



## REQUEST FOR PROPOSAL

### RFP No.: 14-15/40 Merritt College Barbara Lee Center Maintenance Services

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

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

#### Proposal Information

<b>Proposal Description</b>	<b>Transitional Building Maintenance Services for the Merritt College Barbara Lee Center</b>
<b>Proposal Number</b>	<b>14-15/40</b>
<b>Proposal Issued</b>	<b>June 9, 2015</b>
<b>Department</b>	<b>Department of General Services</b>
<b>Mandatory Pre- Proposal Meeting</b>	<b>June 18, 2015 at 10 am, in conference room 218, in Building Q, Business Services at Merritt College, 12500 Campus Drive, Oakland, CA 94619</b>
<b>Scheduled Publication Dates</b>	<b>June 9, 2015 &amp; June 16, 2015</b>
<b>Proposal Due Date</b>	<b>July 7, 2015 at 11AM</b>

#### Instructions for Submitting Proposals

<b>Submittal Address</b>	Peralta Community College District Purchasing Department Attn: John Hiebert 501 5 <sup>th</sup> Avenue Oakland, CA 94606
<b>Submittal Copies</b>	One (1) Original copy clearly marked "Original" and four (4) Copies marked "copy".
<b>Submittal Envelope Requirements</b>	Proposal must be <u>sealed</u> and have the following information <u>clearly marked</u> and visible on the outside of the envelope: <ul style="list-style-type: none"><li>• Proposal Number</li><li>• Name of Your Company</li><li>• Address</li><li>• Phone Number</li></ul>
<b>Late Submittals</b>	Proposals received after the time and date stated above shall be returned unopened to the vendor.

## How to Obtain Proposal Documents

Copies of the Proposal documents may be obtained at:

Available	Location
Yes	Peralta Community College District Purchasing Department 501 5 <sup>th</sup> Avenue Oakland, CA 94606 Monday through Friday 9:00 AM to 4:00 PM (510) 466-7225
Yes	Website: <a href="http://www.peralta.edu">www.peralta.edu</a> Click "Quick Links", then click "Purchasing" and then click "Current Bids, RFPs and RFQs" to download the Proposal packet.

## Contract Document Review

Contract Documents can be reviewed at the Peralta Community College Department of General Services.

Peralta Community College District  
Department of General Services  
333 East 8th Street  
Oakland, CA 94606  
Monday through Friday 9:00 AM to 5:00 PM  
(510) 466-7346

## Questions about the Proposal

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

<b>Primary Contact</b>	<b>John Hiebert</b> <b>Fax:</b> (510) 587-7873 <b>Email:</b> <a href="mailto:jhiebert@peralta.edu">jhiebert@peralta.edu</a>
<b>Question/RFI Due Date</b>	<b>June 25, 2015 at 4:00 p.m.</b> Please submit questions as soon as possible. No questions regarding the specifications will be responded to after the above date. All pertinent questions will be responded to and answered in writing no later than the Response Date listed below.
<b>Response Date</b>	<b>July 1, 2015</b> All pertinent questions will be responded to <b>via addendum</b> faxed (or emailed) to all prospective bidders, and placed on the District's website. Proposer who did not receive a copy of the addendum should download it from the District's website. See "How to Obtain Proposal Documents" section for our web address. All addendums must be acknowledged on the RFP Acknowledgement and Signature form.

**Full Opportunity**

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

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

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

Marie Hampton, Director of Purchasing

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### **Attachments:**

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

## **I. Project Overview**

The Peralta Community College District (District) is seeking Proposals from qualified firms to provide Transition Building Maintenance and Operation Services for the new Merritt College Barbara Lee Science & Allied Health Center. The duration of the transition period is 12 months.

The Barbara Lee Science & Allied Health Center is a new four story building on the Merritt College campus. The building includes the following departments: Biology, mathematics, chemistry/physics, business technology and allied health with related administration offices. The new facility is an approximate 103,000 gross square foot, split level structure built in the south side of the campus between Buildings A & L. The base construction cost of this building was approximately \$43,000,000.

The facility was procured through a design-build delivery method with the design-build team consisting of JK Architecture and Clark & Sullivan/Walsh Construction. We are anticipating occupancy of the facility in August 2015.

The design drawings and specifications, including all MEP design documents, will be available on the District's Purchasing Department ftp site as noted in the RFP advertisement.

