



**LOS ANGELES COMMUNITY COLLEGE DISTRICT
CONTRACTS OFFICE – 6th FLOOR
770 WILSHIRE BLVD.
LOS ANGELES, CA 90017**

**REQUEST FOR PROPOSALS (RFP) NO. 19-03
BOND UNDERWRITING SERVICES**

I. PURPOSE AND SCOPE OF RFP

The Los Angeles Community College District ("District", "LACCD") is seeking proposals from qualified firms to participate in the District's pool of underwriters for a three-year period. Pursuant to its Debt Policy, the District expects to establish two lists of Underwriters: one list of those with the capability of underwriting and serving as senior manager for debt offerings of \$250 million or larger, and one list of those Underwriters designated as co-managers or as potential senior underwriters on offerings smaller than \$250 million.

The LACCD is one of the largest community college districts in the country with an approximate enrollment of 230,000 students at nine campuses. The District's service area is 882 square miles. Voters approved Measure J for \$3,500,000,000 in general obligation bonds on November 4, 2008, \$675,000,000 of which remains unissued. In November 2016, Measure CC was passed for \$3,300,000,000 with \$3.2 million remaining in authorization. From time to time, the District may consider other forms of financing, including bond anticipation notes, certificates of participation, lease revenue obligations and tax and revenue anticipation notes, and will likely draw upon its pool of underwriters for such services if needed.

LACCD is soliciting a Request for Proposal from qualified investment banking firms to establish a pool of investment bankers and underwriters. KNN serves as the District's Municipal Advisor and will be assisting the District in the process. Stradling Yocca Carlson & Rauth will serve as Bond Counsel, and Hawkins Delafield & Wood as Disclosure Counsel.

II. INSTRUCTIONS AND GENERAL CONDITIONS

A. Submission of Proposals

The proposer shall hand deliver or mail to the District one (1) printed original and six (6) printed copies of its proposal, one (1) copy on a CD or USB drive containing an electronic version of the proposal in Microsoft Word format, and one (1) emailed PDF version no later than **1:00 p.m. on Wednesday, April 10, 2019**, Pacific Daylight Time.

Hand delivered or mailed proposals are to be enclosed in a sealed package displaying the proposer's name and the words **"Response to RFP No. 19-03 Bond Underwriting Services"** addressed to:

Brent Hurwitz, Senior Procurement Specialist
Los Angeles Community College District
770 Wilshire Blvd, 6th Floor
Los Angeles, CA 90017

The emailed copy of the proposal shall be sent to Hurwitb@email.laccd.edu with the subject line **"Response to RFP No. 19-03 Bond Underwriting Services."**

Submittals not conforming to the specifications of this RFP will be deemed non-responsive or result in points being deducted during evaluation.

It is the sole responsibility of the proposer to ensure that the proposal is delivered on time. Any proposal received after the stated deadline, may, at the sole discretion of the District, be returned without consideration. It is the practice of LACCD not to consider late offers unless it is determined that a selection cannot be made from among the proposals received on time. LACCD shall not be responsible for, nor accept as a valid excuse for late proposal delivery, any delay in mail service, or other method of delivery used by the proposer. **Proposals submitted via fax or telephone will not be accepted** nor will proposals submitted by email only (emailed copy is in addition to hand delivered or mailed version). If hand-delivered, ample time should be allowed for delays caused by downtown Los Angeles traffic and parking. LACCD does not provide parking accommodations to proposers submitting proposals.

All proposals must be firm offers subject to acceptance by LACCD and may not be withdrawn for a period of 90 calendar days following the last day to submit proposals. Proposals may not be amended once submitted to LACCD, except as permitted by LACCD.

B. Questions About RFP

Questions are to be submitted in writing by email to Brent Hurwitz at email address: Hurwitb@email.laccd.edu on or before Monday, April 1, 2019 ("**Proposers Questions Deadline**"). LACCD shall not be obligated to answer any questions received after this deadline or submitted in a manner other than as instructed above. Proposers should only contact District personnel with questions as described herein. Proposers are instructed not to contact any District personnel, Trustees, or Committee Members concerning this RFP. At LACCD's sole discretion, unauthorized contact may be grounds for disqualification of a proposer. Written responses to the questions from the District will be posted on the website by 5:00 p.m. on Friday, April 5, 2019 (<http://www.laccd.edu/Departments/BusinessServices/Contract-Services/Pages/default.aspx>)

C. RFP Addenda/Clarifications

If it becomes necessary for LACCD to revise any part of this RFP, or to provide clarification or additional information after the proposal documents are released, written addenda will be posted at: <http://www.laccd.edu/Departments/BusinessServices/Contract-Services/Pages/default.aspx>.

