



# **MEMORANDUM OF UNDERSTANDING (MOU)**

**AN AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN  
PERALTA COMMUNITY COLLEGE DISTRICT  
AND  
BAY AREA REGIONAL TECH PREP COLLABORATIVE  
PARTNERS**

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# **1 PREFACE**

## **1.1 PARTIES**

This is an agreement (“AGREEMENT”) between Peralta Community College District (“PERALTA”), located at 333 E. 8th Street, Oakland, CA 94606 and Chabot College including its officers, employees, consultants, subcontractors, and agents (“PARTNER”), a Local Educational Agency, with its principal office at 25555 Hesperian Blvd. Hayward, CA. **94545** (collectively “PARTIES”).

## **1.2 Effective Date and Term**

The effective date of this AGREEMENT is April 21, 2009 (“EFFECTIVE DATE”). AGREEMENT remains effective until it terminates on June 30, 2099 (“TERMINATION DATE”), unless terminated sooner, as provided herein.

## **1.3 Recitals.**

**A. Whereas** California’s future economy depends on the effectiveness of our state’s education system. Our state’s employers rely on the education system more than ever to provide graduates who are well prepared for the intellectually demanding jobs of tomorrow. To influence and achieve this outcome, it is increasingly evident that the blending of the workforce and education systems is critical to sustaining and advancing California’s economy and quality of life for our citizens. Partnerships between education and business and industry at the state, regional, and local levels are critical to support a workforce that can make the necessary transitions among occupations, industries, and careers through lifelong learning and skill advancements as the state’s economy evolves.

**B. Whereas** the Tech Prep Regional Coordination Project brings together representatives from participating community college districts, colleges, Tech Prep consortia, primary and secondary schools (K-12), and workforce community to develop a unified response to workforce development issues in a region.

**C. Whereas** the Bay Area Career Pathway Alliance (“BACPA”) establishes a regional partnership among sixteen (16) regional community college districts for the purpose of developing an effective and comprehensive ongoing regional collaboration between educational, business, and workforce development partners to address emerging workforce development needs, locally and regionally, and providing career training and opportunities for residents in the target areas..

**D. Whereas** PERALTA is recognized by the state as the lead partner in the BACPA project.

**E. Whereas** PARTNER wishes to enter into this agreement with PERALTA and will fulfill obligations defined in this AGREEMENT, in return for payment(s) administered through PERALTA as defined in this AGREEMENT.

**F. Whereas** PARTNER understands that BACPA is a Federally funded program. State and Federal laws apply to the administration of BACPA.

**Now, therefore** in consideration of the mutual agreement set forth in the AGREEMENT, the parties agree as follows:

## **2 AUTHORIZATION**

Bay Area Career Pathway Alliance (“BACPA”), a California Department of Education Tech Prep Regional Coordination Project (California Agreement Number: CN0883316), is authorized to receive state-administered Federal funding under the **Carl D. Perkins Career and Technical Education Act of 2006**, Title II, Public Law 109-270, 20 U.S.C. Section 2373. This AGREEMENT is funded in part or whole with a Vocational Education **Basic Grant** to States or a **Tech-Prep** Education Grant, both from the United States Department of Education, Office of Vocational and Adult Education.

**Basic Grants** of funds to states are subject to **Title 34 CFR sections 400 and 403; EDGAR** (Title 34 CFR sections 74, 76 (except 76.103), 77, 79, 80, 81, 82, and 85); **OCR Guidelines for Vocational Education**. In addition to the above regulations, **Tech Prep** funds are subject to Title 34 CFR 406; EDGAR, Parts 86. Federal programs are described in the Catalog of Federal Domestic Assistance (CFDA) database. The CFDA numbers for **Basic Grants** to states and **Tech Prep** programs are **84.048** and **84.243**, respectively.

### **2.1 Notice and Certification of Understanding**

PARTNER’S Chief Financial Officer certifies by signing Exhibit G—Certification of Understanding: Federal Funds that PARTNER has been given notice and understands that BARTPC is a Federally funded program. Federal regulations and guidelines for the administration of **Basic** and **Tech Prep** grants shall be observed and applied by PARTNER.

## **3 NON-APPROPRIATION OF FUNDS**

The principle agreement between the State of California Department of Education and PERALTA, allocating funds for Tech Prep programming with PARTNER, is valid and enforceable only if sufficient funds are made available to the State by the United States Government and the California State Legislature for the purpose of this program. In addition, the principle agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by Congress or the State Legislature that may affect the provisions, terms, or funding of the principle agreement. Therefore, if funds are not appropriated for any succeeding fiscal year subsequent to the one in which this AGREEMENT is entered into, for the purposes of this AGREEMENT, then PERALTA may terminate this AGREEMENT upon thirty (30) days prior written notice to PARTNER. Should termination be accomplished in accordance with this Section, PERALTA shall be liable only for payments due through the date of termination.

## **4 SERVICES AND OBLIGATIONS**

PARTNER and PERALTA shall comply with the required elements established for all Tech Prep programs as indicated in the Carl D. Perkins Career and Technical Education Improvement Act of 2006.

### **4.1 PARTNER'S Obligations**

#### **4.1.1 Service**

PARTNER shall deliver outcomes as specified in Exhibit A—Work Plan (collectively, “WORK”).

#### **4.1.2 Requirements for Communication and Reporting**

PARTNER shall be required to submit an itemized invoice, and fiscal and progress reports in accordance with the schedule specified in Exhibit A—Work Plan and Exhibit B—Pricing and Payment Schedule.

##### **4.1.2.1 Invoices**

See section 5 and Exhibit B—Pricing and Payment Schedule. PARTNER must include a statement in the invoice acknowledging that a Federal grant is the funding source for the payment.

##### **4.1.2.2 Fiscal Reports**

PARTNER shall comply with all state and Federal fiscal accounting practices as specified in OMB Circulars A-110 and A-21).

PARTNER shall provide a fiscal report within thirty (30) days of the TERMINATION DATE that complies with state and Federal fiscal accounting practices. See section 4.4—Financial Management—below.

