

**PERALTA COMMUNITY COLLEGE DISTRICT  
Board of Trustees Agenda Report  
For the Trustee Meeting Date of , 2010**

ITEM # 14

**ITEM TITLE:**

Electronic Transaction Processing Agreement with Official Payments Corporation (OPC).

**SPECIFIC BOARD ACTION REQUESTED:**

Request approval for a blanket purchase order in the amount of \$150,000 to pay for credit card convenience fees for Fiscal Year 2010-11.

**ITEM SUMMARY:**

OPC currently offers Peralta Community College District electronic check payment and processing transaction services and credit/debit card payment transaction services through an Internet interface over the web, an interactive telephone voice response system, and a point of sale interface.

**BACKGROUND/ANALYSIS:**

**ALTERNATIVES/OPTIONS:**

**EVALUATION AND RECOMMENDED ACTION:**

**SOURCE OF FUNDS (AND FISCAL/BUDGETARY IMPACT):**

**OTHER DEPARTMENTS IMPACTED BY THIS ACTION (E.G. INFORMATION TECHNOLOGY):**

YES \_\_\_\_\_ No  X

**COMMENTS:**

**WHO WILL BE PRESENTING THIS ITEM AT THE BOARD MEETING?**

**DID A BOARD STANDING COMMITTEE RECOMMEND THE ITEM?** YES \_\_\_\_\_ No  X

\_\_\_\_\_ **IF "YES", PLEASE INCLUDE THAT INFORMATION IN YOUR SUMMARY.**

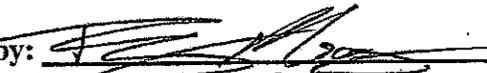
(\*\*\*\*Board contract approval is subject to negotiation and execution by the Chancellor.)

**PLEASE ACQUIRE SIGNATURES IN THIS ORDER:**

**DOCUMENT PREPARED BY:**

Prepared by:  Date: 12/4/10  
Ronald P. Gerhard,  
Vice Chancellor for Finance and Administration

**DOCUMENT PRESENTED AND APPROVED BY:**

Presented and approved by:  Date: 12/4/10  
Ronald P. Gerhard,  
Vice Chancellor for Finance and Administration

**FINANCE DEPARTMENT REVIEW**

Finance review required       Finance review *not* required

If Finance review is required, determination is:       Approved       Not Approved

If not approved, please give reason: \_\_\_\_\_

Signature:  Date: 12/4/10  
Ronald P. Gerhard,  
Vice Chancellor for Finance and Administration

**GENERAL COUNSEL (Legality and Format/adherence to Education Codes):**

Legal review required       Legal review *not* required

If Legal review is required, determination is:       Approved       Not Approved

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Thuy T. Nguyen, General Counsel

**CHANCELLOR'S OFFICE APPROVAL**

Approved, and Place on Agenda       Not Approved, but  
Place on Agenda

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Wise Allen, Chancellor

## ELECTRONIC TRANSACTION PROCESSING AGREEMENT

This Electronic Transaction Processing Agreement, including its exhibits, ("Agreement") is made and entered into by and between Official Payments Corporation, a Delaware corporation ("OPC"), and Peralta Community College District ("Customer").

OPC offers electronic check payment and processing transaction services and credit/debit card payment transaction services through an Internet interface over the web, an interactive telephone voice response system ("IVR"), and a point of sale interface ("POS"). Customer collects payment for tuition, fees, and/or other types of monetary payments from individuals and/or entities. Customer desires to permit payment of amounts owed to it by means of electronic transactions through the OPC System and to have OPC perform certain related services as described below.

### Agreement

#### 1. DEFINITIONS.

"*Customer Designated Account*" means the direct deposit/debit account(s) established and maintained by Customer at an ACH receiving depository institution reasonably acceptable to OPC for payment of Customer Client obligations and debit of Chargebacks, Return Transactions, fines and fees. Customer Designated Account is further described in Section 4.3.

"*Customer Payment*" means any payment that is owed by a Customer Client to Customer and paid through a Payment Transaction.