It shall be the responsibility of the proposer to check the website for addenda issued. All addenda issued shall become part of the RFP. Proposer's

acknowledgement of the addenda must be declared in the proposal - See Exhibit D.

D. Pre-Contractual Expenses

Pre-contractual expenses are defined as any expenses incurred by the proposer in: (1) preparing its proposal in response to this RFP; (2) submitting that proposal to LACCD; (3) negotiating with LACCD any matter related to this RFP, including a possible contract; or (4) engaging in any other activity prior to the effective date of award, if any, of a contract resulting from this RFP. LACCD shall not, under any circumstance, be liable for any precontractual expenses incurred by proposers.

E. No Commitment to Award

Issuance of this RFP and receipt of proposals does not commit LACCD to award a contract. LACCD expressly reserves the right to postpone proposal opening for its own convenience, to accept or reject any or all proposals received in response to this RFP, to negotiate with more than one proposer concurrently, or to cancel all or part of this RFP.

F. Exceptions / Deviations

Any exceptions to, deviations from, or inability to comply with the requirements set forth in this RFP, or the terms and conditions contained in the Professional Services Agreement, must be declared in writing in Exhibit F within the proposal; and failure to do so will prevent Proposer from asserting its inability to comply with the terms or conditions later on.

Such exceptions or deviations must be segregated as a separate element of the proposal under Exhibit F - "Exceptions and Deviations to Professional Services Agreement."

The District will make a good faith effort to consider contractual issues identified by vendors and the District requires all proposing vendors to similarly make a good faith effort to comply with the District's sample agreement terms and conditions.

Proposals that mandate the use of vendor standard services contract, rather than utilizing the District's standard services contract will result in that vendor's proposal being judged non-responsive and these proposals will be rejected. Proposals that reject the following integral provisions of the District's contract terms and conditions will be treated as a rejection of the District's contract and these proposals will be rejected:

- Section 3 - Warranties
- Section 6 - Term of Agreement
- Section 13 - Waiver of Damages: Indemnity

- Section 17 - Governing Law
- Section 18 - Non-Discrimination
- Section 21 - Board Authorization
- Section 26 - Requirements for Federally-Funded Contracts
- Section 27 - District Authority
- Section 28 - Accessibility Requirements

The Proposer's attention is again directed to sections 13 and 14 of the Professional Services Agreement, which specify the indemnity clause and the minimum insurance requirements that must be met by the successful Proposer. The Proposer's inability or unwillingness to meet these requirements as a condition of award of an Agreement must be stated as an exception in the proposal.

Exceptions or deviations which are in conflict with the District's terms and conditions may render the proposal non-responsive. In the event that exceptions and deviations to the Professional Services Agreement are requested after the contract has been awarded, the District may deem the proposal non-responsive and may disqualify the proposal at its discretion.

G. Joint Offers

Joint proposals may **not** be submitted. Only proposals from individual firms will be accepted.

H. Interviews of Firms

The District may conduct in-person interviews based on the highest ranked firms as determined by the Bond Review Committee. Interviews are expected to occur the week of April 22, 2019 or later. If interviews are to be held, the District will make every effort to notify candidates as early as possible including the length of the interview, location, and interview requirements. Firms will be scored on the overall process taking into account both the written proposal and the interview to determine which firms will be selected for inclusion in the underwriting pool.

I. Exemption from Disclosure

Proposals will remain confidential in their entirety until the evaluation and analysis process is complete and a recommendation of an award has been submitted to the Los Angeles Community College District, except for information declared at the proposal opening date. All proposals submitted will become the property of the Los Angeles Community College District. The preparer must identify, in writing, all copyrighted material, trade secrets, or other proprietary information that the preparer claims are exempt from disclosure under the Public Records Act (California Government Code Section 6250 et seq.). Any firm claiming such an exemption must also state in the bid that "the bidder agrees to

indemnify and hold harmless the Los Angeles Community College District, its Board of Trustees, and its officers, employees and agents, from any claims, liability, or damages against, and to defend any action brought against above said entities for their refusal to disclose such material, trade secrets, or other proprietary information by any party." Failure of a proposal to include such a statement will be deemed a waiver of any exemption from disclosure under the Public Records Act. A blanket statement that all contents of the proposal are confidential or proprietary will not be honored by the District.

J. Protests

Any proposer that has provided a sealed bid or proposal to the District may protest the solicitation or award of a contract for violations of LACCD's procurement policies or of laws and regulations governing LACCD's procurement activities, provided the proposer has complied with PP-04-09, Bid Protest and Appeals. <http://www.laccd.edu/Departments/BusinessServices/Contract-Services/Documents/04-09-bid-protest-and-appeal.pdf>.