##### **4.1.2.3 Progress Reports**

The reports shall include detailed description of significant outcomes of the project. Descriptions of activities should be related only to the tasks and scope of the project.

In addition, PARTNER shall submit to PERALTA an end-of-project report on the project's goals, including evaluative evidence to support project successes and suggested strategies for program improvement. The format for these reports shall comply with California Department of Education contracting requirements.

#### **4.1.2.4 Ongoing Contact and Monitoring**

Ongoing contact with project monitors is required. Funded projects will be subject to one or more formal site visits during the period of performance. PARTNER agrees to allow such site visits by the project monitors. Current project monitors are specified in Exhibit I—Notice Contacts.

PARTNER agrees to allow the following monitoring activities:

- *Reporting* – PERALTA shall review all financial and performance reports submitted by PARTNER.
- *Site visits* – PARTNER shall allow periodic site visits by PERALTA and the state project monitor to review financial and programmatic records and observe operations.
- *Regular contact* – PERALTA and PARTNER shall maintain regular contact and appropriate inquiries concerning program activities.

#### **4.1.2.5 Training Workshop, Meetings, and Conference**

BARTPC participants, including PARTNER and PERALTA, are required to send the project director and budget representative to training workshop in Sacramento. The project director must attend a minimum of two meetings in Sacramento or an alternate location to discuss progress, accomplishments, and spending status for the project. Participants must send delegates to attend and participate in the annual Education for Careers Conference in 2009 and 2010 to participate in the Tech Prep Directors' Meeting, submit progress reports, and provide at least one conference presentation each conference year.

#### **4.1.3 Document Retention**

PARTNER shall retain fiscal and progress reports documents for a minimum period of five (5) years.

#### **4.2 Standard of Performance**

PARTNER 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.

#### **4.3 Subcontracting**

PARTNER shall adhere to the rules in Exhibit F—Agreements with Other Governmental Entities and Their Auxiliaries (Subcontractors).

#### **4.4 Financial Management**

PARTNER shall use procurement procedures that conform to applicable Federal laws, regulations, and standards identified in OMB Circular A-110 (Title 2 CFR part 215).

PARTNER'S financial management system shall provide for the following:

- a. accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in OMB Circular A-110 section 215.52;
- b. records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income, and interest;
- c. effective control over and accountability for all funds, property, and other assets;
- d. comparison of outlays with budget amounts for each award;
- e. written procedures for determining the reasonableness, allocation, and allowance of costs in accordance with provisions of OMB Circular A-21;
- f. accounting records including cost accounting records that are supported by source documentation.

## **5 ALLOWABLE COSTS AND PAYMENT**

### **5.1 Schedule of Payments**

PERALTA shall pay PARTNER according to Exhibit B--Pricing and Payment Schedule.

PARTNER shall invoice PERALTA for payments as set forth in Exhibit B. Late payment by PERALTA shall not constitute a material breach of the AGREEMENT.

#### **5.1.1 Invoices Must Affirm Understanding that Payment is from Federal Funds**

PARTNER must include a statement in the invoice to PERALTA, affirming that PARTNER understands that funding for the BARTPC project is a Federal grant, and that PARTNER applied appropriate procedures for accounting and auditing of Federal grants, comprised of OMB Circulars A-133, A-110, and A-21.

### **5.2 Allowable Costs**

PARTNER shall compensate its faculty, ROP/high school, community partners for work done to meet the goals, objectives, and work plan of the BARTPC project. This contract does not permit PARTNER to charge *indirect* expenses to PERALTA for the performance of these services. PARTNER will invoice PERALTA for *direct* expenses and services incurred after those expenses have been incurred and after services have been delivered.

#### **5.2.1 Indirect Expenses Not Compensable**



The allowance of costs incurred by PARTNER, an institution of higher education, is determined in accordance with the provisions of 2 CFR 220, “Cost Principles for Education Institutions (OMB Circular A-21).”

## **5.2.2 Travel and Per Diem Limitations**

PARTNER will comply with the State of California Short-term Travel Expense Reimbursement Program, as outlined in Exhibit E—Travel and Per Diem Limitations.

### **5.2.2.1 Out-of-State/Out-of-Country Travel Expenses Are Not Compensable**

## **5.3 Payment Not Acceptance**

No payment made to PARTNER shall be construed as an acceptance or approval of any of the WORK or constitute a waiver of any claim or right that PERALTA may then or thereafter have against PARTNER. Payments shall be subject to correction or adjustment in subsequent reviews and payments.

## **5.4 Payments Withheld**

PERALTA 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 PERALTA from loss because of:

- a. PARTNER’S failure to supply the WORK in accordance with the AGREEMENT;
- b. third-party claims, suits, or liens arising out of or relating to PARTNER’S supply of the WORK, except to the extent secured or provided for by insurance, bond, or otherwise to DISTRICT’S PERALTA reasonable satisfaction; or
- c. PARTNER’S failure to pay money to PERALTA when due.

## **5.5 No Obligation to Make Payment**

Notwithstanding any provision to the contrary, PERALTA shall have no obligation to make any payment to PARTNER at any time, after NOTICE to PARTNER when:

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

## **5.6 Taxes**

PARTNER agrees to file applicable 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 PERALTA is audited for compliance regarding any applicable taxes, PARTNER agrees to furnish PERALTA with proof of payment of taxes on those earnings. PARTNER

acknowledges that PERALTA will report all earnings to the California State Franchise Tax Board and the Internal Revenue Service as required by law.

## **6 INDEMNITY**

### **6.1 Indemnification of PERALTA**

PARTNER shall defend, indemnify, and hold harmless PERALTA and its officers, agents, employees against all claims, demands, actions, costs (including attorneys' fees) or liability arising from or related to the negligence, willful misconduct, or omission of PARTNER, its officers, agents, or employees in connection with or arising from or out of the performance of this AGREEMENT.

PERALTA shall defend, indemnify, and hold harmless the PARTNER against all claims, demands, actions, costs (including attorneys' fees) or liability arising from or related to the negligence, willful misconduct, or omission of PERALTA, its officers, agents, or employees in connection with or arising from or out of the performance of this AGREEMENT.