Awarded vendor will provide a Local 39 management consultant who will be involved in the commissioning of all systems, including heating, cooling, ventilation, electrical, plumbing, fire protection, fire alarm, life safety, and all auxiliary support systems, as required by regulatory agencies. The District will assign a stationary engineer to assist the management consultant to oversee the commissioning of the building. Other District stationary engineers from the Local 39 Union will rotate during the one-year contractual period to receive training and assist in the maintenance of the building.

## **II. Scope of Services**

### **General Services**

- For the contract term, the vendor will oversee and manage the correct maintenance and operation of the following:
  - HVAC Systems
  - Building Automation System
  - Water Treatment Procedures
  - Electrical Equipment and Distribution System
  - Fire – Life Safety Systems
- For the contract term, the vendor shall provide implement and management of:
  - Operational Manuals and Logs
  - Equipment History Book
  - The Safety Program
  - The Inventory Control Program
  - The Daily Engineering Log
- Provide training modules and procedures for the Peralta maintenance staff on each system so there will be an easy transition to District staff.
- Provide a system manual for each mechanical system.
- Perform minor facility repairs including patch & painting, minor electrical, mechanical and plumbing work.
- Provide recommendation to Peralta for staffing considerations to support the new facility.
- Management consultant may be required to have membership in Local 39.

- Develop a Preventive Maintenance Program.
- Provide a computerized maintenance management system compatible with Delta Controls.
- Provide a custom safety program.
- Provide computer software for maintenance programs compatible with Delta Controls.
- Janitorial and Landscape services are NOT required.

## **Proposal Requirements**

A **Price Proposal** is requested for this project, including all related charges.

1. Price Proposal.
2. Staffing Plan – Please indicate how your firm plans to staff this project. Indicate how many and how often technicians will be onsite during the course of the contract per the staffing plan you propose.
3. Resume of proposed personnel assigned to this facility. Please include experience and areas of expertise.
4. A furnished office on campus will be provided with electrical and wireless data connection.

## **III. Submission Requirements**

Your Statement of Proposals must respond to each item noted below and must follow the format described below.

1. **COVER LETTER/LETTER OF INTEREST** Cover letter must include name of firm, address, telephone and fax numbers, and name of Principal to contact. Letter must be signed by representative of the firm with authorization to bind the firm by contract.
2. **DESCRIPTION OF FIRM**
  - A. Prime Firm
    - History, number of years in business in California, staff size
    - Location of office which will perform the work
    - Size of staff if applicable one person firms may submit
3. **RELEVANT EXPERIENCE**
  - A. List relevant K-12 and or Community College projects where your firm has provided Transition Building Maintenance Services for a similar facility and include:
    1. Project name, type and location Ex: Classroom / Kitchen/ Library / Administration / Laboratory.
    2. Duration of these services.
    3. Project size, square feet and scope of services
  - B. List client names, contact person, and phone number for relevant project information.
4. **Price Proposal:** Include staffing plan.
5. **INSURANCE** The Inspection firm(s) will be required to furnish Evidence of Insurance, naming the District and their designated agencies as additional insured and in accordance with the District's requirement for coverage. See Appendix A of the General Professional Services Agreement
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 considered 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 whose 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 maximum page count for your response.)

#### **IV. Evaluation Criteria**

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

**A. Evaluation Criteria:**

<b>Item</b>	<b>Criteria</b>	<b>Points</b>
1	<u>Qualifications and Experience</u> Vendor's knowledge and experience and capacity to provide professional building maintenance services as evidenced by meeting the District's minimum qualifications and past performance. (Your response to Items 1, 2, 3, 4, 5 and 6 of Submission Requirements section.)	25
2	<u>Client References</u> Your response to item 3 of Submission Requirements section and or results of reference checks.	15
6	<u>Staffing Plan</u> – Please indicate how your firm plans to staff this project. Indicate how many and how often technicians will be onsite during the course of the contract per the staffing plan you propose.	30
3	<u>Price Proposal</u> Provide a Price Proposal based on all proposed services you intend to provide and staffing plan.	20
4	<u>Environmentally Sustainable Procurement</u> Does your product or service meet the District's Environmentally Sustainability initiatives? (Item 6 of Submission Requirements section.)	5
5	<u>SLBE</u> <b>(Only applicable for firms qualifying for the Small Firm's Qualification List)</b> . Does your company meet the District's definition of an SLBE or SELBE?	5
	Total	100

**B. Selection Procedure:**

A technical screening committee comprised of PCCD internal (and possibly external members) with expertise in construction will initially evaluate and score all submissions according to the evaluation criteria above. The project will be awarded to the respondent with the highest point total.