In order to be considered, all protests must be in writing and filed with and received by LACCD, not more than five (5) business days following the date of issuance of the District's Notice of Intent to Award with the contact below. The protest letter must state the basis for the protest and the remedy sought. Protests received by LACCD after this date will be returned to the sender.

James Watson, Director of Business Services
Los Angeles Community College District
770 Wilshire Blvd, 6th Floor
Los Angeles, CA 90017

Failure to timely file the proposal protest shall constitute grounds for the District to deny the proposal protest without further consideration of the grounds stated therein.

K. Form 700

Upon completion of the RFP process, issuance of the Notice of Intent to Award, and all relevant approvals, all key members of the selected underwriting firms/teams and all other consultants participating in this debt issuance shall provide a completed Form 700 to be kept on file with the District.

III. PROPOSAL CONTENT AND GENERAL REQUIREMENTS

A. General

The proposal should provide a straightforward, concise description of the proposer's ability to satisfy the requirements of this RFP. Emphasis should be placed on conformance to the RFP instructions, responsiveness to the RFP requirements, and completeness and clarity of content. This RFP and the

successful proposal may become a part of any contract that is executed as a result of this RFP. Any proposal attachments, documents, letters and materials submitted by the proposer will be binding and may also be included as part of the contract.

B. Presentation/Format

Paper proposals shall be submitted in 8 1/2" x 11" size, using a simple method of fastening. Proposals should be typed and not include any promotional material. Lengthy narrative is discouraged; presentations should be brief and concise. The proposal should not exceed seven (7) double-sided, single space pages, separate cover letter, with a font size no less than 11 point and a total page limit of 15 pages (proposal plus cover letter). Resumes, any debt service runs, transaction histories and schedules may be included in an appendix, which will not be counted towards the page limit.

C. Proposal Content

1. Transmittal Letter/Introduction

The letter of transmittal must, at a minimum, contain the following:

- Identification of the offering firm, including name, address and telephone number;
- Name, title, address, telephone number and email address of contact person during period of proposal evaluation;
- A statement that the proposal shall remain valid for a period of not less than ninety (90) days from the due date for submittal;
- Identification of any information contained in the proposal which the proposer deems to be, and establishes as, confidential or proprietary and wishes to be withheld from disclosure to others under the California Public Records Act (a blanket statement that all contents of the proposal are confidential or proprietary will not be honored by LACCD); and
- Signature of a person authorized to bind the offering firm to the terms of the proposal.

2. Table of Contents

Immediately following the transmittal letter include a complete table of contents for material included in the proposal, including page numbers.

D. General Requirements

1. Provide a brief description and overview of your firm, such as type of organization, years in business, business focus, organizational structure as it relates to municipal investment banking, underwriting and sales and trading, location of headquarters and presence in California, and location of sales and

- trading. Describe any agreements, joint ventures and/or affiliations insofar as they relate to distribution of primary offerings to investors at original offering prices; describe the firm's institutional and retail sales capabilities; and describe your capabilities in marketing both tax-exempt and taxable debt.
2. Summarize your firm's experience in underwriting bond issues since January 1, 2014, with an emphasis on general obligation bonds for California community colleges and other educational entities, and bonds issued in California as separate lists, distinguishing between your roles as book-running senior manager and co-manager, and including par amount, issuer, sale date, and underwriter discount. Any experience outside of California should be listed separately as well. A transaction list may be provided as an appendix and should include summary totals for the number of transactions and the total par amount of bonds issued.
 3. Identify the members of your team to be assigned to LACCD and their location, including the key investment banking personnel and the underwriter who is expected to lead the pricing, and the role of each. Provide a brief resume for each, including experience with similar bonds.
 4. Given the large size of the District's capital program, one of the decisions facing LACCD is whether to issue large issues infrequently (for example, a single issue of \$450 million once a year) or more frequent smaller issues. What advice on this subject do you have on the trade-off of the efficiency of a single large issue (e.g., cost of issuance and staff time) versus any benefits of smaller issues? Considering the challenges presented in the current market environment, what issues would you foresee that might impact a large issuance strategy versus a small issuance strategy? Include a discussion of the types of buyers or market sectors that are most likely to participate in the sales using one strategy versus the other.
 5. LACCD's debt policy sets a minimum threshold of three percent (3%) present value savings for a refunding. Please include in your response additional criteria, if any, that you would recommend in considering both current and taxable advance refunding.
 6. Please include in your response any advice you may have relative to the District's current rating strategy. Do you see actions that are within the District's control that would secure an upgrade from Standard & Poor's and Moody's? Do you think obtaining a Fitch special revenue rating would produce lower interest rates or provide any other advantage? Please do not contact the rating agencies directly in connection with this question. The most recent rating reports from Moody's and S&P are attached as Exhibit F.
 7. Please provide any other recommendations you have relative to the LACCD's debt program. Please support your recommendation(s) with references to

