

The Peralta Community College District (PCCD), Oakland, California, through the Department of Purchasing, is hereby requesting proposals for the above mentioned services.

The successful vendor will be required to furnish all labor, material, equipment, supplies, and applicable taxes to complete all deliverable for this Request for Proposals this project.

## Proposal Information

<b>Proposal Description</b>	<b>Professional Technical Design Services and Specifications for Emergency Phone Systems at College of Alameda</b>
<b>Project Type</b>	<b>College of Alameda Emergency Phone Design Consultant</b>
<b>License Requirement</b>	<b>AIA, PE and/or other national/state equivalent certification</b>
<b>Proposal Number</b>	<b>18-19/08</b>
<b>Proposal Issued</b>	<b>November 30, 2018</b>
<b>Department</b>	<b>Department of General Services</b>
<b>Scheduled Publication Dates</b>	<b>November 30, 2018 December 7, 2018</b>
<b>Mandatory Pre-Bid Meeting Date</b>	<b>No Pre-Mandatory Meeting required for this Project</b>
<b>Proposal Due Date</b>	<b>December 19, 2018 at 2:00 P.M.</b>

## Instructions for Submitting Proposals

<b>Submittal Address</b>	Peralta Community College District Purchasing Department Attn: Nicanor Custodio Jr. 501 5 <sup>th</sup> Avenue Oakland, CA 94606
<b>Submittal Copies</b>	One (1) Original copy clearly marked "Original" and three (3) 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 and Name of Project</li> <li>• Name of Your Company</li> <li>• Address</li> <li>• Phone Number</li> </ul>
<b>Late Submittals</b>	<b>Proposals received after the time and date stated above shall be returned unopened to the vendor.</b>

## Questions about the Request for Proposals

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

<b>Primary Contact</b>	<b>Nicanor Custodio Jr.</b> <b>Email: <a href="mailto:ncustodio@peralta.edu">ncustodio@peralta.edu</a></b>
<b>Question/RFI Due Date</b>	<b>December 10, 2018 at 4:00 P.M.</b>
<b>Response Date</b>	<b>December 14, 2018</b>

## 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.

Dr. Sadiq B. Ikharo  
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	Acknowledgement and Signature Form	Yes
10	Sample Agreement for Professional Services	No

## **I. Project Overview**

The Peralta Community College District (District) is conducting a formal request for proposals from qualified professional individuals and firms with expertise in the preparation of technical design specifications for the removal of existing defunct analog emergency phone system and also for technical design, construction administration and commissioning activities related to the installation of new digital emergency phone network at the College of Alameda, an institution that consists of a main campus and two (2) satellite locations, one of which is the Aviation School at the Oakland International Airport.

The District currently has an active capital renewal project that encompasses building improvements throughout the District and its four campuses: College of Alameda, Berkeley City College, Laney College and Merritt College. This capital construction project is funded by a combination of sources that includes funding from the State of California and local bond Measures. The last local bond was approved by the Alameda county voters in the recently concluded November 6, 2018 elections.

For over fifty years, the Peralta Community College District has served over one million students from the communities of Albany, Alameda, Berkeley, Emeryville, Oakland, and Piedmont. In the current student enrollment report conducted by the RP Group in March 2017, it states that the District serves over 37,700 students within its four campuses in northern Alameda County.

The District anticipates the selection of a winning Proposal by January 11, 2019, and will submit the name of the selected vendor for approval to the District's Board of Trustees at the next scheduled meeting immediately after the selection process has concluded. The term of this RFP shall cover the period of construction/installation through commissioning, a period of about 1 year.

All services will be managed by and coordinated by the Vice Chancellor of General Services or an assigned staff member of the Department of General Services. All strategies and negotiations shall be directed by and coordinated through the Department of General Services. In transactions involving District staff, the Department of General Services will act as liaison for all parties to assure that objectives are being met throughout the entire transaction.