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

### **6.2 Continuing Performance**

If any 3<sup>rd</sup> party claim materially impairs performance of the WORK, then PARTNER, 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 PARTNER shall either:

1. promptly 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
2. promptly replace such materials, combinations, or processes, or modify the same to become non-infringing,

all at PARTNER'S sole expense, but subject to all the requirements of the AGREEMENT.

## **7 COMPLIANCE WITH LAWS AND CERTIFICATIONS**

### **7.1 Compliance with Laws**

PARTNER declares that PARTNER is eligible to contract with the State of California.

PARTNER declares that PARTNER shall fully comply with all laws, executive orders, regulations, PERALTA Board Policies, and other legal requirements applicable to PARTNER

and to the WORK. Failure to comply with this Article shall constitute a material breach of the AGREEMENT.

Applicable Federal and California laws, orders, regulations, policies, and other program related documents, which may be revised from time to time, are incorporated herein by reference as though set forth in their entirety. Applicable documents are referenced in **Exhibit C** of this AGREEMENT. Additional copies may be obtained from PERALTA upon request. The PARTNER's endorsement on this AGREEMENT signifies that appropriate PARTNER personnel have read and understand all applicable laws, regulations, guidelines, and policies, and serves to certify that PARTNER will abide by the provisions thereof. The failure of the PARTNER to examine and abide by any of the documents, or the terms and conditions of this AGREEMENT, shall in no way relieve the PARTNER from obligations with respect to the requirements contained in the documents or the AGREEMENT.

## **7.2 Technology Accessibility**

PARTNER 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, CFR, part 1194, and California Government Code Section 11135 incorporating Section 508. PARTNER agrees to promptly respond to and resolve any complaint regarding accessibility of the WORK which is brought to its attention.

## **7.3 Equal Opportunity**

### **7.3.1 Equal Opportunity in Contracting**

PERALTA is committed to ensuring equal opportunity and equitable treatment in awarding and managing its public contracts. Therefore, it is the policy of PERALTA 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 PERALTA. PERALTA policy prohibits discrimination in PERALTA programs and services, including contracting, subcontracting, personal and professional services, goods and maintenance, repairs, and operations. PARTNER shall fully comply with the DISTRICT'S PERALTA 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.

### **7.3.2 Equal Employment Opportunity**

PARTNER's execution of AGREEMENT certifies that PARTNER shall comply with Executive Order ("E.O.") 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as

supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

#### **7.4 Non-Discrimination**

PARTNER 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, PERALTA Board Policy 4.03, and all applicable laws, rules, and regulations in regard to non-discrimination and equal opportunity. PARTNER 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. PARTNER will, in all solicitations or advertisements for employees, placed by or on behalf of PARTNER, state that all qualified applicants will receive consideration for employment without regard to the aforementioned protected personal characteristics. PARTNER certifies that it does not and will not maintain segregated facilities.

##### **7.4.1 Posting**

PARTNER 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. PARTNER will send each labor union or representative of workers with which PARTNER has a collective bargaining agreement or other contract or understanding a notice, to be provided by the contracting officer, advising of PARTNER'S commitments under Executive Order 11246.

#### **7.5 Sexual Harassment**

PARTNER declares that it will not sexually harass or permit sexual harassment against any individual, including but not limited to employees, applicants for employment, or students. PERALTA shall have the right to remove an alleged offender from performance of the WORK pending the results of a sexual harassment investigation.

#### **7.6 Conflicts of Interest**

PARTNER 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 PERALTA conflict of interest code, Board Policy 6.86. PARTNER represents that it has completely disclosed to PERALTA, and if applicable will disclose in the future, all facts bearing upon any possible interests, direct or indirect, which PARTNER believes any member of PERALTA, or other officer, agent, or employee of PERALTA 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 PARTNER subsequently becomes aware of any such facts, PARTNER shall promptly provide NOTICE to PERALTA of same, along with a proposal for

remedying the violation. PERALTA, at its sole discretion, may determine whether the proposal or any other proposed resolution is satisfactory.

PARTNER 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. PARTNER 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 PARTNER subsequently becomes aware of any such conflicts of interest, PARTNER shall promptly provide NOTICE to PERALTA of same, along with a proposal for remedying the violation. PERALTA, at its sole discretion, may determine whether the proposal or any other proposed resolution is satisfactory.

PARTNER is aware of California conflict of interest provisions applicable to current State employees (Public Contract Code section 10410), former state employees (Public Contract Code section 10411).

### **7.7 Fraud or Misappropriation**

PARTNER certifies that none of its officers have been convicted of fraud or misappropriation of funds.

### **7.8 Construction Contract Provisions**

#### **7.8.1 Copeland "Anti-Kickback" Act Compliance**

PARTNER shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c). All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

#### **7.8.2 Davis-Bacon Act Compliance**

PARTNER shall comply with the Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7). When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction").

#### **7.8.3 Contract Work Hours and Safety Standards Act Compliance**

PARTNER shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333). Where applicable, all contracts awarded by recipients in excess of \$2000 for

construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5).

#### **7.9 Rights to Inventions Made under AGREEMENT**

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

#### **7.10 Air and Water Provisions**

PARTNER shall, when applicable, agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).

#### **7.11 Single Audit Act Amendments of 1996 Compliance**

PARTNER will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. sections 7501-7507) and OMB Circular A-133.

#### **7.12 State Certification Clauses—SIGNATURE ON EXHIBIT D1 REQUIRED**

By executing AGREEMENT, PARTNER certifies that they are knowledgeable of and will comply with the California provisions listed herein, described in Exhibit D1—Contractor Certification Clauses.

Exhibit D1 requires the signature of PARTNER'S authorizing agent.

#### **7.13 Federal Certification Clauses— SIGNATURE ON EXHIBIT D2 REQUIRED**

By executing AGREEMENT, PARTNER certifies that they are knowledgeable of and will comply with the Federal provisions pertaining to *Lobbying, Debarment, Suspension and Other Responsibility Matters*, and *Drug-free Workplace*, as provided in Exhibit D2—Federal Certifications.