- current market conditions, technical indicators, market timing, interest rate projections, and anticipated levels of sector participation.
8. Please provide two (2) case studies that exhibit similar characteristics to LACCD's situation, including the members of the team.
 9. Provide five (5) client/issuer references for similar issuers, preferably individuals who have worked directly with the proposed primary contact(s). Indicate name and title of the individual, issuer, email and phone number.
 10. LACCD expects to appoint more than one firm to each underwriting. Please comment on your recommendations regarding the size and composition of the syndicate and your recommendations as to the assignment of liabilities and as to syndicate rules for an estimated \$300 million tax-exempt financing (Measure J) as well as \$150 million tax-exempt financing and \$50 million taxable financing (Measure CC).
 11. Please provide (in the attachments as Exhibit E) an indicative underwriting spread, broken down by average takedown, expenses and management fee, if any. Identify takedown by maturity of tax-exempt and taxable bonds and provide a detail of anticipated expenses for an estimated \$300 million tax-exempt financing (Measure J) as well as \$150 million tax-exempt and \$50 million taxable financing (Measure CC). Note that the District's disclosure counsel will prepare the official statement and render a 10b-5 opinion to the underwriters.
 12. Describe your pricing expectations for a \$300 million tax-exempt general obligation bond issue, amortized assuming level debt service over 25 years, assuming market conditions as of close on April 3, 2019. Include coupons, yields, serial/term structure and spreads to MMD. The estimated scale and any supporting data for the price rationale you wish to include (such as comparable sales) may be included as an appendix.
 13. State your firm's capital position (Total Capital, Equity Capital, Net Capital and Excess Net Capital) as of its most recent report. Based on that capital, what is your capability to underwrite? Please provide your most recent Focus Report.
 14. Indicate whether your firm or any personnel proposed to work for the District have been investigated or been subject to disciplinary action by FINRA, the SEC, or any other federal or State regulatory body over the past five years. If so, provide a description of such investigation or disciplinary action including the results of any investigation or disciplinary action (this disclosure may be included as an appendix).

15. The District's preference is to use firms that are located within the service area of the District, as well as within Southern California or within the State of California, including Local, Small, Emerging and Disabled Veteran-owned (LSEDV) businesses. As part of your proposal, please provide information about your physical presence in the District's service area and in California overall. In addition, please provide information about your corporate citizenship, e.g., by demonstrating active roles in the communities you serve, including recent development or participation in charitable programs or scholarships. Please include policies with regard to the use of LSEDV business enterprises.

16. Please provide any other information that you feel demonstrates your firm's ability to effectively structure, price and market bonds at favorable terms to LACCD.

E. Mandatory documents proposer must submit with sealed response

Exhibit A - Completed and signed Noncollusion Affidavit

Exhibit B - Completed and signed Certification of Non-Discrimination

Exhibit C - Completed Confidentiality Agreement

Exhibit D - Acknowledgement of all addenda issued by the District

Exhibit E - Cost Proposal/Schedule of Fees

Exhibit F – Recent Ratings Reports

Exhibit G – Exceptions to and Deviations from Standard Agreement

IV. Proposal Evaluation and Contract Award

A. Evaluation Process

Proposals will be reviewed by a panel that consists of LACCD's Chief Financial Officer, Chief Facilities Executive, an appointee of the Chancellor, an appointee of the Finance and Audit Committee chair, an appointee of the Board President, and the District's Municipal Advisor.

B. Evaluation Criteria

Proposals will be evaluated for experience, professional qualifications, service approach, cost and local presence.

The following criteria will be used in the evaluation of written proposals. The relative weights of the criteria are based on a 100-point scale, as listed below:

Qualifications and Experience of Firm	25 Points
Qualifications and Experience of Personnel Assigned to the Project	25 Points
Quality and responsiveness of proposal	25 Points
Fee for Services	15 Points
Local presence and corporate citizenship	10 Points

As note in II. H, the District may conduct in-person interviews of the highest ranked firms as determined by the Bond Review Committee. If so, firms will be scored taking into account both the written proposal and the interview based on the above criteria to determine which firms will be selected for inclusion in the underwriting pool. LACCD reserves the right to reject any or all proposals, to waive any irregularities or informalities in the offers received and to change the evaluation process described above if circumstances dictate this or it is otherwise in the best interests of LACCD to do such. In the event a proposal(s) is rejected, or in the event a proposer's offer is not rejected but does not result in a contract award, LACCD shall not be liable for any costs incurred by the proposer in connection with the preparation and submittal of the proposal.

C. Establishment of Underwriting Pool

It is the intent of LACCD to establish an underwriting pool and recommend underwriting teams as appropriate in accordance with the District's Debt Policy. The size of the Underwriting Pool has not been determined and qualified firms will conform to the Debt Policy as noted in the Purpose and Scope section of this RFP. Approval by the District's Board of Trustees will be required prior to issuance of any bonds.

