



**PERALTA COMMUNITY COLLEGE DISTRICT**  
333 EAST EIGHTH STREET  
OAKLAND, CA 94606

## **AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES 2018/19 Fiscal Year**

**CONTRACTOR:** KITCHELL  
1901 Harrison Street, Suite 1100  
Oakland, CA 94612

**DATE:** May 21, 2019

**PROJECT NAME:** Laney College Music Room & Swimming Pool ADA Modification Project

### **I. SCOPE OF THE SERVICES**

The Services to be rendered (“**Services**”) under this Agreement (“**Order**”) consist of

1. KITCHELL Construction Management will provide construction management services to PCCD for the Laney College Music Room G-189 and Swimming Pool ADA improvements. KITCHELL will manage the development of architectural design and code compliant construction documents, provide project and construction management of the design and construction phase, provide site supervision and coordination between the general contractor and all vendors, and closeout the project in time to satisfy the consent decree, per the proposal dated May 17, 2019 (attachment A).

### **II. COMPENSATION FOR SERVICES**

The undersigned contractor proposes and agrees to perform the Work including, without limitation, providing and furnishing all labor, materials, tools, equipment and services necessary to complete the Work and perform all obligations of the Contractor under this Agreement. Contractor’s total compensation for Services performed under this Agreement is seventy-three thousand dollars and no cents (\$73,000.00) to be paid as:

- (1)  Lump sum;
- (2)  Lump sum with progress payments;
- (3)  **Per incoming invoice, not to exceed \$73,000.00**

Extra services shall not be performed without specific written direction, authorizing the engagement of extra services in advance of performance. All expenses required to perform the Services are included in the lump sum price. There are no “reimbursable” expenses associate with this Agreement.

### III. SCHEDULE OF PERFORMANCE

Contractor shall commence the Services after the Chancellor's approval date indicated in this agreement and complete the Services by **June 30, 2020**:

- (1)  Lump sum;
- (2)  Lump sum with progress payments;
- (3)  Per attached billing rates schedule of rates and charges not to exceed the price of **\$73,000.00**

### IV. OTHER REQUIREMENTS

Under this agreement, the following requirements apply:

- (1)  Prevailing Wage; and
- (2)  The District's Project Labor Agreement (PLA) Requirements.
- (3)  Registration in the Department of Industrial Relations (DIR) Labor Compliance Program (SBA 854), to include to sub-contractors.
- (4)  Registered with the California Contractors State License Board;
- (5)  Possess a California Seller's Permit (No. \_\_\_\_\_).

### V. INVOICES SUBMITTALS & PAYMENTS

Contractor will execute the instructions and requirement below to help expedite invoice payments for maintenance and operations project and capital.

1. After execution of final agreement, all invoices must be emailed to [accountspayable@peralta.edu](mailto:accountspayable@peralta.edu).
2. All invoices must be on Contractor's business letterhead with the following information:
  - Project name and location to match the contract;
  - Reference the new 10-digit Purchase Order number on all invoices. If you have difficulty using the new 10-digit Purchase Order number, please email [vendors@peralta.edu](mailto:vendors@peralta.edu) for assistance;
  - Your Company's name, address and contract information, and email address;
  - Completed scope of work to match the proposal and contract;
  - The date the goods or services were provided (supply date);
  - Invoice number and date on the invoice;
  - The amount(s) being charged, identified as 1) taxable, 2) non-taxable, 3) types of services (i.e. labor vs. professional design services, software, etc.) and
  - The total amount of the invoice.
  - Submit updates and changes to your company contact and banking information to the Purchasing department: [vendors@peralta.edu](mailto:vendors@peralta.edu).

## VI. TERMS AND CONDITIONS

- (1) Contractor shall perform the Services in accordance with the terms and conditions of this Order, INCLUDING THE GENERAL TERMS AND CONDITIONS ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE. Contractor has read, negotiated and expressly accepts all terms incorporated herein, including Section 5 relating to indemnity and liability.
- (2) Agreement number and on all invoices and correspondence. Email all invoices to [accountspayable@peralta.edu](mailto:accountspayable@peralta.edu) immediately upon performance. Reference the 10-digit Purchase Order number on all submitted invoices. If you have difficulty using the new 10-digit Purchase Order number, please email [vendors@peralta.edu](mailto:vendors@peralta.edu) for assistance.
- (3) Changes made to printed Terms and Conditions on this Order are null and void unless approved in writing by the District Project Manager and General Counsel.
- (4) Contractor must comply with Appendix A.
- (5) This instrument is void to the extent it requires payment by the District of more than **\$850.00**