Exhibit D2 requires the signature of PARTNER'S authorizing agent.

## **8 CONFIDENTIALITY**

### **8.1 Duty to Keep Information Confidential**

PARTNER shall treat as confidential all non-public information disclosed by PERALTA in connection with this Agreement, including but not limited to written or oral communications, education records (as defined under the Family Educational Rights and Privacy Act of 1974 (FERPA)), personal data, plans, specifications, and other data (collectively, “Confidential Information”). The terms and conditions of this Agreement shall also be deemed Confidential Information. PARTNER shall not disclose Confidential Information to any third party except as PERALTA authorizes, and shall only disclose it to those within PARTNER’s organization who need to use it in performance of the Agreement. Upon completion or termination of this Agreement, Contractor shall return or destroy all such Confidential Information (except for this Agreement), or otherwise dispose of it as PERALTA may approve. This provision is not intended to restrict PARTNER’s right to use or disclose information that is already known to the public or rightfully obtained without restriction from other sources. PARTNER shall defend, indemnify and hold harmless PERALTA from and against any and all claims, demands, damages, liabilities, expenses, losses of every nature and kind, including but not limited to attorney’s fees and costs, sustained or alleged to have been sustained by PERALTA as a result of any disclosure or use of any Confidential Information in violation of this Agreement.

### **8.2 Breach of Confidentiality**

Both PARTIES agree that in the event of a breach, threatened breach, violation, or evasion of the terms of this provision, immediate and irreparable injury shall occur to the injured party, that such injury shall be impossible to measure or remedy in monetary damages, and PERALTA 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.

### **8.3 Duration of Obligation**

The obligations of the PARTIES pursuant to this article on Confidentiality shall extend indefinitely beyond the AGREEMENT PERIOD.

## **9 FINANCIAL STATUS, RECORDS, AND NOTICE**

### **9.1 Financial Solvency**

By signing the AGREEMENT, PARTNER affirms financial stability and continued solvency. At the request of PERALTA, PARTNER will provide written evidence of its financial stability and solvency.

### **9.2 Accounting Records and Auditing**

PARTNER shall keep accurate and complete accounting records concerning performance of the AGREEMENT in accordance with state and Federal guidelines, and generally recognized accounting principles and practices consistently applied. See section 4.4.

PERALTA 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 PERALTA'S main offices, PARTNER shall, upon request of PERALTA, and at no cost to PERALTA, make such records available to PERALTA for inspection at a location within said 75 mile radius. Such records shall be available for five (5) years after the latest of:

- (a) delivery of the WORK;
- (b) termination of the AGREEMENT; or
- (c) resolution of any pending issues between PERALTA and PARTNER with respect to the AGREEMENT.

PARTNER agrees to allow interviews of any of its employees who might reasonably have information related to such records and to otherwise assist PERALTA in its auditing procedures at no cost to PERALTA. The provisions of this section shall be specifically enforceable.

### **9.3 Return Documents**

If PARTNER has accepted any forms or other writings on PERALTA'S behalf, those forms and writings shall be returned to PERALTA at the end of the AGREEMENT PERIOD or upon earlier termination of the AGREEMENT, at no cost to PERALTA.

### **9.4 Evaluation**

In accordance with procedures established by PERALTA, PARTNER'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 PERALTA and may be used in future selection of contractors.

### **9.5 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.

## **10 MODIFICATION OF AGREEMENT**

### **10.1 AUTHORIZED AGENTS**

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



## **10.2 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 PERALTA personnel who are not AUTHORIZED AGENTS cannot order or approve additions, deletions, or revisions in the WORK (“CHANGES”). Failure of PARTNER 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 PARTNER thereafter shall be entitled to no compensation or reimbursements whatsoever for the performance of such CHANGES.

## **10.3 Renewal**

Upon the mutual agreement of PARTIES, this AGREEMENT may be renewed, contingent upon funding. 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.

## **10.4 Provision of Reports**

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

# **11 ASSIGNMENT**

PARTNER may neither assign the AGREEMENT, in whole or in part, nor any money payable under the AGREEMENT without PERALTA’S prior written consent. Any such assignment without PERALTA’S prior written consent shall be null, void, and of no force and effect whatsoever. PERALTA reserves the right to assign the AGREEMENT to an affiliate of or contractor of PERALTA with the prior written consent of PARTNER which shall not be unreasonably withheld, provided that at any time after PARTNER has been paid in full for work then provided, PERALTA may, without the consent of PARTNER, assign the AGREEMENT to an affiliate or a contractor of PERALTA upon NOTICE to PARTNER.

## **11.1 Prohibition Against Outside Agreements**

PERALTA and PARTNER shall not enter into agreements related to products and/or services of this contract with any out-of-state agency or organization. Any out-of-state agency or organization shall negotiate with the California Department of Education for products and/or services pertaining to this contract.

## **12 TERMINATION**

AGREEMENT shall terminate upon completion by PARTNER of the obligations listed in Section 4 or by the TERMINATION DATE, whichever occurs first, whichever occurs first. This AGREEMENT may be terminated by either party upon thirty (30) days written notice. AGREEMENT may also be cancelled immediately by mutual written consent.

### **12.1 Termination for Cause**

PERALTA may terminate performance under the AGREEMENT, in whole or in part subjthe cure language in should PARTNER commit a material breach. If PERALTA elects to terminate the AGREEMENT for cause, PERALTA shall provide NOTICE to PARTNER of its breach and of the extent to which performance shall be terminated. PARTNER shall immediately upon receipt of said NOTICE cease performance per the terms of the NOTICE and mitigate damages.

### **12.2 Payment Obligations**

In the event AGREEMENT is terminated prior to completion of the project, PERALTA shall pay PARTNER the allowable costs incurred by PARTNER to the time of the termination.

### **12.3 Suspension of Performance**

PERALTA may suspend, delay, or interrupt performance, in whole or in part, for such periods of time as PERALTA may determine in its sole discretion. PARTNER 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.