EXHIBIT A

**NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY PROPOSER
AND SUBMITTED WITH ITS PROPOSAL**

(Name) _____, being first duly sworn,
disposes and says that he or she is (Title) _____ of
(Company) _____

_____, the party making the foregoing proposal, that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the proposer has not directly or indirectly induced any other proposer to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the proposer has not in any manner, directly, or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the proposer or any other proposer, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and further, that the proposer has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusion or sham proposal.

IN WITNESS WHEREOF, the undersigned has executed this Noncollusion Affidavit this
_____ Day of _____, 2019

PROPOSER _____
(Type or Print Complete Legal Name of Firm)

By _____
(Signature)

Name _____
(Type or Print)

Title _____

Address _____

City _____ State _____ Zip _____

EXHIBIT B

**CERTIFICATION OF NON-DISCRIMINATION TO BE EXECUTED BY PROPOSER
AND SUBMITTED WITH ITS PROPOSAL**

Proposer hereby certifies that in performing work or providing products for the District, there shall be no discrimination in its hiring or employment practices because of age, sex, race, color, ancestry, national origin, religious creed, physical handicap, medical condition, marital status, or sexual orientation, except as provided for in Section 12940 of the California Government Code. Proposer shall comply with applicable federal and California anti-discrimination laws, including but not limited to the California Fair Employment and Housing Act, beginning with Section 12900 of the California Government Code.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Non-Discrimination
this _____ day of _____, 2019.

PROPOSER _____
(Type or Print Complete Legal Name of Firm)

By _____
(Signature)

Name _____
(Type or Print)

Title _____

Address _____

City _____ State _____ Zip _____

EXHIBIT C

CONFIDENTIALITY AGREEMENT

The undersigned, a duly authorized officer of _____, does hereby represent, warrant and agree to the following statement:

All financial, statistical, personal, technical or other data and information relating to the District's operation which are designated confidential by the District and made available to the undersigned shall be protected by the undersigned from unauthorized use and disclosure.

Date: _____
Name of Proposer _____

By: _____
Authorized Officer

EXHIBIT D
ACKNOWLEDGMENT OF ADDENDA

The Proposer shall signify receipt of all Addenda, if any, here:

ADDENDUM NO.	DATE RECEIVED	SIGNATURE

If necessary, please print and sign additional pages.

PROPOSER _____
(Type or Print Complete Legal Name of Firm)

By _____
(Signature)

Name _____
(Type or Print)

Title _____

Address _____

City _____ State _____ Zip _____

EXHIBIT E

COST PROPOSAL/SCHEDULE OF FEES
(to be submitted by Proposer)

EXHIBIT F

COPY OF RECENT RATINGS REPORTS

EXHIBIT G

EXCEPTIONS TO AND DEVIATIONS FROM STANDARD AGREEMENT

Certain exceptions and deviations may deem the proposal non-responsive and result in rejection of the proposal.

The Proposer acknowledges it has seen and reviewed the standard agreement provided as Exhibit H and attests to the following:

1. Proposals that mandate the use of Proposer standard agreement, rather than utilizing the District's standard agreement may be rejected; and
2. Proposals that reject the following integral provisions of the District's agreement terms and conditions will be treated as a rejection of the District's contract and these proposals will be rejected:
 - Warranties
 - Term of Agreement
 - Indemnification
 - Governing Law
 - Non-Discrimination
 - Accessibility Requirements
 - Board Authorization
 - Requirements for Federally Funded Contracts
 - District Authority

In the event that exceptions and deviations to any of the attached Agreements are requested after the contract has been awarded, the District may deem the proposal non-responsive and may disqualify the proposal at its discretion.

As applies to Exhibit H: Standard Agreement, check one of the following:

- We have no exceptions or deviations.
- We have the following or attached exceptions and/or deviations.

PROPOSER _____
(Type or Print Complete Legal Name of Firm)

By _____
(Signature)

Name _____
(Type or Print)

Title _____

Address _____

EXHIBIT H

SAMPLE PROFESSIONAL SERVICES AGREEMENT (“STANDARD AGREEMENT”)

PARTIES:

LOS ANGELES COMMUNITY COLLEGE DISTRICT ("District")
770 Wilshire Boulevard
Los Angeles, California 90017
("District")

("Contractor")

DATE:

TERM OF AGREEMENT:

RECITALS

WHEREAS, the District is authorized to contract for the procurement of professional services as authorized by law; and

WHEREAS, the Contractor is specially licensed, trained, experienced and competent to perform the services described herein pursuant to this agreement;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereby agree as follows:

AGREEMENT

1. **SERVICES.** The Contractor shall perform the Services set forth in Exhibit "F" (the "Services") in compliance with specifications and standards set forth in that Exhibit. The District shall have the right to order, in writing, changes in the scope of work or under the Services to be performed with any applicable version of the compensation paid hereunder agreed upon by the District and the Contractor. Any adjustment to fees, rate schedules,

or schedule of performance can only be adjusted pursuant to written agreement between the parties.