## **II. Scope of Services**

### **General Services**

The Technical Design firms will support the District Office, Department of General Services and the Capital Projects Building Program with the preparation of drawings and specifications for use by the District in construction bids and/or for the use of regulatory agencies including but not limited to The Division of the State Architects (DSA) review and approval. These drawings will also be used to conduct a competitive bid process to select a licensed contractor to perform the work. All services will be on an as-needed basis. The Technical Design firms, as directed by the Vice Chancellor of General Services, the Director of Capital Projects, and /or the District's representative will assist the District with basic technical services including, but not limited to the following:

#### **1) Schematic Design/Design Development, Bidding, Construction Administration and Project Closeout.**

- a. Schematic Design/Design Development shall also include verifying existing space dimensions; inventory of existing network infrastructure to remain; attend meetings with the District and designated stakeholders to determine program requirements and approvals for proposed layouts; generate options for conceptual layouts; layouts may include cables (CAT6 and/or fiber optic) and equipment layout; outline of technical specifications;

probable Cost Estimate to establish budget; Code Analysis

- b. Review final drawings and specifications with District
- c. Revise Cost Estimate at 98% completion of documents
- d. Issue package to District for Board Approval
- e. Assist the District with preparation of bidding package and be available to respond to bidders inquiries
- f. Construction Administration shall require that the Technical Design firm observes the progress of construction, conformance with contract documents & specifications while also responding to contractor's request for information and documentation where necessary. Other standard Construction Administration (CA) phase tasks include (but not limited to) meeting attending meetings with the District and General Contractor at District or on site.
- g. Review of Submittals for conformance with design intent
- h. Review and response to GC Requests for Information
- i. Distribute and coordinate Submittals and RFI's to other consultants as needed
- j. Review and approval of General Contractor's Requests for Payment
- k. Review of general construction progress for conformance to budget and schedule
- l. Issuance of Clarifications and/or Bulletins
- m. Generation of project punch
- n. Project Closeout
- o. Assist the District w/ DSA Closeout Procedure (Form 6), if needed for this project
- p. Assist the District with Commissioning of the project

## 2) **Deliverables**

### A. Technical Design Drawings

- Security Site Plan showing path of travel for underground cables
- Demolition Plan for removal of existing Analog phone network
- Floor plan showing location of phone terminals
- Elevations Details showing equipment, connectivity, et.al.
- Engineering drawing indicating electro-mechanical system modifications as required
- Preparation of Bid Documents
- Technical Specifications as it relates to (a) Security Wiring & Conduit, (b) Fiber-Optic Communication System, and (c) System Security Testing

### B. Cost Estimating

- Minimum of two (2) Cost Estimates
- Specifications – Technical
- Partition Details and Electrical Calculations
- Demolition drawings to include lighting, power, data, fire alarm and any other low-voltage systems including disconnecting from unaffected areas surrounding the remodel space
- New plans for all systems including reconnection of existing network circuits and pathways through spaces (outdoors and indoors)
- Code documentation per UL standards

## 3) **Additional Services**

The District may at its own discretion, retain the services of the Technical Design Services and Specifications firm to perform either all or part of these services. The District will not reimburse any firms for any costs involved in the preparation and submission of proposals nor to prepare for and attend interviews. This RFP does not obligate the District to award a contract or accept or contract for any expressed or implied services. District reserves the right to reject or accept any and all proposals, and to waive informalities and minor irregularities in any proposal reviewed. District reserves the right to request any firm submitting a proposal to clarify its proposal or to supply additional material deemed necessary to assist in the selection of a selected firm, and modify or alter any of the requirements herein. In an attempt to reach an agreed upon contract by both parties, District reserves the right to negotiate with the proposer selected by the committee. If the parties cannot negotiate a RFP. In the event that the proposal guidelines change materially, all

Proposers who submit a proposal will be given an opportunity to modify their proposal in the specific areas that are impacted. Further, District may reject any proposal which does not conform to the instructions contained within this RFP.

### **III. Submission Requirements**

The District has elected not to have a Mandatory Pre-Qualification meeting, and in its place interested parties could call to discuss and review the submission requirements.

Please respond to the following 7 submission requirements in a straightforward, concise delineation of your capabilities proposed to satisfy the requirement of the RFP. PCCD will use your responses to objectively determine your capabilities and experience. Please label your responses 1 through 7, in the order presented below. Please limit your total response to (forty) 40 pages (excludes the required attachment forms provided with this RFP).

