable, set forth in Exhibit A.

4.2 Delivery Complete. Delivery shall be deemed substantially complete when all of the GOODS have been delivered to the delivery point, as evidenced by a bill of lading signed by the carrier, provided such GOODS conform to the requirements of the AGREEMENT as set forth in Exhibit A.

4.3 Passage of Title. Title to the GOODS, and any portion thereof, shall pass to DISTRICT at the time of final payment or delivery to the delivery point, whichever is earlier. At any time after transfer of title to DISTRICT, VENDOR shall, upon the written request of DISTRICT, execute and deliver to DISTRICT a bill of sale and such other good and sufficient instruments of conveyance, assignment, and transfer, which shall be effective to vest in DISTRICT good and marketable title to the GOODS, free and clear of all liens, claims, security interests, encumbrances, or other defects of title.

4.4 Risk of Loss. Irrespective of the passage of title, VENDOR shall bear the risk of loss and shall repair or replace, at VENDOR'S cost, any portion of the GOODS which is lost, damaged, or destroyed prior to delivery to the delivery point, irrespective of how such loss or damage shall have occurred, except to the extent it was due to the gross negligence or intentional misconduct of DISTRICT. Upon delivery of the WORK to the delivery point, risk of loss shall pass to DISTRICT, and DISTRICT thereafter shall be responsible for loss or damage to the WORK, except to the extent it was due to the fault of VENDOR.

4.5 Removal of Rejected Goods. In the event any GOODS furnished by VENDOR in the performance of the AGREEMENT should fail to conform to the requirements herein, DISTRICT may reject the same, and it shall become the duty of VENDOR to reclaim and remove the GOODS promptly, at no cost to DISTRICT.

ARTICLE 5 DELAYS

5.1 Excusable Delays (Force Majeure). VENDOR is entitled to a reasonable extension of the delivery date for the WORK 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 VENDOR'S ability to provide the WORK on the schedule delivery date; and 4) was not the result an act or omission by VENDOR (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 VENDOR), natural disasters, labor strikes, or government action. In the event of an EXCUSABLE DELAY

EVENT, VENDOR 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 VENDOR becomes aware of such event. VENDOR shall then be entitled to a day for day extension corresponding to the number of days of delay demonstrated by VENDOR 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 the WORK.

5.2 Non-Excusable Delays. If a delay does not meet the definition of an Excusable Delay Event (a “NON-EXCUSABLE DELAY”), then VENDOR shall not, without the DISTRICT’s prior written consent (which may be withheld), be entitled to an extension of the delivery date for the WORK then due. If the VENDOR 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 VENDOR 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 VENDOR or by submission by the DISTRICT of an invoice indicating the amount of the damages.

5.3 Compensation in the Event of Delay. Regardless of whether the VENDOR obtains the DISTRICT’s consent to a NON-EXCUSABLE 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 VENDOR 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 WORK for any reason, the DISTRICT shall be entitled to suspend any payment obligations related to such WORK until such time as the delivery of the WORK to, and acceptance by, the DISTRICT.

ARTICLE 6 LIQUIDATED DAMAGES

6.1 Liquidated Damages for Delay in the Delivery of the WORK. The VENDOR acknowledges that if VENDOR fails to deliver the WORK pursuant to that timetable set forth in Exhibit A, damages will be sustained by DISTRICT. The VENDOR and the DISTRICT each agree that it would be impracticable to ascertain and determine the actual damage that DISTRICT would sustain by reason of such a delay. Therefore, notwithstanding that the DISTRICT may consent to an extension of the delivery date due to a Non-excused Delay, in the event that VENDOR fails to meet a delivery date for any reason other than an Excusable Delay Event (provided that the DISTRICT consents to the new delivery date resulting therefrom), the VENDOR will be required to pay liquidated damages (which shall not be considered or construed as a penalty) in the dollar amounts set forth in Exhibit F – Liquidated Damages for Delay. Said damages shall be paid, at the DISTRICT’s choosing, by either an offset against the amount due by the DISTRICT to the VENDOR or by submission by the DISTRICT of an invoice indicating the duration of the delay and the corresponding amount of liquidated damages.