### **12.4 Termination for Convenience**

PERALTA may terminate performance of the AGREEMENT, in whole or in part, for convenience upon its determination that such termination is in PERALTA'S best interests. PARTNER 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, PARTNER 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.

### **12.5 Termination for Illegality**

PERALTA 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, PARTNER shall immediately cease performance of such activity and mitigate damages. PARTNER 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.

### **12.6 Tort Claims Act**

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

### **12.7 Forum Selection**

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

### **12.8 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.

### **12.9 No Special Damages**

Notwithstanding any other provision, in no event shall PERALTA 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.

### **12.10 Reserve Right to Offset**

PERALTA reserves the right to offset the reasonable cost of all damages caused to PERALTA against any outstanding invoices or amounts owed to PARTNER.

### **12.11 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 PERALTA'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.

### **12.12 Course of Dispute**

Unless PERALTA gives NOTICE to stop work or of its intent to terminate this AGREEMENT, nothing in the AGREEMENT shall allow PARTNER to discontinue the WORK during the course of any dispute, and PARTNER'S failure to continue the WORK during any and all disputes shall be considered a material breach of the AGREEMENT.

## **13 INTERPRETATION**

### **13.1 Integration**

It is mutually understood and agreed that this AGREEMENT, the Exhibits, and any documents, provisions of law or PERALTA policies attached or referenced to herein are incorporated herein by reference and together serve as the final, complete, and exclusive agreement of the PARTIES, setting out the entire intention of the PARTIES. Any and all prior agreements or representations are superseded 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.

### **13.2 Defined Terms**

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

### **13.3 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.

### **13.4 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.

### **13.5 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.

### **13.6 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.

### **13.7 PARTNER Is Independent of PERALTA**

This AGREEMENT is by and between two independent agencies and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association. PARTNER and its officers, agents, and employees are not entitled to participate in any pension, insurance, bonus, or similar benefits PERALTA provides its PERALTA employees. PARTNER shall not sign contracts on behalf of or otherwise bind PERALTA.

### **13.8 Sovereign Immunity Reserved**

Nothing herein shall be construed to waive or limit PERALTA'S sovereign immunity or any other immunity from suit provided by law.

### **13.9 No Waiver of Performance**

The failure of PERALTA to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of the AGREEMENT, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right as to further performance. No waiver, properly authorized and in writing, of any breach of any provision shall be construed as a waiver of any continuing or succeeding breach of such provision, a waiver or modification of the provision itself, or a waiver or modification of any right under the AGREEMENT, unless the waiver so states.

## **14 DOCUMENTS INCORPORATED**

The AGREEMENT comprises the general provisions set out in these articles as well as all exhibits:

EXHIBIT A:	WORK PLAN
EXHIBIT B:	PRICING AND PAYMENT SCHEDULE
EXHIBIT C:	APPLICABLE LAW, REGULATIONS, GUIDELINES AND POLICIES
EXHIBIT D1:	STATE "CONTRACTOR CERTIFICATION CLAUSES"
EXHIBIT D2:	FEDERAL CERTIFICATIONS
EXHIBIT E:	TRAVEL AND PER DIEM LIMITATIONS
EXHIBIT F:	AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES AND THEIR AUXILIARIES (SUBCONTRACTING)
EXHIBIT G:	CERTIFICATION OF UNDERSTANDING: FEDERAL FUNDS
EXHIBIT H:	AUTHORIZED AGENTS
EXHIBIT I:	NOTICE CONTACTS

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**15 EXECUTED**

**15.1 Authority.**

Signing of the AGREEMENT has been done in compliance with Board approval as outlined in the Board Policies for the Peralta Community College District. An AUTHORIZED AGENT for each PARTY shall sign.

**15.2 Executed.**

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

**PARTNER ACCEPTS AND AGREES:**

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

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

Title: \_\_\_\_\_

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

**PERALTA ACCEPTS AND AGREES:**

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

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

Title: \_\_\_\_\_

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

\_\_\_\_\_  
APPROVED AS TO LEGAL FORM:

## **EXHIBIT B: PRICING AND PAYMENT SCHEDULE**

As full compensation for all WORK contemplated by the AGREEMENT, PARTNER shall be recompensed by payment of \$ \_\_\_\_\_ for the Fiscal Year (“FY”) 2008-2009. PARTNER shall submit a maximum of two (2) invoices to the Peralta Community College District Office for payment during FY 2008-2009. Invoices shall be submitted for the amounts noted below no later than the dates that follow:

1. \$ 24,500 no later than June 30, 2009
- 2.

### **Invoicing:**

1. Invoices shall include the California Department of Education agreement number.
2. Invoicing must comply with the State Contracting Manual:
  - (a) State Contracting Manual, Chapter 3, Section 3.06 –See Exhibit F—Agreements with Other Governmental Entities and Their Auxiliaries
  - (b) State Contracting Manual, Chapter 7, Section 7.30, summarized below:
    - A. If payment is on a cost-reimbursement basis, the following items should be included and all unit rates must be extended and totaled (PCC § 10371[C]):
      1. Personal service costs showing individual or position rates per unit of time
      2. Fringe benefits costs citing actual benefits or a percentage of personal services costs
      3. Operating expenses including rent and supplies
      4. Equipment costs specifying equipment to be bought and the disposition of equipment at the end of the contract
      5. Travel expenses and per diem rates set at the rate specified by the Department of Personnel Administration for similar employees or verification supplied that such rates are not available to the contractor
      6. Overhead
      7. Other specific breakdown required
    - B. A consultant services contract must contain the above items. (PCC § 10371(c))
    - C. If payment is based on a lump sum or fixed price for the total project, the contractor is paid for an agreed upon result.
3. PARTNER must include a statement in the invoice to PERALTA, affirming that PARTNER understands that funding for the BARTPC project is a Federal grant, and that PARTNER applied appropriate accounting compliance procedures for Federal funds. OMB Circulars A-133 (compliance requirements), A-21 (cost principles), and A-110 (procurement standards) are applicable. PARTNER may submit the following form with each invoice, acknowledging that the funding for the Tech Prep program is from a Federal grant.