#### **Submittal Format:**

Responses may not be longer than a maximum of (forty) 40 pages (one sided or 20 pages double sided), printed on 8 ½" x 11" paper and formatted in no smaller than 11 point font. Each section shall be labeled according to the sections below. All submitted material must only be bound with only **one staple** in the upper left corner. Please no binders or any other type of spiral binding. Submittals must be able to fit into a 9 x 11½ inch folder.

**1. Company Information/Executive Summary:** Provide the name of your company (including the name of any parent company), business address, email address, Federal Tax ID number, telephone and FAX numbers, and names and titles of key personnel and a brief history of your company. Provide a brief statement of who is authorized to submit the qualification on the behalf of your firm. Please make sure that person signs and dates the statement.

**2. Demonstration of Meeting the District's Minimum Qualifications:** Provide information that demonstrates your firm's ability to meet the four Minimum Qualifications items listed in the "Scope of Services" section. Make sure to demonstrate your experience with all four minimum qualification of:

- 1) Firm's General Experience
- 2) Firm's Relevant Experience
- 3) Experience with DSA and/or other regulatory state agencies.
- 4) Ability to Interface with Local Agencies

**3. Qualifications and Experience (Statement of Qualification):** Provide a statement of qualification and relevant information about your company's knowledge and experience that qualifies your firm to submit a Proposal in response to this RFP. This District must be able to determine if your firm is qualified to provide the requested technical design services. Include at minimum the following:

- A. Provide a list of all key team members that will be assigned to this project and provide their relevant project experience. If you are partnering with other firms, provide the names of who you are partnering with, and provide their qualifications.

- B. Provide any professional licenses your team holds and your company (and partners) hold that qualifies your firm for this project.
  
- C. Provide a list of similar projects your firm has undertaken, and a brief description of your most recent project with a view to discuss challenges and opportunities and how you overcame it.

**4. Fee:** Include in your proposal your detailed fee structure for performing the Scope of Services outlined in this RFP. Provide any reduced fees offered to governmental entities as well as and what your standard hourly rates.

**5. Client References:** Provide names, addresses and contact information for three (3) current clients who can attest to the quality and responsiveness of your firm's services to other Community Colleges, Universities, Public Agencies or Business Organizations. Provide the size and scope of each project and a brief description of the projects. References must be within the last five (5) years.

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

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

**8. Required Forms:** The Vendor must fill out all forms included in the RFP (listed in the attachments section) and return them with your Proposals. Failure of the vendor to provide any information requested in the RFP, may result in rejection for non-responsiveness. (These required forms will not count against the maximum page count for your response.)



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**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 qualifications, 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>Company Information/Executive Summary and Letter of Interest</u> (and adherence to the 30 page limit and submission of all required forms). As evidence from your response to items 1 and 7 of Submission Requirements section.	10
2	<u>Qualification and Experience and Debarment</u> Vendor’s qualification and experience in providing professional technical design services for emergency “Blue” phone systems as evidence	45
3	<u>Client References</u> As evidence from your response to item 5 of Submission Requirements section.	15
4	<u>Fee</u> As evidence from to item 4 of Submission Requirements Section	20
5	<u>Environmentally Sustainable Procurement</u> Does your product or service meet the District’s Environmentally Sustainability initiatives? (Item 7 of Submission Requirements section.)	5
6	<u>SLBE</u> Does your company meet the District’s definition of an SLBE or SELBE?	5
	Total	100

**B. Selection Procedure:**

A technical screening committee comprised of PCCD internal (and possibly external members) with expertise in general engineering services will initially evaluate and score all submissions according to the evaluation criteria above. Based on these evaluations and reviews, a proposal will be rated the best, and the vendor selected. Once a proposal is selected, the firm will be

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invited for a pre-contract interview.

**C. Compensation:**

Following the proposal-based selection process, fees for services will be negotiated with the most highly qualified firm and determined in accordance with the provisions of the Peralta Community College District Professional Agreement. Subsequently, if an agreement on fees cannot be reached in a timely manner with the highest qualified firm, the District will seek to reach an agreement with the next best qualified firm, and so on. Should the District not be able to reach an agreement with any of the top three ranked firms, the District shall select additional firms in order of their competence and qualifications and continue negotiations with the next highest ranked firm.