6.2 Liquidated Damages for Failure to Meet Performance Guarantees. If the WORK fails to meet the performance guarantees specified in Exhibit A, damages will be sustained by DISTRICT. If in the DISTRICT’s sole opinion, it is impracticable to ascertain and determine the actual damage the DISTRICT sustained as a result of an uncured breach, then the Parties agree that VENDOR shall pay to the DISTRICT the liquidated damages set forth in Exhibit F – Liquidated Damages in the Event of an Uncured Breach of Warranty (which damages are not and should not be construed as a penalty), in which case the DISTRICT’s invoice will reflect these amounts.

6.3 Damages in the Event of an Uncured Breach of Warranty. In the event of an uncured breach of warranty, the DISTRICT is entitled to reimbursement by VENDOR of all of the DISTRICT’s costs, expenses and damages incurred as a result of such breach of warranty, which reimbursement may be by way of offset against payments owed by the DISTRICT to the VENDOR or by direct payment by the VENDOR to the DISTRICT of an invoice submitted by VENDOR setting out the damages incurred.

ARTICLE 7 WARRANTIES / OPPORTUNITY TO CURE

7.1 Warranties. For a period ending five (5) years from the expiration or termination of this AGREEMENT (the “WARRANTY PERIOD”), VENDOR represents and warrants that:

- (a) the WORK shall be in compliance with all laws, standards, and codes;
- (b) the WORK shall be in accordance with all applicable manufacturer’s requirements;

- (c) the WORK shall be in accordance with the provisions of the AGREEMENT, including but not limited to the specifications set forth in Exhibit A;
- (d) the WORK shall be in new, unused, and undamaged condition when delivered, free of defects in design, materials, and workmanship;
- (e) the VENDOR shall have, where applicable, all of the required statutory engineering certifications and all other licenses that are proper in the jurisdictions where design or engineering work is accomplished, and all other necessary licenses, permits, and other documentation and permissions necessary for VENDOR to provide the WORK under this AGREEMENT in full compliance with all applicable laws;
- (f) all of the WORK shall be done in a professional and workmanlike manner;
- (g) all WORK will be original, and if not, VENDOR will obtain all necessary third party consents and releases necessary to give DISTRICT unrestricted rights in such WORK, and that any agreement VENDOR enters into with third parties shall provide that the WORK is the sole property of DISTRICT and that DISTRICT shall have the unrestricted right to use the WORK in the manner in which, and so long as, it desires.
- (h) it will employ its best efforts to refrain from engaging in any conduct that will impair the reputation of DISTRICT; and
- (i) that the completed WORK, and each deliverable related thereto, shall operate and perform as specified in the AGREEMENT, will meet the performance guarantees specified in Exhibit A and shall be, and remain, free of any weakness, deficiency, defect, failure, break down, or deterioration.

7.2 Incorporation of Products or Materials of Third Parties. To the extent that VENDOR incorporates the goods of a 3rd party into the WORK, it shall exercise reasonable efforts to obtain warranties in the name of the DISTRICT against defects in design, materials, and workmanship from every such manufacturer or supplier. All such manufacturer or supplier warranty provisions shall be submitted to DISTRICT with all other compliance submittals. The existence and terms of such manufacturers' and suppliers' warranties shall in no way limit VENDOR'S warranties for the WORK as provided in this AGREEMENT, which the PARTIES recognize to be independent from any manufacturer and supplier warranty, and on which DISTRICT fully relies. At the request of DISTRICT during the AGREEMENT PERIOD, VENDOR shall cooperate with the DISTRICT in establishing working relationships between DISTRICT and the manufacturers and suppliers who furnished material for the WORK. VENDOR shall be responsible for the enforcement of all manufacturer and supplier warranties on the DISTRICT's behalf during the WARRANTY PERIOD.

7.3 Due Performance. If events arise that cause the DISTRICT to reasonably question VENDOR'S performance or VENDOR'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 WORK to be provided/performed hereunder.

7.4 Breach of Warranties. Breach of any warranty by VENDOR or a failure by it to provide satisfactory assurances of its ability to perform hereunder constitutes a material breach of this AGREEMENT.