# INVOICE ADDENDUM: TECH PREP IS FEDERALLY FUNDED

This form must be attached with every invoice submitted to Peralta Community College District for reimbursement of BARTPC expenses.

**AUTHORIZATION FOR TECH PREP COLLABORATIVE:**

Bay Area Career Pathway Alliance (“BACPA”), a California Department of Education Tech Prep Regional Coordination Project (California Agreement Number: CN0883316), is authorized to receive state-administered Federal funding under the **Carl D. Perkins Career and Technical Education Act of 2006**, Title II, Public Law 109-270, 20 U.S.C. Section 2373. This AGREEMENT is funded in part or whole with a Vocational Education **Basic Grant** to States or a **Tech-Prep** Education Grant, both from the United States Department of Education, Office of Vocational and Adult Education.

**Basic Grants** of funds to states are subject to **Title 34 CFR sections 400 and 403; EDGAR** (Title 34 CFR sections 74, 76 (except 76.103), 77, 79, 80, 81, 82, and 85); **OCR Guidelines for Vocational Education**. In addition to the above regulations, **Tech Prep** funds are subject to Title 34 CFR 406; EDGAR, Parts 86. Federal programs are described in the Catalog of Federal Domestic Assistance (CFDA) database. The CFDA numbers for **Basic Grants** to states and **Tech Prep** programs are **84.048** and **84.243**, respectively.

By checking the box below, PARTNER acknowledges that the attached invoice will be reimbursed with Federal funds, which are subject to Federal rules and guidelines.

PARTNER Acknowledges That Federal Funds Are Being Requested.	(check box)	<input type="checkbox"/>
Invoice Number:		
By (Authorized Signature)		
Printed Name and Title of Person Signing		
Date		



## **EXHIBIT C: APPLICABLE LAW, REGULATIONS, GUIDELINES AND POLICIES**

- Public Law 101-336 - American with Disabilities Act (ADA) of 1990 (42 USC 12101 et seq.)
- Public Law 104-156 (Single Audit Act Amendments of 1996)
- Public Law 105-17 - Individuals with Disabilities Education Act (IDEA)
- Title VII of Civil Rights Act of 1964 as amended by the Civil Rights Act of 1991
- 29 U.S.C. 1001 et seq. (Employee Retirement Income Security Act of 1974)
- 40 U.S.C. 276a et seq. (Davis Bacon Act)
- 40 U.S.C. 276a-a7 (Copeland Anti-Kickback Act)
- 5 CFR 733 Hatch Act
- 28 CFR 35 - Nondiscrimination on the Basis of Disability in State and Local Government
- 29 CFR 5 (Department of Labor Regulations)
- 34 CFR 74 – Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations
- 34 CFR 76 – State-administered Programs
- 34 CFR 77 – Definitions that Apply to Department Regulations
- 34 CFR 79 – Intergovernmental Review of Department of Education Programs and Activities
- 34 CFR 80 – Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- 34 CFR 81 - General Education Provisions Act—Enforcement
- 34 CFR 82 – New Restrictions on Lobbying
- 34 CFR 85 – Governmentwide Debarment and Suspension (Nonprocurement)
- 34 CFR 86 – Drug and Alcohol Abuse Prevention
- 34 CFR 97 – Protection of Human Subjects
- 34 CFR 100 – Nondiscrimination under Programs Receiving Federal Assistance through the Department of Education Effectuation of Title VI of the Civil Rights Act of 1965
- 34 CFR 104 – Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance
- 34 CFR 106 – Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance
- 34 CFR 110 – Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance
- 34 CFR 400 – Vocational and Applied Technology Education Program—General Provisions
- 34 CFR 406 – State-administered Tech-Prep Education Program
- 37 CFR 401 – Rights to Inventions Made by Nonprofit Organizations and Small Business firms Under Government Grants, Contracts, and Cooperative Agreements
- 2 CFR 230 (OMB Circular A-122) – Cost Principles for Nonprofit Organizations
- 2 CFR 225 (OMB Circular A-87) – Cost Principles of State, Local, and Indian Tribal Governments
- Circular A-133 (Office of Management and Budgets {OMB}) Audits of States, Local Governments and Non-Profit Organizations

- General Services Administration - Federal Acquisition Regulation (Guidance for Purchasing and Contracting)
- Grant Application and Budget Instrument (GABI)
- CA Code of Regulations, Title II, Chapter 5, Section 8107, Non-discrimination Clause
- California Code of Regulations Title II Subchapter I (CA Department of Personnel Administration Regulations)
- California Code of Regulations, Title 2, Division 6 (sections 18109-18997). California Fair Political Practices Commission - Political Reform Act of 2002
- CA Education Code Section 45125.1 - Fingerprinting and Background Checks
- California Government Code Sec. 54950 et seq. (Ralph M. Brown Act)
- California Labor Code
- California Public Contract Code Sections 10410 and 10411 – Conflict of interest with current and former state employees
- California Department of Education (CDE)/CDD Funding Terms and Conditions and Program Requirements for Child Development Programs
- Any and All Other Appropriate and Required Laws, Regulations, Policies and Procedures for Tech Prep Programs.

**EXHIBIT D1: STATE "CONTRACTOR CERTIFICATION CLAUSES"**

(California Form: CCC-307)

**CONTRACTOR CERTIFICATION CLAUSES**

**1. STATEMENT OF COMPLIANCE:**

Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

**2. DRUG-FREE WORKPLACE REQUIREMENTS:**

Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
  - 1) the dangers of drug abuse in the workplace;
  - 2) the person's or organization's policy of maintaining a drug-free workplace;
  - 3) any available counseling, rehabilitation and employee assistance programs; and,
  - 4) penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the proposed Agreement will:
  - 1) receive a copy of the company's drug-free workplace policy statement; and,
  - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

**3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:**

Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

**4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT:**

Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Revised: June 22, 2009

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

**5. EXPATRIATE CORPORATIONS:**

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

**6. SWEATFREE CODE OF CONDUCT:**

- a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108.
- b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

**7. DOMESTIC PARTNERS:**

For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

**DOING BUSINESS WITH THE STATE OF CALIFORNIA**

The following laws apply to persons or entities doing business with the State of California.