**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 Proposals or the performance of the contract.

**D. Public Records:**

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

**E. Qualification 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.

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**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 subsequent RFPs, and reference checks. The Board will award the contract to the firm select through the competitive process outlined in this RFP and subsequent RFPs. 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 Proposal. 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.



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**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**



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**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 or Employee	Apprentice
<b>Total #</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.



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

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<b>Main Headquarters Office(s) Address/Telephone</b>  (List all as applicable)	1.  2.  3.
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**Total # of Employees** \_\_\_\_\_

<b>Local Office(s) Address/Telephone</b>  (List all as applicable)	1.  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>  (Please use the Zip+4®) Use separate sheet as Necessary	1. 2. 3. 4. 5. 6.
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**ENVIRONMENTALLY SUSTAINABLE**

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: \_\_\_\_\_





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**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.)



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**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 REQUEST FOR PROPOSAL 18-19/08

### College of Alameda Emergency Phone Design Consultant

#### **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.



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- 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/SELBE 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 contract 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.



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**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.

RFP Number: \_\_\_\_\_ RFP Name: \_\_\_\_\_

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Title



**PERALTA COMMUNITY COLLEGE DISTRICT  
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**NON-COLLUSION AFFIDAVIT**

(To be executed by Proposer and submitted with your proposal)

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: \_\_\_\_\_



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#### **GENERAL PROVISIONS**

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

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

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

3. **INDEMNIFICATION:**

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

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

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

**A. INSURANCE REQUIREMENTS**

The Contractor shall maintain in full force and effect and cause its subcontractors to maintain, for the period covered by the Contract, the following insurance:

1. Comprehensive or commercial general liability insurance with limits not less than \$1,000,000 per each occurrence combined single limit for bodily injury and property damage, including coverage for contractual liability, personal injury, independent contractors, explosion, collapse and underground (XCU), broad form property damage, products liability, and completed operations.
  - a. Should any of the required insurance be provided under a form of coverage that includes an annual general aggregate limit or provides that claims investigation or legal defense costs be included in such annual general aggregate limit, such annual general aggregate limit shall be two times the occurrence limits stipulated.



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- b. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this contract, and without lapse, for a period three years beyond the contract expiration, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the contract, such claims shall be covered by such claims-made policies.
2. Comprehensive or business automobile liability insurance with limits not less than \$1,000,000 per each occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned, and hired automobiles, as applicable.
3. Workers' Compensation, including Employers' Liability Insurance with limits not less than \$1,000,000 each accident, occurrence or disease and \$1,000,000 aggregate.
  - a. The Workers' Compensation Insurance shall cover any compensation payable under the provisions of the act of legislature of the State of California, known as the "Workmen's Compensation Insurance and Safety Act" approved May 26, 1913, and all acts amendatory and supplemental thereto. If the Contractor fails to maintain such insurance, the District, at its sole option and without incurring any further obligation to provide insurance, may take out Workers' Compensation Insurance to cover any compensation payable under the provisions of the Act by reason of any employee of the Contractor being injured or killed, and to deduct and retain the amount of the premium for such insurance from any sums due the Contractor. If the injury occurs to any employee of the Contractor for which the employee, or its dependents in the event of its death, is entitled to compensation from the District under the provisions of said Act, or for which compensation is claimed from the District, the District may retain from the sums due the Contractor under these Contract Documents an amount sufficient to cover such compensation, as fixed by said Act, until such compensation is paid; and if the District is compelled to pay such compensation, it will deduct and retain from such sums the amount so paid.
  - b. The Contractor shall sign and file with the District the following certification prior to performing the Work of the Contract:

"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."
4. Builder's Risk Insurance on an All-Risk Form covering the new Work under the Contract, excluding earthquake and flood but including ensuing perils, with limits not less than the Contract Sum and any deductible not to exceed \$10,000.
  - a. Coverage for debris removal limits not less than \$1,000,000.
  - b. Such policy shall name the District as loss payee and shall be issued by carrier(s) satisfactory to the District and licensed through the Department of Insurance to conduct insurance business in California.