"*Card Services*" means the services provided by OPC relating to credit card and/or pin-less debit card services provided in accordance with this Agreement and as detailed in Section 2.2 of this Agreement inclusive of payment and electronic funds transfer which enable Payment Transactions to be processed.

"*Chargeback*" means the reversal of a Payment Transaction previously credited to a Customer Designated Account.

"*Co-Brand*" means an electronic transaction containing payment and identification data which is initiated by the Customer Client on the Customer's website, then transferred to an OPC web page where the Customer Client completes the transaction and is provided with a confirmation of the Payment Transaction.

"*Co-Brand Plus*" means an electronic transaction containing payment and identification data which is initiated by the Customer Client on the Customer's website, then transferred to an OPC web page where the Customer Client completes the transaction. The Customer Client is subsequently transferred back to the Customer's web site along with confirmation of the Payment Transaction.

"*Customer Client*" means the person, business or entity who initiates and makes payment of the Customer Payment and Convenience Fee through a Payment Transaction.

"*Convenience Fee*" means the fee charged to a Customer Client or to a Customer, as applicable, by OPC for the convenience of Customer Client making Customer Payments by use of the Services. The convenience fee schedule is set forth in Exhibit B.

"Electronic Check Services" means the services provided by OPC relating to electronic check services provided in accordance with this Agreement and as detailed in Section 2.1 of this Agreement inclusive of payment and electronic funds transfer that enable Payment Transactions to be processed.

"OPC Designated Account" means the direct deposit account(s) set up by OPC to receive payment of Convenience Fees, and any other fees owed to OPC.

"OPC System" means OPC's and its Suppliers' electronic payment processing system including but not limited to its technology, hardware, software and equipment.

"Payment Transaction" means an electronic payment transaction initiated by a Customer Client by electronic check or by credit/debit card as provided below, at the OPC or Customer website, IVR, or POS, as applicable, and processed by OPC and/or its Suppliers under this Agreement.

"POS Services" means the services provided by OPC in connection with processing credit card, debit card, and electronic check transactions that are initiated by a Customer Client using a POS terminal placed in a Customer location for authorizing and settling credit and debit card transactions.

"Return Transaction" means a Payment Transaction that is unable to be processed by a Customer Client's depository financial institution.

"Return Transaction Fee" means the fee charged to Customer pursuant to Section 4.1 and Exhibit B.

"Services" means the Card Services and/or Electronic Check Services provided by OPC and its Suppliers pursuant to this Agreement.

"Simple Transaction Processor" (STP) means an electronic transaction and return confirmation containing payment and identification data, initiated and received by the Customer Client on the Customer website, without a link or transfer to an OPC web page.

"Suppliers" means OPC authorized vendors including, but not limited to, ACH processor(s).

## 2. SERVICES.

**2.1 Electronic Check Services.** To the extent the Customer elects to receive Electronic Check Services, as specified in Exhibit A to this Agreement, OPC shall provide the following as part of the Services:

2.1.1 Provide Customer Clients with the opportunity to make Customer Payments by electronic check through an internet interface, an IVR system, and POS.

2.1.2 Validate the bank transit routing number, validate the ACH eligibility of the bank transit routing, determine that the dollar amount is below or equal to the maximum and above or equal to the minimum specified by the Customer.

2.1.3 Create a transaction file and forward Payment Transactions to the Automated Clearing House (ACH), electronically debiting the Customer Client's bank account and crediting the OPC Designated Account.

2.1.4 On a weekly basis, settle Customer Payments into the Customer Designated Account. OPC will deduct the Convenience Fees (if applicable) and any Return Transaction Fees from the Customer's Designated Account prior to remitting Customer Payments.

2.1.5 Confirm the dollar amount of each Customer Payment made by Customer Clients and the corresponding Convenience Fees, if applicable, to be electronically debited from the Customer Client's designated demand deposit account.

2.1.6 Other than in connection with Customer Payments made through an STP or POS, obtain the Customer Client's authorization (electronic or otherwise) of such transaction prior to initiating the transaction.

2.1.7 Other than in connection with Customer Payments made through an STP or POS, provide the Customer Client with electronic confirmation of the electronic check transaction and retain electronic check authorization logs and transaction records for such period of time as required by applicable law and the regulations of the National Automated Clearing House Association ("NACHA").