**V. Additional Requirements:**

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

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

**B. District Rights:**

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

**C. Law Compliance**

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

**D. Public Records:**

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



from. The party submitting materials sought by any other party shall be solely responsible for the cost and defense in any action or proceeding seeking to compel disclosure of such materials.

**E. Proposal Considerations**

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

**F. False Statements**

False statements in a Proposal will disqualify the Proposal.

**G. Legal Proceeding Waiver**

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

**H. Taxes**

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

**I. Grade of Service**

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

**J. The Vendor's Liability**

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

**K. Contract Termination**

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

**L. Award Consideration**

Award of contract will be based on the information submitted as a result of this RFP and reference checks. The Board will award the contract to the firm selected through the competitive process outlined in this RFP. The Board of Trustees shall not be bound to accept the lowest-quote fee.

**M. Amendments**

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

**N. Withdrawal or Modification of Offers**

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

**O. Acceptance**

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

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

**P. 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.



**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
<b>Total #</b>														
<b>% of assets</b>														

**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
<b>Total #</b>														
<b>% of assets</b>														

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).

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

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

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

	3.
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Total # of Employees \_\_\_\_\_

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

### 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](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.**

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

Contractor Name: \_\_\_\_\_ Title: \_\_\_\_\_

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



## Peralta Community College District

### CERTIFICATE REGARDING WORKERS' COMPENSATION

Labor Code Section 3700 in relevant part provides:

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

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

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

\_\_\_\_\_  
Contractor

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

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



**Peralta Community College District**

## **Statement of Equal Employment Opportunity**

I hereby certify that

\_\_\_\_\_  
(Legal Name of Vendor/Consultant/Contractor)

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

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

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

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

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

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

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

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



## Peralta Community College District

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

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

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

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

#### **Definitions:**

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

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

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

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

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



## **Subcontractors:**

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

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

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



**Peralta Community College District**

**SLBE/SELBE SELF CERTIFICATION AFFIDAVIT**

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

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

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

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

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Title



**Peralta Community College District**

**NON-COLLUSION AFFIDAVIT**

(To be executed by Vendor and submitted with Proposal)

**RFP No.: 14-15/40 Merritt College Barbara Lee Center Maintenance Services**

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

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

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

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

## GENERAL PROVISIONS

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

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

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

3. **INDEMNIFICATION:**

(a) CONTRACTOR agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release DISTRICT, its officers, agents and employees, from and against any and all actions, claims, damages, disabilities or expenses including attorney's fees and witness costs that may be asserted by any person or entity, arising out of or in connection with the 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 (Errors & Omissions):** In the event any contract specifications requires your firm to provide professional services, such as but not limited to, architectural, engineering, construction management, surveying, design, etc., a certificate of insurance must be provided prior to commencing work evidencing such coverage with a limit of not less than \$1,000,000. Any material change in limits, coverage or loss of aggregate limit due to outstanding claims must be reported to the District within 30 days of any such event

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

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

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

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

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

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

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

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

DISTRICT:

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

CONTRACTOR:

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

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

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

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

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

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

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

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

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

15. **DUE PERFORMANCE:** Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may, in writing, demand adequate assurance of due performance and until such written assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received.

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

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

**End of Section**



## Peralta Community College District

### RFP Acknowledgement and Signature Form

#### RFP No.: 14-15/40 Merritt College Barbara Lee Center Maintenance Services

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

#### Addendum Acknowledgement

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

#### Acknowledgement and Signature:

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

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

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

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

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

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

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

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

#### Decline Proposal:

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

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

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

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





## Peralta Community College District

### PROPOSAL FORM

#### RFP No.: 14-15/40 Merritt College Barbara Lee Center Maintenance Services

The undersigned having carefully examined the location of the proposed work, the local conditions of the place where the work is to be done, the Invitation for Bid, the General Conditions and Instructions to Bidders, the Peralta Community College District (District) Contract, the Specifications and all of the contract documents for this project, and accurately completed the Vendor's Questionnaire, proposes to perform the contract, including all of its component parts, and to furnish any and all required labor, materials, equipment, insurance, permit, bonding, transportation and services required for the construction of the project in strict conformity with the plans and specifications prepared, including any Addenda, within the time specified for the lump sum price of (including all taxes):