2. **CONTRACT DOCUMENTS.** The complete contract between the Contractor and the District includes the following documents as applicable: the advertisement for Request For Proposals, the RFP conditions, requirements and specifications, the Proposal of the Contractor and its acceptance by the District, the District's contract, and all amendments thereto. Any of these documents shall be interpreted to include all provisions of the other documents as though fully set forth therein. Notwithstanding anything to the contrary contained in the agreement between the District and the Provider, and/or in case of any conflicting terminology between the Provider's proposal and the District's contract terms and conditions, the District's RFP conditions and instructions and the District's Agreement terms and conditions shall apply and prevail.

3. **WARRANTIES.** The Contractor warrants and represents that it is specially trained, qualified, duly licensed, experienced, and competent to provide the Services. The Contractor warrants that Services (and any goods in connection therewith) furnished hereunder will conform to the requirements of this agreement (including all descriptions, specifications and drawings made a part hereof) and in the case of goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by the District, free from defects in design. The District's approval of designs or specifications furnished by the Contractor shall not relieve the Contractor of its obligations under this warranty. All warranties, including special warranties specified elsewhere herein, shall inure to the District, its successors, assigns, and users of the goods or services.

4. **FEES.** The District shall pay the Contractor the fees set forth in Exhibit B, in accordance with the terms and conditions of this Agreement. The Contractor represents that such fees do not exceed the Contractor's customary current price schedule. The District shall pay all applicable taxes; excepting, however, the federal excise tax, and all state and local property taxes, as college districts are exempt therefrom. Payment shall be made by the District's Accounts Payable Office upon submittal of invoice(s) approved by the Vice-President of Administration, or designee, at the College.

5. **EXPENSES.** The Contractor shall assume all expenses incurred in connection with performance except as otherwise provided in this agreement.

6. **TERM OF AGREEMENT.** This agreement shall be for the term set forth above, unless sooner terminated pursuant to the terms hereof.

7. **TERMINATION OF AGREEMENT.**

The Los Angeles Community College District may at any time elect to terminate the agreement without cause and issue a thirty (30) day written termination notice. The Provider likewise can issue a thirty (30) day notice of termination. The fees due to the Provider will be based the following conditions:

a) If during the course of the projects any attempt to deviate from the approved Project Plan may necessitate termination of the agreement. Remaining payment for services shall be based on the approved payment schedule which shall delineate the percent of payment / amount due based on the work performed.

b) If the Project Plan schedule as provided by the Provider and approved by DISTRICT is not maintained and adequate justification is not provided within a reasonable time period, the College may elect to terminate the agreement. Remaining payment for services shall be based on the approved payment schedule which shall delineate the percent of payment /amount due based on the work performed.

8. **DOCUMENTATION.** The Contractor agrees to provide to the District, at no charge, a sufficient number of nonproprietary manuals and other printed materials, as used in connection with the Services, and updated versions thereof, which are necessary or useful to the District in its use of the Services provided hereunder.

9. **RIGHTS IN DATA.** All technical communications and records originated or prepared by the Contractor pursuant to this agreement including papers, reports, charts, computer programs, and other documentation, but not including the Contractor's administrative communications and records relating to this agreement shall be delivered to and shall become the exclusive property of the District and may be copyrighted by the District. The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this agreement by the Contractor or jointly by the Contractor and the District can be used by either party in any way it may deem appropriate. All inventions, discoveries or improvements of the computer programs developed pursuant to this agreement shall be the property of the District. During the term of this

agreement, certain information which the District deems confidential ("Confidential Information") might be disclosed to the Contractor. The Contractor agrees not to divulge, duplicate or use any Confidential Information obtained by the Contractor during the Contractor's engagement. Such Confidential Information may include, but is not limited to, student and employee information, computer programs, and data in the District's written records or stored on the District's computer systems.

10. **CONTRACTOR ACCOUNTING RECORDS.** Records of the Contractor's directly employed personnel, other consultants and reimbursable expenses pertaining to the work and records of account between the District and the Contractor shall be maintained on an accounting basis acceptable to the District and shall be available for examination by the District or its authorized representative(s) during regular business hours within one (1) week following a request by the District to examine such records. Failure by the Contractor to permit such examination within one (1) week of a request shall permit the District to withhold all further payments until such examination is completed unless an extension of time for examination is authorized by the District in writing.