2.1.8 Provide Customer with reports detailing Payment Transactions and Chargeback Transactions or Returned Transactions.

2.1.9 During the implementation process, provide Customer with OPC's standard disclosures for Customer's incorporation into the system for all STP transactions.

**2.2 Credit/Debit Card Services.** To the extent the Customer elects to receive Card Services, as specified in Exhibit A to this Agreement, OPC shall provide the following as part of the Services:

2.2.1 OPC shall provide Customer Client the opportunity to make Customer Payments by credit card and "pin-less" debit card through an interactive telephone voice response system ("IVR"), Internet interface, and/or POS.

2.2.2 OPC shall, on behalf of Customer, collect and process Customer Payments from Customer Clients using the credit cards mutually agreed upon by Customer and OPC (each, a "Card") as set forth in Exhibit A.

2.2.3 OPC shall begin providing the Services to Customer Clients on a date to be mutually agreed upon by OPC and Customer.

2.2.4 Customer authorizes OPC to debit the Customer Designated Account in connection with (i) any "reversed" Card transaction that is approved by an authorized representative of Customer and OPC, and (ii) any "Chargeback" Card transaction that is initiated by a Customer Client and approved by an authorized representative of OPC and the Card Company. OPC shall refund to the Customer Client the corresponding Convenience Fee if it was paid by the Customer Client. The Customer agrees that it shall not refund in cash to a Customer Client any Customer Payment made by a Customer Client using OPC Services.

2.2.5 OPC shall forward Customer Payment Transactions to the appropriate Card organizations for settlement to the Customer Bank Account. Convenience fees and credits shall be debited from the Customer Bank Account or invoiced to Customer on a monthly basis by OPC, as applicable. In the event that OPC is unable to collect all amounts owed by Customer hereunder through debiting the Customer Bank Account, Customer shall promptly pay all owed amounts to OPC in immediately available funds.

2.2.6 For Payment Transactions initiated through OPC's web page or IVR, OPC will confirm the dollar amount of all Customer Client's Customer Payments and the corresponding Convenience Fees, if applicable, to be charged to his/her Card. For Payment Transactions initiated through OPC's web page or IVR, OPC shall obtain the Customer Client's approval (electronic or otherwise) of such charges prior to initiating credit authorizations.

2.2.7 For Payment Transactions initiated through OPC's web page or IVR, OPC will provide Customer Clients with electronic confirmation of Card transactions.

2.2.8 For authorization purposes, OPC will electronically transmit all Card transactions to the appropriate Card-processing center, in real time as the transactions occur.

2.2.9 OPC will retain Card authorization logs and transaction records for such period of time as required by applicable law and the regulations of the respective Card organizations.

2.2.10 OPC will arrange for a unique line merchant descriptor for the Customer Payment including Convenience Fee, if applicable, that references the name of Customer.

2.2.11 OPC will provide Customer with reports summarizing use of the Services by Customer Clients for a given reporting period.

**3. CUSTOMER OBLIGATIONS.** Customer obligations include the following:

**3.1 Customer Credit/Debit Card and Electronic Check Obligations.**

3.1.1 STP Transactions and POS Transactions. This Section 3.1.1 shall only apply in the event Customer is using the Services via STP or POS. Customer understands that STP transactions take place on the Customer website without link to the OPC web page and that POS transactions are initiated on equipment located at a Customer facility and operated by Customer personnel. Accordingly, in connection with such transactions, Customer shall:

3.1.1.1 Be responsible for obtaining the Customer Client's approval (electronic or otherwise) of Payment Transactions (and corresponding Convenience Fees):

3.1.1.2 Provide Customer Clients with electronic and/or paper receipt confirmation of Payment Transactions;

3.1.1.3 Obtain and retain all records related to the initiation and authorization of such transactions, including all digital (click-wrap) or written authorizations for OPC to collect and/or initiate transactions utilizing the OPC System.