7.5 Opportunity to Cure. In the event that a breach occurs, the VENDOR shall have { } working days (the "CURE PERIOD") to repair, redesign, or otherwise remedy the breach, after its receipt of NOTICE from the DISTRICT of said breach or VENDOR's discovery of the breach, whichever date is first. The DISTRICT in its sole discretion may agree to a longer cure period or determine, in its reasonable judgment, that redesign, repair, or replacement must be accomplished in fewer days than the CURE PERIOD allows, including, but not limited to, cases where delay could result in serious loss or damage to persons or property. The VENDOR shall be solely responsible for the costs it incurs in its efforts to cure any breach.

7.6 DISTRICT May Repair. The DISTRICT may, at its option, undertake to redesign, repair, or replace the defective WORK itself, when: (a) the VENDOR fails to cure the breach within the agreed cure period, (b) the VENDOR fails to give the DISTRICT adequate assurances that the breach will be cured within the agreed cure period, or (c) the DISTRICT determines, in its reasonable judgment, that redesign, repair, or replacement must be accomplished immediately and that VENDOR will not be able to satisfactorily do so. The DISTRICT shall be entitled to an offset of the costs it incurs to cure a breach of warranty by the VENDOR against its payment obligations to VENDOR, or at the DISTRICT's sole discretion to invoice, and seek reimbursement from, the VENDOR for the costs the DISTRICT incurs in its efforts to cure. For each day of the cure period, DISTRICT may recover the liquidated damages associated with delay set forth in Article 6.1.

7.7 Quality Assurance/Quality Control. During the VENDOR's process of manufacturing, assembling, developing and providing the WORK, VENDOR shall conduct a continuous program of quality inspection, assurance and quality control. The objective of this quality program shall be to prevent defects or deficiencies before they occur and, if they nonetheless occur, to ensure their prompt identification, reporting, and correction.

ARTICLE 8 INSURANCE

8.1 Insurance Requirement. VENDOR shall provide and maintain insurance with coverages and limits of liability not less than those specified in Exhibit G Required Insurance Coverage from Vendor. 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. VENDOR 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 VENDOR will promptly reimburse any cost to DISTRICT.

8.2 Workers' Compensation. VENDOR 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. VENDOR further certifies that it does and will comply with such provisions before commencing performance of the AGREEMENT and for the duration of the AGREEMENT.

8.3 Certificates. Prior to commencing performance under the AGREEMENT, VENDOR shall furnish DISTRICT standard insurance certificates executed by an authorized representative of VENDOR'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 VENDOR does not release or diminish in any manner the liability or obligations of VENDOR or constitute a waiver of any of the insurance requirements under the AGREEMENT. Replacement certificates of insurance evidencing continuation of VENDOR'S coverage shall be furnished to DISTRICT prior to the expiration of the current policies.

8.4 Coverage for INDEMNIFIED PARTIES. Each VENDOR 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 WORK and shall include a cross-liability and severability of interests clause. Each VENDOR 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 9 INDEMNITY

9.1 Indemnification of the DISTRICT. VENDOR shall indemnify, defend and hold harmless DISTRICT, its 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 WORK, VENDOR's performance of services or provision of goods under this AGREEMENT, or any other act or omission of the VENDOR, including, but not limited to:

(a) claims by VENDOR's officers, agents or employees arising from or relating to their employment or contractual relationship with VENDOR, 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 WORK;

(c) claims arising out a failure by VENDOR or its officers, agents, or employees to comply with the laws and policies set forth in Article 11;

(d) acts or omissions of VENDOR's subcontractors as provided in Section 2.3; and

(e) claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the VENDOR.

This indemnification obligation shall survive the termination or expiration of this AGREEMENT.

9.2 Continuing Performance. If any 3rd party claim materially impairs performance of the WORK, then VENDOR, 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 VENDOR 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 VENDOR'S sole expense, but subject to all the requirements of the AGREEMENT.