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- c. In the event of any damage except earthquake and flood, it shall be the Contractor's responsibility to perform at its expense all required repair and replacement including damage to adjacent areas.
  - d. The Contractor shall be responsible for all losses not covered by the policy, excluding earthquake and flood, including the deductibles.
5. In the event that the Contractor employs professional engineering services, the Contractor shall require the retained engineers to carry professional liability insurance with limits not less than \$1,000,000 each claim with respect to negligent acts, errors, or omissions in connection with professional services to be provided under this Agreement and any deductible not to exceed \$50,000 each claim. The Contractor shall provide the District with Certificates of Insurance for any such policy.
  6. In the event that the Contractor is performing abatement of hazardous or contaminated materials work or employs a subcontractor or entity for abatement of hazardous or contaminated materials, the Contractor shall furnish or require the subcontractor or entity to maintain environmental liability insurance with limits not less than \$1,000,000, policy written on an occurrence form, with any deductible not to exceed \$25,000, including coverage for Contractor's pollution legal liability for contaminated soils, asbestos, lead, underground storage tanks, and other hazardous materials which may be encountered at the site.

#### **B. INSURANCE BY OTHERS:**

For General Liability, Environmental Pollution Liability and Automobile Liability Insurance, the Contractor shall include as additional named insureds, the District, the Architect, the District's Consultants, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them.

#### **C. FORM OF POLICIES AND OTHER INSURANCE REQUIREMENTS:**

1. Before commencement of the Work of this Contract, certificates of insurance shall be furnished to the District, with complete copies of policies to be furnished to the District promptly upon request.
2. Approval of the insurance by the District shall not relieve or decrease the extent to which the Contractor or subcontractor of any tier may be held responsible for payment of any and all damages, except damage caused by earthquake or flood, resulting from its operations. All policies of insurance and certificates shall be satisfactory to the District.
3. Liability insurance shall be on an occurrence basis; and said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability.



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4. Each such policy shall provide that no cancellation, non-renewal nor any reduction in its coverage shall occur without the carrier giving to the District at least thirty (30) days' written notice prior thereto. All notices shall be made to:

Sadiq B. Ikhara  
Vice Chancellor of General Services  
Peralta Community College District  
333 East 8<sup>th</sup> Street  
Oakland, CA 94606

5. The Contractor shall file with the District a certificate of the required new or renewed policy at least ten (10) days before the effective date of such cancellation, change or expiration, with a complete copy of new or renewed policy.
  6. If, at any time during the life of this Contract, the Contractor fails to maintain any item of the required insurance in full force and effect, all Work of this Contract may, at District's sole option, be discontinued immediately, and all Contract payments due or that become due will be withheld, until notice is received by the District as provided hereinbefore that such insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the District.
  7. Any failure to maintain any item of the required insurance may, at District's sole option, be sufficient cause for termination of this Contract.
- D. Insurance companies shall be legally authorized, licensed and admitted through the California Department of Insurance to engage in the business of furnishing insurance in the State of California. All insurance companies shall have an "A-,VIII" in Bests Rating Guide and shall be satisfactory to the District.

#### **D CONTRACTOR ADDITIONAL INSURANCE REQUIREMENTS (For all projects)**

- A. Notice to the District: Further the policy will provide not less than thirty (30) days prior written notice to District's Program Administrator or its Designee of any material change in the insurance or cancellation or non-renewal.
- B. Additional Insured: The District will be endorsed as "additional insured" on Contractor's and Subcontractors' policy or policies. Contractor and Subcontractors shall furnish Certificates of Insurance evidencing said coverage before commencing work on the Project.
- C. Contractor Construction Equipment Insurance: Any policies maintained by the contractor and subcontractors on their owned and/or rented equipment and materials shall contain a provision requiring the insurance carriers to waive their rights of subrogation against the Owner and all other indemnities named in the contract.