3.1.1.4 Comply with the PCI security specifications attached as **Exhibit C** to this Agreement, which are incorporated by reference and made a part of this Agreement;

3.1.2 Digital (or, if applicable, written) copies of the records specified in section 3.1.1.3 shall be delivered by Customer to OPC within fifteen (15) days of written request by OPC and shall otherwise be retained by Customer for a period of at least two (2) years following the date of the transaction. Customer shall be liable to OPC for any and all liabilities, claims, costs, expenses, reimbursement obligations, fines and penalties which arise in connection with a failure to timely secure and produce such records, authorization agreements or receipts in accordance with applicable laws and regulations, inclusive of NACHA rules and regulations.

3.1.3 For STP transactions, Customer shall (i) incorporate the OPC standard disclaimers into its website, (ii) present such terms to each Customer Client for viewing, (iii) allow Customer Clients to print the terms for their records, (iv) require the Customer Client's affirmative electronic or written agreement to the disclaimer terms prior to submitting the Payment Transaction, and (v) keep written or electronic record of the Customer Client's agreement to the disclaimer terms. OPC may change its standard disclosures from time to time with written notice to Customer, and Customer shall incorporate such changes into the disclaimers within five (5) business days after its receipt of such changes from OPC.

3.1.4 If Customer is using Co-Brand, Co-Brand Plus, STP or POS; Customer shall take all reasonable security precautions within its system, hardware and software to prevent unauthorized or fraudulent use of the OPC System by Customer, Customer employees and agents, and Customer Clients. OPC may, but shall not be required to, assign to Customer one or more identification numbers or passwords for Customer's use in obtaining the Services. Once such identification number(s) or password(s) have been delivered to Customer by OPC, the use and confidentiality of such numbers and/or passwords shall be the sole responsibility of Customer.

3.1.5 Customer authorizes OPC to debit the Customer Designated Account in connection with (i) any "reversed" Card transaction that is approved by an authorized representative of Customer and OPC, (ii) any "Chargeback" Card transaction that is initiated by a Customer Client and approved by an authorized representative of OPC and the Card company, and (iii) any "Chargeback"/returned Electronic Check transaction that has previously settled into the Customer Designated Account.

3.1.6 Other than permitting OPC to charge the Convenience Fees, as authorized by Customer in Exhibit B of this Agreement, Customer will not impose any surcharge or penalty on Payment Transactions made by Customer Clients under this Agreement.

3.1.7 Customer will not require, as a condition to making a Customer Payment, that a Customer Client agree in any way to waive such person's rights to dispute the transaction with their banking institution for legitimate reasons.

3.1.8 Customer shall be solely responsible, at its own expense, for acquiring, installing and maintaining all of its own equipment, software and data communication service, which are not a part of the OPC System. Equipment provided to Customer by OPC in connection with a POS, if any, shall be provided under a separate written agreement between OPC and the Customer.

3.1.9 Customer shall execute and deliver to OPC an ACH authorization agreement in the format provided by OPC to authorize electronic payments/debits to and/or from the Customer Designated Account, and any other certificates, instruments or documents as required by applicable laws and regulations in order to consummate the transactions intended under this Agreement. Customer will maintain and comply with applicable NACHA rules and regulations on behalf of itself, its employees, agents and Customer Clients.

### 3.2 Customer Credit/Debit Card Specific Obligations.

3.2.1 If required by the credit card organizations, Customer will enter into all applicable merchant Card agreements and fully adhere to the rules, regulations and operating procedures of the various Card organizations, including without limitation, with respect to the use of specific Card logos and marks.

3.2.2 Customer will provide to OPC all necessary documents and correspondence in connection with Chargeback transactions or other similar refund transactions.

3.2.3 Customer will establish a reasonable adjustment policy to accommodate adjustments that are required in the normal course of Customer's daily operations.