#### Total Proposal Price

<p><b>Total lump sum of price proposal</b></p> <p>\$ _____ (Numeric amount)</p> <p>_____ (Written amount)</p> <p>Written amount prevails if any discrepancy exists.</p>
---

#### Agreement Terms

1. If awarded the contract, the undersigned hereby agrees to sign said contract and furnish the necessary Payment Bond, Performance Bond, and Certificates of Insurance within 10 calendar days after the Notice of the Award of this contract and agrees to commence construction within 10 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.
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 which best serves the interests of the District.
4. All pages of this Bid Form must be completed and signed in ink. The bid will be awarded to the lowest responsive, responsible bidder.

# CONTRACT TEMPLATE

## PERALTA COMMUNITY COLLEGE DISTRICT

### CONTRACT FOR PURCHASE OF GOODS AND SERVICES

#### ARTICLE 1    PREFACE

- 1.1    Effective Date and Parties
- 1.2    Documents Incorporated
- 1.3    Recitals

#### ARTICLE 2    WORK

- 2.1    Work
- 2.2    Standard of Performance
- 2.3    Subcontractors
- 2.4    Ownership of Work Product

#### ARTICLE 3    PAYMENT

- 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

#### ARTICLE 4    DELIVERY OF GOODS

- 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

#### ARTICLE 5    DELAYS

- 5.1    Excusable Delays (Force Majeure)
- 5.2    Non-Excusable Delays
- 5.3    Compensation in the Event of Delay

#### ARTICLE 6    LIQUIDATED DAMAGES

- 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

#### ARTICLE 7    WARRANTIES / OPPORTUNITY TO CURE

- 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>
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8.2	Workers' Compensation
8.3	Certificates
8.4	Coverage for INDEMNIFIED PARTIES
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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</u>	<u>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</u>	<u>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
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12.5	Return Documents
12.6	Evaluation
12.7	Notice
<u>ARTICLE 13</u>	<u>MODIFICATION OF AGREEMENT</u>
13.1	Authorized Agents
13.2	Modifications
13.3	Change Order Requests
13.4	Change Order Record Keeping
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13.6	Provision of Report
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<u>ARTICLE 14</u>	<u>TERMINATION</u>
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15.3	Tort Claims Act
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15.5	Cumulative Remedies
15.6	No Special Damages
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- 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

ARTICLE 17 EXECUTED

- 17.1 Authority
- 17.2 Executed

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- 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.

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: 1) was not contemplated at the time this AGREEMENT was executed; 2) was not reasonably foreseeable; 3) 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-EXCUSALBE 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-EXCUSED DELAY, and in the case of an EXCUSABLE DELAY EVENT that is not the related to an unanticipated and unforeseeable act or omission by the DISTRICT, the 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 3<sup>rd</sup> 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 warranties. Such 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 INDENTIFIED 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; and

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

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

9.2 Continuing Performance. If any 3<sup>rd</sup> party claim materially impairs performance of the WORK, then VENDOR, at its sole expense, shall timely procure the right from said 3<sup>rd</sup> party to continue its performance of its obligations under the AGREEMENT. Further, if an INDEMNIFIED PARTY should be enjoined from the use of any materials, combinations, or processes provided or to be provided under this AGREEMENT, then 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. When the terms of Exhibit J Independent Contractor / Consultant Services Contract conflict with any other 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: \_\_\_\_\_

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

APPROVED AS TO LEGAL FORM:

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

Print Name: Thuy Thi Nguyen

Title: General Counsel, Peralta Community College District

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

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

[specify delivery point for goods]  
[identify performance guarantees (for liquidated damages purposes also)]

**EXHIBIT B: PRICING AND PAYMENT SCHEDULE**

[As full compensation for all WORK contemplated by the AGREEMENT, VENDOR shall be recompensed by payment of \$ \_\_\_\_\_ on a \_\_\_\_\_ basis on the tenth of the month following the month the WORK is provided.]