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- D. Professional Liability Insurance (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, coverages or loss of aggregate limit due to outstanding claims must be reported to the District within 30 days of any such event.
- E. Environmental and Asbestos Abatement Coverages: If this Agreement involves the removal of asbestos, the removal/replacement of underground tanks or the removal of toxic chemicals and substances, the Contractor will be required to provide adequate coverages, with limits not less than \$1,000,000 per claim basis, for such exposures subject to requirements and approval of the District.
- F. Hold Harmless clause: Work done on the premises, or in connection with the prosecution of this contract by the Contractor, shall be at the Contractor's risk and the Contractor shall assume any and all liability and shall hold harmless the District, their agents, servants or employees, from claims or demands, cost expenses, loss or damage due to bodily injury, sickness or disease, including death to employees of the Contractor or any other person, or damage of property including loss of use thereof suffered by employees of the Contractor or any other person; arising out of the performance of the contract, whether such are based upon negligence of the District or any other person, firm, corporation or organization for whom such contract is being performed, their agents, employees or otherwise.

#### **E PROOF OF CARRIAGE OF INSURANCE**

- A. Before work is started, the Contractor shall forward to the Owner two copies of a Certificate of Insurance or Memorandum of Insurance, evidencing that all required Contractor Furnished Insurance is in force, executed by an authorized representative of the insurance company, and naming Owner as additional insured as outlined below.
- B. Certificates and insurance for contractor furnished insurance policies shall include the following clause:
- "This policy shall not be cancelled or reduced in required limits of liability or amounts of insurance until notice have been mailed to the District. Date of cancellation or reduction may not be less than Thirty (30) days after date of mailing notice."*
- C. Certificates of insurance for contractor furnished insurance policies shall state in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, and cancellation and reduction notice.
- D. Certificates of insurance for contractor furnished insurance policies shall clearly state that the District is named as an additional insured under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by the District.
- E. Contractor furnished policies will be written by an insurer of satisfactory character including a Best's rating of not less than A- VIII and an admitted carrier in the State of California. If requested by the District, a certified copy of the actual policies with appropriate endorsement(s) and other documents shall be provided to the District.



## PERALTA COMMUNITY COLLEGE DISTRICT REQUEST FOR PROPOSAL 18-19/08

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- F. In the event the contractor or any subcontractor fails to furnish and maintain required insurance or to furnish satisfactory evidence thereof, the Owner may procure and maintain such coverages for all parties on behalf of the contractor. Contractor shall furnish all necessary information and pay the premium cost to the District immediately upon presentation of a premium invoice.
- G. Subcontractors. Should a contractor engage a subcontractor, the same conditions will apply to each subcontractor. Each subcontractor must be covered by insurance of the same character and in the same amounts as the Contractor, naming the Contractor and the Owner as additional insureds. Copies of certificates of insurance for subcontractors must be filed with the District within thirty (30) working days after issuance of a Notice to Proceed and at least five (5) working days before the subcontractor begins work on the site. Failure to provide evidence of such insurance shall result in the subcontractor being excluded from the site until proper coverage is verified. The cost of any resulting delay will be borne by the contractor.

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:

Dr. Sadiq B. Ikhara  
Department of General Services  
Peralta Community College District  
333 East 8<sup>th</sup> Street  
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.

7. **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.



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8. **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.

9. **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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **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.

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

16. **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  
REQUEST FOR PROPOSAL 18-19/08**

**College of Alameda Emergency Phone Design Consultant**

**Acknowledgement and Signature Form**

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  
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**CONTRACT TEMPLATE**