#### 4. FEES, TAXES, AND PAYMENTS.

4.1. Electronic Check Fees and Taxes. Customer or Customer Client shall pay OPC fees for Services in accordance with the rates set forth on Exhibit B ("Fee Schedule"), which is incorporated into this Agreement by reference. OPC will charge a Convenience Fee for each Payment Transaction. Customer may elect to pay the Convenience Fee or may require that the Customer Clients pay the Convenience Fee, as specified in Exhibit B. If the Customer Client is paying the Convenience Fee, the Convenience Fee will be processed with the corresponding Customer Payment as a part of a unified transaction. If the Customer is paying the Convenience Fee, OPC will debit the Customer Designated Account or invoice Customer on a monthly basis for the Convenience Fees generated pursuant to this Agreement in the immediately preceding calendar month. In the event that OPC incurs an increase in transaction processing fees, taxes or other increase in fees required by applicable law or government or association regulation during the term of this Agreement, OPC may pass through such charges to Customer. Customer fees are subject to change by OPC after the initial term, upon thirty (30) days prior notice to Customer. Customer shall pay to OPC, and during the term of this Agreement and for sixty (60) days thereafter OPC (or its Suppliers) may debit from the Customer Designated Account, any other amounts owed by Customer under this Agreement, including, but not limited to, chargebacks, deposit charges, refunds, fines (inclusive of those imposed by NACHA), Returned Transaction Fees, ACH debits that overdraw the Customer Designated Account, and any other fines or liabilities incurred under this Agreement by Customer. Any fees and charges or other liabilities owed by Customer and not paid when due shall bear interest of 1.5% per month until paid.

4.2 Credit/Debit Card Fees. Customer may elect to pay the Convenience Fee for a Card transaction or may require that the Customer Clients pay the Convenience Fee, as specified in Exhibit B. If the Customer Client is paying the Convenience Fee, the Convenience Fee will be processed with the corresponding Customer Payment as a part of a unified Card transaction. If the Customer is paying the Convenience Fee, OPC will debit the Customer Designated Account or invoice Customer on a monthly basis for the amount of Convenience Fees generated pursuant to this Agreement in the immediately preceding calendar month. A schedule of the Convenience Fees for Credit/Debit card Payment Transactions is attached to this Agreement as Exhibit B, and OPC may amend this schedule at any time upon prior written notice to Customer. Except for any fees to be paid by Customer as set forth in Exhibit B, OPC shall not charge Customer a fee in consideration for OPC providing the Card Services to Customer Clients. Enhancements to the Services or additional services not provided for in this Agreement, and any related fees payable by Customer in connection therewith, will be mutually agreed upon by OPC and Customer.

4.3 Customer Designated Account. Prior to any Payment Transaction, Customer will establish a Customer Designated Account and will provide OPC with the electronic record specifications necessary for funds settlement and the posting of Customer Payment data related to payments. Customer shall maintain such account during the term of this Agreement and for at least 90 days after expiration or termination for any reason. Customer agrees to maintain sufficient funds in the Customer Designated Account to satisfy all fees, charges and other obligations of Customer under this Agreement. Customer authorizes OPC or its assignee to debit via ACH transfer, the Designated Account for any such amounts Customer owes OPC under this Agreement. If the amount in the Customer Designated Account does not contain sufficient funds to cover fees and obligations of Customer, Customer agrees to pay OPC the amount it owes under this Agreement upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees. The authority granted by this Section shall survive the termination of this Agreement.

**5. SUSPENSION; RESTRICTIONS.** OPC may immediately suspend the Services or withhold Services or individual financial settlements in the event (i) OPC has reason to believe there has been or may be a breach of security, fraud, or misrepresentation in connection with the Services, (ii) continued provision of the Services would violate any applicable law, government regulation or the NACHA rules and regulations, or (iii) the financial status or credit quality of Customer is substantially diminished in the reasonable discretion of OPC. OPC will provide notice and opportunity to cure if practical, depending on the nature of the event causing the suspension. In the event of a suspension under this Section 5, OPC may require Customer to establish a reserve account or institute other mutually agreed restrictions prior to OPC restoring Services. OPC shall have no liability for any suspension in accordance with the terms of this Section 5.

**6. TERM AND TERMINATION.**

6.1. Term. This Agreement shall be effective upon the date of full execution and has an initial term of three (3) full years (the "Initial Term"). This Agreement shall automatically renew for successive periods of one (1) year (a "Renewal Term") on the 3 year anniversary of the Initial Term or on the one year anniversary of any Renewal Term unless OPC or Customer notifies the other in writing at least ninety (90) days prior to the expiration date of the Initial Term or Renewal Term of its intention not to renew this Agreement.