ARTICLE 10 COMPLIANCE WITH LAWS

10.1 Compliance with Laws. VENDOR shall fully comply with all laws, executive orders, regulations, DISTRICT Board Policies, and other legal requirements applicable to VENDOR and to the WORK. Failure to comply with this Article shall constitute a material breach of the AGREEMENT. (Board Policies can be found on the DISTRICT website.)

10.2 Hazardous Substances. VENDOR 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.

10.3 Technology Accessibility. VENDOR hereby warrants that the WORK 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. VENDOR agrees to promptly respond to and resolve any complaint regarding accessibility of the WORK which is brought to its attention.

10.4 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. VENDOR 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 subcontractor 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.

10.5 Non-Discrimination. VENDOR 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. VENDOR 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. VENDOR will, in all solicitations or advertisements for employees, placed by or on behalf of VENDOR, state that all qualified applicants will receive consideration for employment without regard to the aforementioned protected personal characteristics. VENDOR certifies that it does not and will not maintain segregated facilities.

10.6 Posting. VENDOR 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. VENDOR will send each labor union or representative of workers with which VENDOR has a

collective bargaining agreement or other contract or understanding a notice, to be provided by the contracting officer, advising of VENDOR'S commitments under Executive Order 11246.

10.7 Sexual Harassment. VENDOR 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 WORK pending the results of a sexual harassment investigation.

10.8 Drug-free Workplace. VENDOR certifies that VENDOR 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 VENDOR'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) VENDOR'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 VENDOR'S drug-free policy statement and agree to abide by the terms of VENDOR'S statement as a condition of employment on the AGREEMENT.

10.9 N.L.R.B. Certification. VENDOR 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 VENDOR within the immediately preceding two-year period because of VENDOR'S failure to comply with an order of the National Labor Relations Board.

10.10 DISTRICT Conflicts of Interest. VENDOR 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. VENDOR 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 VENDOR 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 VENDOR subsequently becomes aware of any such facts, VENDOR 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.

10.11 VENDOR Conflicts of Interest. VENDOR 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 WORK required by the AGREEMENT. VENDOR 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 VENDOR subsequently becomes aware of any such conflicts of interest, VENDOR 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.

10.12 Fraud or Misappropriation. VENDOR certifies that none of its officers has been convicted of fraud or misappropriation of funds.

10.13 Disclosure of Legal Matters. VENDOR 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 VENDOR, 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 VENDOR is a defendant;
- (e) administrative agreements; and

- (f) past contracts terminated for cause.

ARTICLE 11 CONFIDENTIALITY

11.1 Duty to Keep Information Confidential. The DISTRICT shall furnish to VENDOR such information, proprietary data, access to the DISTRICT's personnel, equipment, and materials as may be reasonably necessary and appropriate for VENDOR to provide the WORK, 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 VENDOR providing the WORK, VENDOR 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 VENDOR 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 VENDOR'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 WORK under this AGREEMENT.

(b) During the time that this AGREEMENT remains in effect and at all times thereafter, VENDOR 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, VENDOR 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 VENDOR's possession or under VENDOR'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 VENDOR shall not apply to any INFORMATION that (a) is a matter of public knowledge (from a source or sources other than VENDOR), (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 VENDOR shall, prior to making any such required disclosure, notify the DISTRICT in sufficient time to permit the DISTRICT to seek an appropriate protective order.

11.2. Third Party INFORMATION. VENDOR 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, VENDOR will hold all Third Party INFORMATION in the strictest confidence and will not disclose or use it, except as required by the WORK for the DISTRICT or expressly authorized in writing by an authorized officer of the DISTRICT. VENDOR represents that performance of this AGREEMENT shall not, does not, and will not breach any other agreement to which VENDOR prior to the commencement of this AGREEMENT. VENDOR further represents that VENDOR has not entered into, and agrees not to enter into, any agreement, either oral or written, in conflict herewith.

11.3 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.

11.4. Return of Information. Upon termination of this AGREEMENT or upon request by the DISTRICT, VENDOR 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 VENDOR or another party. VENDOR 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.

11.5 Duration of Obligation. The obligations of the PARTIES pursuant to this article shall extend indefinitely beyond the AGREEMENT PERIOD.