**EXHIBIT C: FIRM PROFILE**

Please check all categories that apply to VENDOR:

- Small Local Business Enterprise* is an independently owned and operated for-profit concern that performs a commercially useful function. The business is located at a fixed, established commercial address located in DISTRICT'S market area (Alameda County), in the city of \_\_\_\_\_, that constitutes the business location at which work of an administrative, clerical, professional, or productive nature is performed relative to its contracts, and not a temporary or movable office, a post office box, or a telephone answering service. If the business has an office outside of DISTRICT'S market area as well as an office within the market area, the office within DISTRICT'S market area is staffed on a full time, permanent basis with someone in the employ of the business. If requested, businesses with an office outside of DISTRICT'S market area must provide proof of one or more past contracts (such as contracts to perform work, to rent space or equipment, or for other business services) citing the business address that evidences the applicant's address in 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 DISTRICT'S market area. It is a small business whose gross annual revenue for the past three consecutive years has not exceeded 8.5 million dollars for a construction firm, three million dollars for an architecture, engineering, or professional services firm, or six million dollars for all other firms.
  
- Small Emerging Local Business Enterprise* is a small local business enterprise whose gross annual revenue for the past three consecutive years has not exceeded 1.5 million dollars.

**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	Handicapped	Vietnam-Veteran	Women
<b>Total #</b>											
<b>% of assets</b>											

**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	Handicapped	Vietnam-Veteran	Women
<b>Total #</b>											
<b>% of assets</b>											

Please attach any certification of 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**

Liquidated Damages for Delay

Rate: \$ \_\_\_\_\_ / day

Cap: \$ \_\_\_\_\_

Liquidated Damages for Failure to Meet Performance Guarantees

Guarantee: \_\_\_\_\_ Rate: \$ \_\_\_\_\_ / day

Guarantee: \_\_\_\_\_ Rate: \$ \_\_\_\_\_ / day

Guarantee: \_\_\_\_\_ Rate: \$ \_\_\_\_\_ / day

Guarantee: \_\_\_\_\_ Rate: \$ \_\_\_\_\_ / day

Guarantee: \_\_\_\_\_ Rate: \$ \_\_\_\_\_ / day

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Guarantee: \_\_\_\_\_ Rate: \$ \_\_\_\_\_ / day

Guarantee: \_\_\_\_\_ Rate: \$ \_\_\_\_\_ / day

Cap: \$ \_\_\_\_\_

**EXHIBIT G: REQUIRED INSURANCE COVERAGE FROM VENDOR**

		Limits		
		Contracts of \$150 K or less	Contracts between \$150 K & \$1 MM	Contracts of \$1 MM or more
a	Workers' Compensation <sup>1</sup> (W.C.)	Statutory	Statutory	Statutory
b	Employer's Liability <sup>2</sup> (E.L.)	Each accident	{ }	{ }
		Disease policy limit	{ }	{ }
		Disease each employee	{ }	{ }
c	Commercial General Liability <sup>3</sup> (C.G.L.)	General aggregate	{ }	{ }
		Personal / advertising injury	{ }	{ }
		Each occurrence	{ }	{ }
		Fire damage (any one fire)	{ }	{ }
		Medical expense (any one person)	{ }	{ }
d	Products / Completed Operations Aggregate	{ }	{ }	{ }
e	Business Automobile Liability <sup>4</sup> (A.L.)	Bodily injury (per person)	{ }	{ }
		Bodily injury (per accident)	{ }	{ }
		Property damage	{ }	{ }
		Or combined single limit	{ }	{ }
f	Professional Liability (Errors and Omissions)	{ }	{ }	{ }
g	Excess Umbrella Liability <sup>5</sup>	N/A	{ }	{ }

K = one thousand (1,000)      MM = one million (1,000,000)

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

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

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

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

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



**EXHIBIT H: AUTHORIZED AGENTS**

DISTRICT'S AUTHORIZED AGENTS

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

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

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

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

VENDOR'S AUTHORIZED AGENTS

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

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

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

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

**EXHIBIT I: NOTICE CONTACTS**

DISTRICT'S NOTICE CONTACT

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

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

VENDOR'S NOTICE CONTACT

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

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

**EXHIBIT J: INDEP. CONTRACTOR / CONSULTANT SERVICES CONTRACT**