## **1. CONFLICT OF INTEREST:**

Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

### **Current State Employees (Pub. Contract Code §10410):**

- a. No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- b. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

### **Former State Employees (Pub. Contract Code §10411):**

- a. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- b. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

## **2. LABOR CODE/WORKERS' COMPENSATION:**

Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

## **3. AMERICANS WITH DISABILITIES ACT:**

Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

**4. CONTRACTOR NAME CHANGE:**

An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

**5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:**

- a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
- b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.
- c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

**6. RESOLUTION:**

A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

**7. AIR OR WATER POLLUTION VIOLATION:**

Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

**8. PAYEE DATA RECORD FORM STD. 204:**

This form must be completed by all contractors that are not another state agency or other governmental entity.

**CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed above as Exhibit D1. This certification is made under the laws of the State of California.

Contractor/Bidder Firm Name (Printed)	Federal ID Number
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	Executed in the County of

## **EXHIBIT D2: FEDERAL CERTIFICATIONS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 34 CFR Part 82, new restrictions on Lobbying, and 34 CFR Part 85, Government-wide Debarment and Suspension (Non procurement) and Government-wide requirements for Drug-Free Workplace (Grants). The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

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### **1. LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000 as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement:

(b) If any funds other than federal appropriated funds have been or will be paid to any person for influencing or attempting to influence an employee of Congress, or any employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL,  Disclosure Form to Report Lobbying in accordance with this instruction;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

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### **2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by executive Order 12549, Debarment and Suspension, and other responsibilities implemented at 34 CFR Part 85, for prospective participants in primary or a lower tier covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110-

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency: (B) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction



or contract under a public transaction violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) Have not within a three-year period proceeding this application had one or more public transactions (federal, state, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

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### **3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The danger of drug abuse in the workplace;

(2) The grantee'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 occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will -

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d) (2) from an employee or otherwise receiving actual notice of such conviction.

Employers of convicted employees must provide notice, including position title, to: Director, Grants, and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant:

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d) (2), with respect to any employee whom is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency:

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

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Check [ ] if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE**  
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610

a. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant, and

b. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3) Washington, DC 20202-4571. Notice shall include the identification numbers(s) of each affected grant.

**FEDERAL CERTIFICATIONS**

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	CONTRACT #
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

## **EXHIBIT E: TRAVEL AND PER DIEM LIMITATIONS**

### **A summary of the State of California Short-term Travel Expense Reimbursement Program Administered by the Department of Personnel Administration**

Rates, time frames, and requirements are applicable to all contractors and subcontractors. Additional details applicable to the travel reimbursement program may be found in the California Code of Regulations, Title 2, Division 1, Chapter 3, Article 2 (requirements applicable to excluded employees).

#### **Conditions of Travel**

Reimbursement shall not be made for meal and lodging expenses incurred within 50 miles of home or headquarters. The CDE may approve meals and/or lodging for employees *on travel status* away from, but within 50 miles of home or headquarters. Delegation does not extend to the approval of meals or lodging at either the home or headquarters location.

#### **Lodging Reimbursement Rates – In-State**

Applicable when state business requires an overnight stay and the employee uses a good, moderately priced commercial lodging establishment (hotel, motel, bed and breakfast, or public campground) that caters to the short-term traveler and for day trips of less than 24 hours.

#### **Lodging Reimbursement (receipt required)**

Statewide, with the following exceptions	up to \$84.00 + tax
Counties of Los Angeles and San Diego	up to \$110.00 + tax
Alameda, San Francisco, San Mateo, and Santa Clara	up to \$140.00 + tax

Note: Travelers who do not provide a lodging receipt are eligible to claim meals/incidentals only as appropriate to the time frames of travel (see below for rates and time frames).

#### **Mileage Reimbursement Rates**

All privately owned vehicle mileage driven on state business is subject to advanced approval by the appointing authority. The rate claimed shall be considered full reimbursement for all costs related to the operation and maintenance of the vehicle, including both liability and comprehensive insurance.

<u>Automobile</u>	<u>50.5 cents per mile</u>
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If an automobile is picked up and dropped off at a common carrier and no parking expense is claimed, mileage to and from the common carrier may be claimed at the above appropriate rate times twice the number of miles the driver occupied the vehicle (pays for each round trip).

#### **Meals and Incidentals (each 24-hour period)**

Breakfast:	<u>actual expense up to</u>	\$6.00
Lunch:	<u>actual expense up to</u>	\$10.00

Dinner: actual expense up to \$18.00  
Incidentals: actual expense up to \$6.00

Note: **YOU** must retain all meal receipts for audit by the state or the IRS.

### **Time Frames**

#### First Day (Trip of More Than 24 Hours):

Trip begins at or after 8 a.m.: may claim breakfast

Trip begins at or after 2 p.m.: may claim lunch

Trip begins at or after 7 p.m.: may claim dinner

#### Fractional Day (After 24 Hours of Travel):

Trip ends at or after 8 a.m.: may claim breakfast

Trip ends at or after 2 p.m.: may claim lunch

Trip ends at or after 7 p.m.: may claim dinner

#### Fractional Day (Trip of Less Than 24 Hours of Travel):

Trip must begin at or before 6 a.m. AND end at or after 9 a.m. in order to claim breakfast.

Trip must begin at or before 4 p.m. AND end at or after 7 p.m. in order to claim dinner.

No lunch or incidentals may be claimed.

If there is no overnight stay, these meals are taxable.

Note: Full meals included in airfare, hotel and conference fees, or otherwise provided may not also be claimed for reimbursement. The same meal may not be claimed more than once on any date. Continental breakfast of rolls, coffee, and juice are not considered full meals.