ARTICLE 12 FINANCIAL STATUS, RECORDS, AND NOTICE

12.1 Financial Solvency. By signing the AGREEMENT, VENDOR affirms financial stability and continued solvency. At the request of DISTRICT, VENDOR will provide written evidence of its financial stability and solvency.

12.2 Financial Misrepresentation in Response to Request for Proposal. VENDOR certifies that VENDOR'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.

12.3 Accounting Records and Auditing. VENDOR 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, VENDOR 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:
delivery of the WORK;
termination of the AGREEMENT; or
resolution of any pending issues between DISTRICT and VENDOR with respect to the AGREEMENT.

VENDOR 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.

12.4 Hazardous Materials Records. VENDOR shall maintain all records pertaining to hazardous materials for at least thirty (30) years.

12.5 Return Documents. If VENDOR 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.

12.6 Evaluation. In accordance with procedures established by DISTRICT, VENDOR'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.

12.7 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 13 MODIFICATION OF AGREEMENT

13.1 AUTHORIZED AGENTS. Each PARTY shall specify at least one agent with authority to modify the AGREEMENT (“AUTHORIZED AGENT”) in Exhibit H Authorized Agents.

13.2 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 WORK (“CHANGES”). Failure of VENDOR 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 VENDOR thereafter shall be entitled to no compensation or reimbursements whatsoever for the performance of such CHANGES.

13.3 Change Order Requests. No later than twenty (20) calendar days after VENDOR provides NOTICE of a request for a change order, VENDOR 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 VENDOR 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.

13.4 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. VENDOR shall keep and present, in such form as DISTRICT may prescribe, an itemized accounting of such costs and savings with appropriate supporting documentation.

13.5 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.

13.6 Provision of Reports. Notwithstanding any other provision in the AGREEMENT, VENDOR shall deliver any report requested by DISTRICT during the AGREEMENT PERIOD that VENDOR agrees, either orally or in writing, to provide. Failure by VENDOR to submit the report within the time frame agreed upon by both PARTIES will be considered a breach of the AGREEMENT. VENDOR shall provide DISTRICT with status reports, at no cost to DISTRICT, upon NOTICE of a request by DISTRICT.

13.7 Assignment. VENDOR 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 VENDOR which shall not be unreasonably withheld, provided that at any time after VENDOR has been paid in full for work then provided, DISTRICT may, without the consent of VENDOR, assign the AGREEMENT to an affiliate or a contractor of DISTRICT upon NOTICE to VENDOR.

ARTICLE 14 TERMINATION

14.1 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 VENDOR commit a material breach. If DISTRICT elects to terminate the AGREEMENT for cause, DISTRICT shall provide NOTICE to VENDOR of its breach and of the extent to which performance shall be terminated. VENDOR shall immediately upon receipt of said NOTICE cease performance per the terms of the NOTICE and mitigate damages.

14.2 Payment Obligations. If DISTRICT terminates for cause VENDOR'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, VENDOR 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 VENDOR the amount of such difference within thirty (30) calendar days following determination of the cost to complete.

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

14.3 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. VENDOR 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 WORK shall be treated as an EXCUSABLE DELAY EVENT.

14.4 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. VENDOR 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, VENDOR shall be entitled to be paid for WORK satisfactorily performed to the termination date and for reasonable costs associated with the termination, but may recover no other cost, damage, or expense.

14.5 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, VENDOR shall immediately cease performance of such activity and mitigate damages. VENDOR shall be entitled to be paid for WORK 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 15 DISPUTE RESOLUTION

15.1 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 15.2, below.

15.2 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 15.1, 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.

15.3 Tort Claims Act. No provision of the AGREEMENT shall alter the requirements of the Tort Claims Act, California Government Code Section 810 et seq.

15.4 Forum Selection. The exclusive venue for all litigation arising from or relating to the AGREEMENT shall be in Alameda County, California.

15.5 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.

15.6 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.

15.7 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 VENDOR.

15.8 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.

15.9 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 VENDOR to discontinue the WORK during the course of any dispute, and VENDOR'S failure to continue the WORK during any and all disputes shall be considered a material breach of the AGREEMENT.