**PERALTA COMMUNITY COLLEGE  
DISTRICT**

**CONTRACT FOR PURCHASE OF GOODS AND SERVICES**



**PERALTA COMMUNITY COLLEGE DISTRICT  
REQUEST FOR PROPOSAL 18-19/08**

**College of Alameda Emergency Phone Design Consultant**

<u>ARTICLE 1</u>	<u>PREFACE</u>
1.1	Effective Date and Parties
1.2	Documents Incorporated
1.3	Recitals
<u>ARTICLE 2</u>	<u>WORK</u>
2.1	Work
2.2	Standard of Performance
2.3	Subcontractors
2.4	Ownership of Work Product
<u>ARTICLE 3</u>	<u>PAYMENT</u>
3.1	Schedule of Payments
3.2	Payment Not Acceptance
3.3	Payments Withheld
3.4	No Obligation to Make Payment
3.5	Taxes
3.6	Most Favored Customer
<u>ARTICLE 4</u>	<u>DELIVERY OF GOODS</u>
4.1	Method of Delivery
4.2	Delivery Complete
4.3	Passage of Title
4.4	Risk of Loss
4.5	Removal of Rejected Goods
<u>ARTICLE 5</u>	<u>DELAYS</u>
5.1	Excusable Delays (Force Majeure)
5.2	Non-Excusable Delays
5.3	Compensation in the Event of Delay
<u>ARTICLE 6</u>	<u>LIQUIDATED DAMAGES</u>
6.1	Liquidated Damages for Delay in the Delivery of the Work
6.2	Liquidated Damages for Failure to Meet Performance Guarantees
6.3	Damages in the Event of an Uncured Breach of Warranty
<u>ARTICLE 7</u>	<u>WARRANTIES / OPPORTUNITY TO CURE</u>
7.1	Warranties
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#### 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:



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#### 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.



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#### 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.



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#### 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.



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#### 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 of 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 deliver the WORK.

5.2 Non-Excusable Delays. If a delay does not meet the definition of an Excusable Delay Event (a "NON-EXCUSABLE DELAY"), then VENDOR shall not, without the DISTRICT's prior written consent (which may be withheld), be entitled to an extension of the delivery date for the WORK then due. If the VENDOR does not obtain the DISTRICT's consent to a NON-EXCUSABLE DELAY, then it shall be responsible for any additional costs it incurs in its efforts to meet the delivery deadline. Notwithstanding that the DISTRICT may consent to an extension of the delivery date due to a NON-EXCUSABLE DELAY, the VENDOR will be required to pay any actual damages incurred by the DISTRICT as a result of such delay, by either offset against the amount due by the DISTRICT to the VENDOR or by submission by the DISTRICT of an invoice indicating the amount of the damages.

5.3 Compensation in the Event of Delay. Regardless of whether the VENDOR obtains the DISTRICT's consent to a NON-EXCUSABLE DELAY, and in the case of an EXCUSABLE DELAY EVENT that is not 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.



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#### 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;





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- (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 recovery 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



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prevent defects or deficiencies before they occur and, if they nonetheless occur, to ensure their prompt identification, reporting, and correction.



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#### 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.



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#### 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.



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#### 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,



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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;



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- (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.



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#### 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





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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.



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#### 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.



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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.



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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.



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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



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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.



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**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: \_\_\_\_\_



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

[specify delivery point for goods]

[identify performance guarantees (for liquidated damages purposes also)]





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**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.]



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**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:**



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	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.



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**EXHIBIT D: REQUEST FOR PROPOSAL (R.F.P.)**



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**EXHIBIT E: RESPONSE TO REQUEST FOR PROPOSAL (R.F.P.)**



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**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

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

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



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**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.



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**EXHIBIT H: AUTHORIZED AGENTS**

DISTRICT'S AUTHORIZED AGENTS

<b>Name</b>	Jowell Laguerre	<b>Name</b>	_____
<b>Title</b>	Chancellor	<b>Title</b>	_____
<b>Address</b>	333 E. 8th Street	<b>Address</b>	_____
	Oakland, CA 94606		_____
<b>Telephone</b>	(510) 466-7202	<b>Telephone</b>	_____
<b>Facsimile</b>	(510) 268-0604	<b>Facsimile</b>	_____
		<b>Other</b>	_____

VENDOR'S AUTHORIZED AGENTS

<b>Name</b>	_____	<b>Name</b>	_____
<b>Title</b>	_____	<b>Title</b>	_____
<b>Address</b>	_____	<b>Address</b>	_____
	_____		_____
<b>Telephone</b>	_____	<b>Telephone</b>	_____
<b>Facsimile</b>	_____	<b>Facsimile</b>	_____
<b>Other</b>	_____	<b>Other</b>	_____





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**EXHIBIT I: NOTICE CONTACTS**

DISTRICT'S NOTICE CONTACT

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

VENDOR'S NOTICE CONTACT

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



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