### **Conferences/Conventions** (rooms that are contracted by the sponsors for the event)

- State sponsored: With receipt, up to \$110.00 + tax
- Non-state sponsored: With receipt, up to the rate contracted for the event

### **Out-of-State Travel/Out-of-Country Travel – Not allowed**

#### **Receipts/Miscellaneous:**

Receipts are required for each item for expense for street car, ferry fares, bridge and road tolls, local transit, taxi, shuttle, or hotel bus, and parking over \$10, business phone calls over \$5.00, all gas for rental cars and all lodging, regardless of amount.

Keep all receipts. The CDE may require submission of receipts with invoices. All business expenses are to be incurred as a result of conducting state business and are subject to review/verification by the CDE.

Subcontractors are subject to the same rules and requirements if they are reimbursed for travel. Meals eaten when the individual is not on travel status and refreshments or break service at meetings are not reimbursable.

**EXHIBIT F: AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES AND THEIR AUXILIARIES (SUBCONTRACTING)**

The following information is taken directly from the State Contracting Manual, Chapter 3, Section 3.06.

- A. Government entities/auxiliaries exempt from competitive bidding: Agreements for services and consultant services do not require competitive bids or proposals if the contract is with:
  - 1. A governmental agency from California or any state (PCC § 10340) or a state college or state university from California or any state
  - 2. A local governmental entity or agency, including those created as a Joint Powers Authority (JPA)
  - 3. An auxiliary organization of the CSU, or a California community college
  - 4. The Federal Government
  - 5. A foundation organized to support the Board of Governors of the California Community Colleges, or
  - 6. An auxiliary organization of the Student Aid Commission established under Education Code §69522.
  
- B. Administrative overhead fees: Agencies shall assure that all administrative fees are reasonable considering the services being provided. Agencies may only pay overhead charges on the first \$25,000 for each subcontract.
  
- C. No subcontracting to circumvent competitive bidding: Services to be provided by entities listed in Section A, above are to be performed primarily with the staff of the public entity or, in the case of the educational institutions, auxiliaries or foundations, by the faculty, staff or students associated with the particular educational institution. Agreements, with entities listed in Section A are not to be used by state agencies to circumvent the state's competitive bidding requirements. (PCC § 10340)
  
- D. Subcontracting without limitation: Services may be subcontracted without restriction only when:
  - 1. The primary agreement is a subvention agreement, or
  - 2. The total of all subcontracts does not exceed \$50,000 or 25 percent of the total contract, whichever is less, and that subcontracting is not done for the purpose of circumventing competitive bidding requirements.
  - 3. All subcontracts are with entities listed in Section A or the services to be provided under the subcontract are otherwise exempt from competitive bidding.
  
- E. Subcontracting subject to conditions: If the total of all subcontracts exceeds \$50,000 or 25 percent of the total contract, whichever is less, then subcontracting shall be permissible only if the subcontract:

1. Meets one of the categories in D, above, or
2. Prior written approval from DGS/OLS has been received, or
3. Certification that the subcontractor has been selected by the prime contractor pursuant to a bidding process requiring at least three bids from responsible bidders, or,
4. Approval by the agency secretary or highest executive officer, attesting that the selection of the particular subcontractor(s) without competitive bidding was necessary to promote the agency/department program needs and was not done for the purpose of circumventing competitive bidding requirements.

**EXHIBIT G: CERTIFICATION OF UNDERSTANDING: FEDERAL FUNDS**

**AUTHORIZATION FOR TECH PREP COLLABORATIVE:**

Bay Area Career Pathways Alliance (“BACPA”), a California Department of Education Tech Prep Regional Coordination Project (California Agreement Number: CN0883316), is authorized to receive state-administered Federal funding under the **Carl D. Perkins Career and Technical Education Act of 2006**, Title II, Public Law 109-270, 20 U.S.C. Section 2373. This AGREEMENT is funded in part or whole with a Vocational Education **Basic Grant** to States or a **Tech-Prep** Education Grant, both from the United States Department of Education, Office of Vocational and Adult Education.

**Basic Grants** of funds to states are subject to **Title 34 CFR sections 400 and 403; EDGAR** (Title 34 CFR sections 74, 76 (except 76.103), 77, 79, 80, 81, 82, and 85); **OCR Guidelines for Vocational Education**. In addition to the above regulations, **Tech Prep** funds are subject to Title 34 CFR 406; EDGAR, Parts 86. Federal programs are described in the Catalog of Federal Domestic Assistance (CFDA) database. The CFDA numbers for **Basic Grants** to states and **Tech Prep** programs are **84.048** and **84.243**, respectively.

As a PARTNER in the Bay Area Regional Tech Prep Collaborative, your organization may request reimbursement for allowable costs. This document serves as notice to the Chief Financial Officer that Federal funds are used for reimbursement of those allowable costs. As such, Federal guidelines and laws are applicable.

By signing below and returning this to PERALTA, you certify that you acknowledge notice of and understand that Federal funds may be received by your organization for reimbursement of allowable costs as a PARTNER in BARTPC.

Name:
Title:
Signature
Date



**EXHIBIT H: AUTHORIZED AGENTS**

**PERALTA'S AUTHORIZED AGENTS**

**Name** Elihu Harris  
**Title** Chancellor  
**Address** 333 E. 8th Street  
Oakland, CA 94606

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

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

**PARTNER'S AUTHORIZED AGENTS**

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

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

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

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

**EXHIBIT I: NOTICE CONTACTS**

**PERALTA'S NOTICE CONTACT**

<b>Name</b>	<b>Ahmad Mansur</b>
<b>Title</b>	<b>Project Director</b>
<b>Address</b>	<b>333 E. 8<sup>th</sup> Street</b>
	<b>Oakland CA 94605</b>
<b>Telephone</b>	<b>510-520.3154</b>
<b>Facsimile</b>	<b>510.587.7807</b>
<b>Other</b>	<b>amansur@peralta.edu</b>

**PARTNER'S NOTICE CONTACT**

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

**STATE'S PROJECT MONITOR**

<b>Name</b>	<b>Cindy Beck</b>
<b>Title</b>	
<b>Address</b>	
<b>Telephone</b>	<b>916-319-0470</b>
<b>Facsimile</b>	
<b>Other</b>	