11. **RELATIONSHIP OF PARTIES.** With regard to performance hereunder, the Contractor is an independent contractor and not an officer, agent, partner, joint venturer, or employee of the District. The Contractor shall not, at any time, or in any manner, represent that it or any of its agents or employees is in any manner agents or employees of the District.

12. **DISTRICT REPRESENTATIVE.** The contact person set forth above or his or her designee shall represent the District in the implementation of this agreement.

13. **WAIVER OF DAMAGES; INDEMNITY.** The Contractor hereby waives and releases the District from any claims the Contractor may have at any time arising out of or relating in any way to this agreement, except to the extent caused by the District's willful misconduct. Notwithstanding the foregoing, the parties agree that in no event shall the District be liable for any loss of the Contractor's business, revenues or profits, or special, consequential, incidental, indirect or punitive damages of any nature, even if the District has been advised in advance of the possibility of such damages. This shall constitute the District's sole liability to the Contractor and the Contractor's exclusive remedies against the District. Except for the sole negligence or willful misconduct of the District the Contractor shall indemnify, hold harmless and defend the District and its Board of Trustees, officers, employees, and agents from any liability, losses, costs, damages, claims, and obligations relating to or arising from this agreement.

Without limiting the foregoing, the Contractor shall indemnify and hold harmless the District, and its Board of Trustees, officers, employees, and agents from all liability, losses, costs, damages, claims, and obligations of any nature or kind, including attorney's fees, costs, and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance, registered or unregistered trademark, servicemark, or tradename, furnished or used in connection with this agreement. The Contractor, at its own expense, shall defend any action brought against the District to the extent that such action is based upon a claim that the goods or software supplied by the Contractor or the operation of such goods infringes a patent, trademark, or copyright or violates a trade secret.

Each party hereto (the "Indemnifying Party") agrees to protect, indemnify, defend and hold harmless to the other party, and its affiliates, successors, assigns, directors, officers, employees, and agents, from and against any and all losses, claims, liens, liabilities and expenses whatsoever, arising from or relating to the performance of this Agreement but only to the extent of the Indemnifying Party's fault hereunder.

14. **INSURANCE.** Without limiting the Contractor's indemnification of the District and as a material condition of this agreement, the Contractor shall procure and maintain at its sole expense, for the duration of this agreement, insurance coverage with limits, terms and conditions at least as broad as set forth in this section. The Contractor shall secure and maintain, at a minimum, insurance as set forth below, with insurance companies acceptable to the District to protect the District from claims which may arise from operations under this agreement, whether such operations be by the Contractor or any subcontractor or anyone directly or indirectly employed by any of them. As a material condition of this agreement, the Contractor shall furnish to the District certificates of such insurance and endorsements, which shall include a provision for a minimum thirty-day notice to the District prior to cancellation of or a material change in coverage.

The Contractor shall provide the following insurance:

a) Commercial General Liability Insurance, "occurrence" form only, to provide defense and indemnity coverage to the Contractor and the District for bodily injury and property damage. Such insurance shall name the District as an additional named insured and shall have a combined single limit of not less than five million dollars (\$5,000,000) per occurrence. The policy so secured and maintained shall include personal injury, contractual or

assumed liability insurance; independent contractors; premises and operations; products liability and completed operation; broad form property damage; broad form liability; and owned, hired and non-owned automobile insurance. The policy shall be endorsed to provide specifically that any insurance carried by the District which may be applicable to any claim or loss shall be deemed excess and non-contributory, and the Contractor's insurance primary, despite any provisions in the Contractor's policy to the contrary.

b) Professional liability insurance in an amount not less than one million dollars (\$1,000,000) per incident.

c) Workers' Compensation Insurance with limits as required by the Labor Code of the State of California and Employers Liability insurance limits of not less than one million dollars (\$1,000,000) per accident.

d) Business auto liability insurance with coverage at least as broad as provided by Insurance Services office form CA 00 01 with limits not less than one million dollars (\$1,000,000) combined single limit, including owned, non-owned, and hired autos;

Failure to maintain the insurance and furnish the required documents may terminate this agreement without waiver of any other remedy the District may have under law.

15. **AMENDMENTS.** This agreement is the entire agreement between the parties as to its subject matter and supersedes all prior or contemporaneous understandings, negotiations, or agreements between the parties, whether written or oral, with respect thereto. This agreement may be amended only in a writing signed by both parties.

16. **ASSIGNMENT.** This agreement may not be assigned or otherwise transferred, in whole or in part, by either the District or the Contractor without prior written consent of the other.