ARTICLE 16 INTERPRETATION

16.1 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 hereby. 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.

16.2 Defined Terms. Each term that is defined in the AGREEMENT shall have the same meaning throughout the AGREEMENT.

16.3 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.

16.4 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.

16.5 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.

16.6 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.

16.7 Time Is of the Essence. For all performance under the AGREEMENT, time is of the essence.

16.8 VENDOR Is Independent of DISTRICT. VENDOR 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.

16.9 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.

16.10 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.

16.11 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 17 EXECUTED

17.1 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.

17.2 Executed. The PARTIES have caused the AGREEMENT to be executed effective as of the EFFECTIVE DATE.

VENDOR ACCEPTS AND AGREES:

Signature: _____

Print Name: _____

Title: _____

Date: _____

DISTRICT ACCEPTS AND AGREES:

Signature: _____

Print Name: _____

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

Date: _____

A. Equipment Summary**1. Two Way Radios**

Department	Motorola Model #	Qty	Qty
Administration -1	XPR7750	48	
Administration -2	SL7750		8
Emergency Response Teams	XPR7750	53	
Custodial	XPR7750	54	
Maintenance	XPR7750	31	
Grounds	XPR7750	18	
Security Guards	XPR7750	9	
Student Security Aids	XPR7750	21	
Sheriff's Department	XPR7750	2	
Construction Management	XPR7750	2	
Information Technology		0	
Spares	XPR7750	27	
		265	8

2. Other Equipment

	Motorola Model #		Qty
Repeaters	XPR8400		4
Repeater Battery Back up for 3 hrs			4
Turbo View consol base statoin desktop w/tower, monitor, speaker & mic			2
Base Station and gate way hardware to support consol mentioned above			3
I Pad smart phone connection			1
Radio Multi Charging Station Rack	IMPRES - six bank		11
Ear pieces	Motorola Surveillance Ear Phone		40
Speaker-Micrphones	Motorola Speaker-Microphone		20
Spare Belt Clips			44
Mobile vehicle radios	XP5550		10
Mobile vehicle antenna			10
Yagi Directional Antenna			0
Radio hulsters	Motorola Holsters		68

B. Proposed Equipment Distribution By Site And Department**1. Two Way Radios**

Department	Air School	Berkeley	COA	860	Laney	Merritt	DGS	Risk Mgt	D/O	Total
Administration - 1	1	7	11	1	9	7	3	2	7	48
Administration - 2		1	1		1	1	1		3	8
Emergency Response Teams	1	6	12	1	12	6	0	12	3	53
Custodians	0	5	12	0	19	12	6	0	0	54
Maintenance	0	2	3	0	6	3	17	0	0	31
Grounds	0	0	2	0	3	3	10	0	0	18
Security Guards	0	2	2	0	3	2	0	0	0	9
Student Security Aids	0	2	3	0	6	10	0	0	0	21
Sheriff's Department	0	0	0	0	0	0	0	0	2	2
Construction Management	0	0	0	0	0	0	0	0	2	2
Information Technology	0	0	0	0	0	0	0	0	0	0
Spares	0	1	1	0	1	1	5	16	2	27
Total	2	26	47	2	60	45	42	30	19	

2. Equipment

	Air School	Berkeley	COA	860	Laney	Merritt	Fac	Risk Mgt	D/O	Total
Repeaters	0	1	1	0	1	1	0	0	0	4
Repeater Battery Back up for 3 hrs	0	1	1	0	1	1	0	0	0	4
Base Stations	0	0	0	0	0	0	1	0	0	1
Radio Multi Charging Rack	0	1	1	0	1	1	4	3	0	11
Ear pieces	0	0	0	0	0	0	20	0	0	20
Speaker-Microphones	0	0	0	0	0	0	10	0	0	10
Spare Belt Clips	0	2	5	0	5	5	5	0	0	22
Mobile vehicle units	0	0	0	0	0	0	6	0	0	6
Mobile vehicle antenna	0	0	0	0	0	0	6	0	0	6
Radio holsters	0	0	0	0	0	0	34	0	0	34