<p><b>PERALTA COMMUNITY COLLEGE DISTRICT</b></p> <p>By: _____          Frances White, PhD., Chancellor  <i>(Authorized Agent)</i></p> <p>Date: _____</p> <p>Approved as to legal form:</p> <p>By: _____          Ericka Curls-Bartling, Acting General Counsel</p> <p>Date: _____</p> <p><b><u>Department of General Services:</u></b></p> <p>By: _____          Leigh Sata, VC of General Services          Peralta Community College</p> <p>Date: _____</p>	<p><b>KITCHELL, INC.</b></p> <p>A California corporation,</p> <p>Address: _____          _____</p> <p>By: _____</p> <p>Title: _____</p> <p>Attest: _____          _____</p> <p>Print Name and Title          (If Corporate: Secretary, Assistant Secretary, Chief          Financial Officer, or Assistant Treasurer)</p>
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## GENERAL TERMS AND CONDITIONS

1. Purchase Order (“Order”) Force and Effect. District is not responsible for services rendered without the authority of an Order on this form. This Order shall supercede and control over all inconsistent provisions in any proposal. The provisions of this Order (which may include attachments) constitute the entire agreement between the Contractor and District regarding the work and services described herein. No representation, term or covenant not expressly specified in this Order shall, whether oral or written, be a part of this agreement. No modification of this Order shall be effective unless it is in writing. This Order shall supersede all other prior purchase orders and agreements between Contractor and District with respect to the work and services described herein. This Order may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of District and Contractor. The headings in this Order are for convenience only and do not affect the construction of this Order.
2. Performance of Services/No Assignment. Time is of the essence in the performance of the Services. Contractor represents that it is skilled in the professional discipline necessary to perform the services (“**Services**”) under this Order. Contractor will perform its Services in a skillful manner, comply fully with criteria established by District, and with applicable laws, codes, and all applicable professional standards, including by not limited to, the California Education Code and Title 24. Contractor shall not contract any portion of the Services or otherwise assign this Order without prior written approval of District. (Contractor shall remain responsible for compliance with all terms of this Order, regardless of the terms of any such assignment.) Contractor’s authorized representative is the individual signing this Order unless Contractor otherwise informs District in writing. The granting of any payment, and any inspections, reviews, approvals or oral statements by any District representative, or certification by any governmental entity, shall in no way limit Contractor’s obligations under this Order.
3. Records and Payment Requests. Contractor shall submit all billings with all necessary invoices or other appropriate evidence of performance, after which District shall make payment within thirty (30) days. District shall have the right to audit the Contractor’s work records. Contractor shall make available to District, its authorized agents, officers, or employees, any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursement charged to District, for examination. Contractor shall furnish to District, its authorized agents, officers, or employees, such other evidence or information as District may require with regard to any such expenditure or disbursement charged by Contractor. Contractor shall maintain all documents and records prepared by or furnished to Contractor during the course of performing the services for at least three (3) years following completion of the Services, except that all such items pertaining to hazardous materials shall be maintained for at least thirty (30) years. Such records include, but are not limited to, correspondence, internal memoranda, calculations, books and accounts, accounting records documenting its work under its Order, and invoices, payrolls, records and all other data related to matters covered by this Order. Contractor shall permit District to audit, examine and make copies, excerpts and transcripts from such records. The State of California or any federal agency having an interest in the subject of Order shall have the same rights conferred to District by this section. Such rights shall be specifically enforceable.
4. Independent Contractor. Contractor is an independent Contractor and does not act as District’s agent in any capacity, whatsoever. Contractor is not entitled to any benefits that District provides to District employees, including, without limitation, worker’s compensation benefits or payments, pension benefits, health benefits or insurance benefits. Terms within this Order regarding direction apply to and concern the result of the Contractor’s provision of Services not the means, methods, or scheduling of the Contractor’s work. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures with respect to its provision of Services under this Order. Contractor shall pay all payroll taxes imposed by any governmental entity and will pay all other taxes not specifically identified in this Order as District’s responsibility.
5. Indemnity/Liability. To the extent of its proportionate fault and permitted by law, Contractor shall defend, indemnify and save the District, and all of its officers, directors, representatives, agents and employees (together “**Indemnitees**”), from and against any and all claims and liability of any type resulting from Contractor’s negligent performance of this Order. Defense counsel retained under this section shall be subject to the Indemnitees’ reasonable approval. Notwithstanding any provision of this Order, the Indemnitees shall not be liable, in contract or tort, for any special, consequential, indirect or incidental damages arising out of or in connection with this Order or the Services. The Indemnitees’ rights and remedies, whether under this Contract or other applicable law, shall be cumulative and not subject to limitation.
6. Conflict of Interest. Contractor represents and warrants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of work and services required under this Order. Without limitation, Contractor represents to and agrees with District that Contractor has no present, and will have no future conflict of interest between providing District services hereunder and any interest Contractor may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to District, as determined in the reasonable judgment of District.
7. Confidentiality. Any information, whether proprietary or not, made known to or discovered by Contractor during the performance of or in connection with this Order for District, will be kept confidential and not be disclosed to any other person. Contractor will immediately notify District in writing if it is requested to disclose any information made known to or discovered by during the performance of or in connection with this Order. These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services to District hereunder.