17. **GOVERNING LAW.** This agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder, and any action arising from or relating to this agreement, shall be construed and enforced in accordance with, and governed by, the laws of the State of California or United States law, without giving effect to conflict of laws principles. Any action or proceeding arising out of or relating to this agreement shall be brought in the county of Los

Angeles, State of California, and each party hereto irrevocably consents to such jurisdiction and venue, and waives any claim of inconvenient forum.

18. **NONDISCRIMINATION.** The Contractor hereby certifies that in performing work or providing services for the District, there shall be no discrimination in its hiring, employment practices, or operation because of sex, race, religious creed, color, ancestry, national origin, physical disability, mental disability, medical condition, marital status, or sexual orientation, except as provided for in section 12940 of the Government Code. The Contractor shall comply with applicable federal and California anti-discrimination laws, including but not limited to, the California Fair Employment and Housing Act, beginning with Section 12900 of the California Government Code, the provisions of the Civil Rights Act of 1964 (Pub. L. 88-352; 78 Stat. 252) and Title IX of the Education Amendments of 1972 (Pub. L. 92-318) and the Regulations of the Department of Education which implement those Acts. The Contractor agrees to require compliance with this nondiscrimination policy by all subcontractors employed in connection with this agreement.

19. **EQUAL OPPORTUNITY EMPLOYER.** The Contractor, in the execution of this agreement, certifies that it is an equal employment opportunity employer.

20. **ATTORNEYS' FEES AND COSTS.** If either party shall bring any action or proceeding against the other party arising from or relating to this agreement, each party shall bear its own attorneys' fees and costs, regardless of which party prevails.

21. **BOARD AUTHORIZATION.** The effectiveness of this agreement is expressly conditioned upon approval by the District's Board of Trustees.

22. **SEVERABILITY.** The Contractor and the District agree that if any part, term, or provision of this agreement is found to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect other parts, terms, or provisions of this agreement, which shall be given effect without the portion held invalid, illegal, or unenforceable, and to that extent the parts, terms, and provisions of this agreement are severable.

23. **TERMINATION FOR NON-APPROPRIATION OF FUNDS.** If the term of this agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the agreement is contingent on the appropriation and availability of funds for such purpose, as determined in good faith by the District. If funds to effect such continued purpose are not

appropriated or available as determined in good faith by the District, this agreement shall automatically terminate and the District shall be relieved of any further obligation.

24. **NOTICE.** Any notice required to be given pursuant to the terms of this agreement shall be in writing and served personally or by deposit in the United States mail, postage and fees fully prepaid, addressed to the applicable address set forth above. Service of any such notice if given personally shall be deemed complete upon delivery, and if made by mail shall be deemed complete on the day of actual receipt or at the expiration of 2 business days after the date of mailing, whichever is earlier.

25. **CONFLICTS OF INTEREST.** The Contractor agrees not to accept any employment or representation during the term of this agreement which is or may likely make the Contractor financially interested. (as provided in California Government Code Sections 1090 and 87100) in any decision made by the District on any matter in connection with which the Contractor has been retained pursuant to this agreement.

26. **REQUIREMENTS FOR FEDERALLY FUNDED CONTRACTS.**

A.) If this Agreement is funded by the District, in whole or in part, from revenues received from the Federal Government, then the following additional provisions shall apply. It shall be the Contractor's responsibility to ascertain if Federal funds are involved.

B.) Contractor, and any subcontractors at any tier, shall comply with 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."

C.) No contract, or any subcontract at any tier, shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold (currently \$100,000) shall provide the required certification regarding its exclusion status and that of its principal employees.

27. **DISTRICT AUTHORITY.** The Chancellor, Deputy Chancellor, Director of Business Services, Contracts Manager, Chief Facilities Executive, Director of Facilities Planning and Development, College President or Vice President of Administrative Services have delegated authority from the District Board of Trustees to bind District contractually. Persons acting in positions not specified above or have specific delegated authority by the Board of Trustees and those in the capacity as project managers or consultants to District do not have authority to: (1) obligate or commit District to any payment of money; (2) obligate District to any modification to this Contract or the Contract Sum; (3) relieve Contractor of any of its obligations under this Contract; or (4) approve or order any Work to be done or materials, equipment or supplies to be delivered.

28. **ACCESSIBILITY_REQUIREMENTS.** The vendor hereby warrants that the products or services to be provided under this agreement comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended, and its implementing regulations. Vendor agrees to respond promptly to and resolve any complaints regarding accessibility of its products or services that are brought to its attention. Vendor further agrees to indemnify and hold harmless the District from and against any claim arising out of its failure to comply with these requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of this agreement.”

IN WITNESS WHEREOF, the parties hereto have executed this agreement in Los Angeles, California, on the date set forth above.

-DISTRICT-
LOS ANGELES COMMUNITY COLLEGE DISTRICT

By _____

- CONTRACTOR -

By _____
(Signature)

Printed Name _____

Title _____