8. Ownership of Results. Any interest (including copyright interests) of Contractor or its contractors or subcontractors (together, "**Subcontractors**"), in studies, reports, memoranda, computational sheets, drawings, plans or any other documents (including electronic media) prepared by Contractor or its Subcontractors in connection with the Services, shall become the property of District. To the extent permitted by Title 17 of the United States Code, work product produced under this Order shall be deemed works for hire and all copyrights in such works shall be the property of District. In the event that it is ever determined that any works created by Contractor or its Subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns to District all copyrights to such works. With District's prior written approval, Contractor may retain and use copies of such works for reference and as documentation of experience and capabilities. As respects Contractor's standard details and proprietary design instruments of service (not specific to this Project), however, District shall have only a non-exclusive but otherwise unrestricted license to use the materials on the Project.
9. Non-Discrimination Policy. Contractor shall not discriminate against any employee or applicant for employment, nor against any Subcontractor or applicant for a subcontract, because of race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA or veteran's status. To the extent applicable, Contractor shall comply with all federal, state and local laws (including, without limitation, all County and District ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time. Contractor shall provide all information reasonably requested by District to verify compliance with such matters. Contractor stipulates, acknowledges and agrees that District has the right to monitor Contractor's compliance with all applicable non-discrimination requirements, and may impose sanctions upon a finding of a willful, knowing or bad faith noncompliance or submission of information known or suspected to be false or misleading.
10. Termination and Suspension. District may direct Contractor to terminate, suspend, delay or interrupt Services, in whole or in part, for such periods of time as District may determine in its sole discretion. District may issue such directives without cause. District will issue such directives in writing, and compensate Contractor for its costs expended up to the termination plus reasonable profit thereon only in the event District terminates this Order for District's convenience. Contractor may recover no other cost, damage, or expense. Suspension of Services shall be treated as an excusable delay. District may terminate performance of the Services under this Order in whole, or from time to time in part, for default, should Contractor commit a material breach of the Order, or part thereof, and not cure such breach within ten (10) calendar days of the date of District's written notice to Contractor demanding such cure. In the event District terminates the Order for default, Contractor shall be liable to District for all loss, cost, expense, damage and liability resulting from such breach and termination. Contractor shall continue its work throughout the course of any dispute, and Contractor's failure to continue work during a dispute shall be a material breach of this Order. Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of this Order, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every provision hereof.
11. Execution; Venue; Limitations. This Order shall be deemed to have been executed in the City of Oakland, Alameda County, California. Enforcement of this Order shall be governed by the laws of the State of California, excluding its conflict of laws rules. Except as expressly provided in this Order, nothing in this Order shall operate to confer rights or benefits on persons or entities not party to this Order. As between the parties to this Order, 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 this Order, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.

## **APPENDIX A – CONTRACTOR INSURANCE REQUIREMENTS**

At all times during the Work, the Contractor and each Subcontractor shall obtain and maintain the following insurance coverages:

- A. **Commercial general liability insurance**, written on an “occurrence” basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, liability for slander, false arrest and invasion of privacy, blanket contractual liability, broad form endorsement, and completed operations, personal and advertising liability, with limits of not less than **\$2,000,000** general aggregate and **\$1,000,000** each occurrence, subject to a deductible of not more than **\$25,000** payable by Contractor.
- B. **Business automobile liability insurance** with limits not less than **\$1,000,000** each occurrence including coverage for owned, non-owned and hired vehicles, subject to a deductible of not more than **\$10,000** payable by Contractor.
- C. **Workers’ Compensation Employers’ Liability** limits not less than **AS REQUIRED BY STATE** each accident, **AS REQUIRED BY STATE** per disease and **AS REQUIRED BY STATE** aggregate. Contractor’s Workers’ Compensation Insurance policy shall contain a Waiver of Subrogation. In the event Contractor is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.
- D. NOT APPLICABLE - Professional Liability Insurance with limits not less than **\$1,000,000** each claim and aggregate, all with respect to negligent acts, errors or omissions in connection with services to be provided under this Agreement, and any deductible not to exceed **\$10,000** for each claim, with no exclusion for claims of one insured against another insured and with tail coverage for a period of three (3) years after the completion of the Services.
- E. Insurance policies in Appendix A shall contain an endorsement containing the following terms:
  1. PERALTA COMMUNITY COLLEGE DISTRICT and their respective affiliates, directors, officers, officials, partners, representatives, employees, Contractors, subcontractors and agents, shall be named as additional insureds, but only with respect to liability arising out of the activities of the named insured, and there shall be a waiver of subrogation as to each named and additional insured.
  2. The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company’s liability.
  3. Written notice of cancellation, non-renewal or of any material change in the policies shall be mailed to District thirty (30) days in advance of the effective date thereof.
  4. Insurance shall be primary insurance and no other insurance or self-insured retention carried or held by any named or additional insureds other than Contractor shall be called upon to contribute to a loss covered by insurance for the named insured.
- F. Certificates of Insurance and Endorsements shall have clearly typed thereon the title of the Contract, shall clearly describe the coverage and shall contain a provision requiring the mailing of written notices of cancellation described in clause E.3 above.



May 17, 2019

Leigh Sata, Vice Chancellor of General Services  
Peralta Community College District  
Department of General Services  
333 East 8th Street  
Oakland, CA 94606

**RE: Construction Management (CM) Services for ADA Modifications at Laney Campus**

Dear Mr. Sata:

Pursuant to your recent request, we have prepared a proposal to provide construction management services to address the needs and resolve certain accessibility issues at the Laney Campus Music Room G-189 and the Swimming Pool updates. On the following page, we have included our fee for services and identified our qualified and available staff/hourly rates.

Through our understanding of the challenges and support services we may provide, we have identified a team who can support your needs as required. Our proposal is outlined in the subsequent pages, and offers different levels of participation among our team members to accommodate your needs. In general, the tasks to complete include, but are not limited to:

- ~ Manage the architect (Sally Swanson & Associates) to develop architectural design and drawings to complete code compliant construction documents
- ~ Provide project management for the design and construction phase
- ~ Provide site supervision and coordination between the general contractor and all vendors
- ~ Closeout the project in time to satisfy the consent decree

Kitchell is committed to providing Peralta Community College District with full comprehensive construction management services. We appreciate your consideration and look forward to the opportunity to initiate these services.

Sincerely,

David Giannelli  
Senior Vice President

Arturo Taboada  
Executive Director, Bay Area

# PROPOSAL FOR CONSTRUCTION MANAGEMENT SERVICES

Our proposal for the Laney College Campus ADA Modification Project is as follows:

## I. Design Coordination Services for Music Room G-189:

- ˘ Site visit
- ˘ Review of the existing as built drawings and details
- ˘ Prepare architectural construction documents and coordinate with SSA District consultant:
  - Floor plan
  - Details
  - Elevations

## II. Construction Management Services for Music Room & Swimming Pool Chair Lift

- ˘ Review drawings
- ˘ Provide/review construction estimate
- ˘ Assist the District in procurement, order materials and manage vendors
- ˘ Manage project schedule
- ˘ Provide site supervision and project management
- ˘ Closeout the project

## III. Cost Breakdown

- ˘ Kitchell as construction manager managing a general contractor and various equipment vendors as required

<b>CM Contract with District:</b>	<b>Days</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
Program Director	40	1	\$250	\$10,000
Sr. Project Management	40	4	\$200	\$32,000
Project Design/Architect <i>(See Note 1 below)</i>	5	8	\$180	\$14,400
Assistant PM	40	2	\$145	\$11,600
Subtotal				\$68,000
Reimbursable Allowance				\$5,000
<b>TOTAL CONSTRUCTION MANAGEMENT FEES</b>				<b>\$73,000</b>

- Exclusions:**
- ˘ Fire Alarm System design
  - ˘ Plumbing design
  - ˘ HVAC design

## IV. Proposal Clarifications

Our estimated quantities and scope of services are based upon review of the documents available at the time of our proposal, which includes sketches of location of improvements, list of items in need of compliance, site visit, and others.

This proposal is an estimate to perform services. Actual charges are based solely upon time spent on the job site and the required services. Invoices will be submitted on a bi-weekly basis in accordance with this proposal. All invoices will include a summary of work performed to date, budget balance remaining and prorated project management fee. Prices quoted are valid through June 30, 2019.