6.2. Termination.

6.2.1 Termination For Cause. Either party may terminate this Agreement for cause in the event of a material breach by the other party, which breach is not cured within thirty (30) days after written notice of such breach is provided to the other party.

6.2.2 Termination By OPC. OPC may terminate this Agreement at any time upon written notice to the Customer in the event the provision of the Services hereunder is determined by OPC in its sole discretion to violate any statute, regulation, rule, order or operating procedure enacted or promulgated by a governmental or judicial authority of competent jurisdiction, NACHA (or any similar industry organization with authority over the Services), or in the event that any statute, regulation, rule, order or operating procedure is enacted or promulgated which effectively reduces or eliminates the fees charged by OPC.

**7. EXCLUSIVITY.** OPC shall be Customer's exclusive provider for the Services.

**8. ACCOUNT MONITORING; SECURITY.** OPC and its Suppliers may monitor the use of Services or Payment Transaction activity and investigate unusual or suspicious activity to the extent it is with reasonable discretion and in compliance with applicable laws and government regulations, provided, that in no event does OPC assume any responsibility to discover any possible breach of Customer's security or misuse of the Services. Customer and OPC shall immediately notify the other if either discovers any breach of security. OPC shall have the right, at OPC's sole cost, to inspect Customer's operation, system and web site to verify Customer's compliance with its security obligations. Customer shall be responsible for failure to use reasonable security precautions and for any fraud committed by its employees, representatives and Customer Clients and as a result such failure in connection with the use of the Services.

**9. INTELLECTUAL PROPERTY.** In order that Customer may promote the Services and OPC's role in providing the Services, OPC grants to Customer a revocable, non-exclusive, non transferable, royalty-free license to use OPC's logo, trademarks and other service marks (the "OPC Marks") for such purpose only, in a form as approved by OPC. Customer does not have any other right, title, license or interest, express or implied, in and to any object code, software, hardware, OPC Marks, service mark, trade name, trade dress, formula, OPC System, know-how, telephone number,

telephone line, domain name, URL, copyrighted image, text, script (including, without limitation, IVR or the OPC Website scripts) or other intellectual property right of OPC (collectively "OPC Intellectual Property"). All such OPC Intellectual Property, and all rights and title therein (other than rights expressly granted in this Agreement) are owned exclusively by OPC. Customer's license to use any OPC Marks shall terminate upon the earlier of (a) the effective date of termination or expiration of this Agreement, or (b) immediately, in the event of any breach of this section of the Agreement by Customer. Customer will not utilize any OPC Intellectual Property in any manner that would diminish its value or harm the reputation of OPC. Customer agrees that any use of the OPC Marks will conform to reasonable standards of acceptable use specified by OPC.

#### 10. COMPLIANCE WITH LAWS, RULES AND REGULATIONS.

The parties shall comply with all applicable laws, rules and regulations of federal, state and local governmental authorities and governing industry associations, including without limitation, Federal Reserve Regulation E (12 C.F.R. Part 205), the rules of the NACHA, the Card company rules and regulations, and all applicable privacy laws and regulations, all of which are incorporated herein by reference and made a part of this Agreement as if set forth in full herein. OPC may from time to time establish reasonable rules, regulations and operational guidelines with respect to use of the Services by Customer, and Customer agrees to be bound by and comply with such rules, regulations and guidelines thirty (30) days after delivery thereof to Customer, unless immediate compliance is required by law or regulation or otherwise agreed upon in writing by the parties.

#### 11. WARRANTY AND DISCLAIMER.

11.1 Warranty. Each party represents and warrants that it has the full legal right, authority and power to enter into this Agreement and perform its obligations hereunder and that the person who signs the Agreement for each party has full authorization to bind the respective party. Customer shall provide to OPC the standard set up information for electronic check transactions and deposit instruction for Card transactions within ten (10) days of full execution of this Agreement. Customer represents and warrants to OPC that all information provided in such form is current, correct and complete. Customer agrees to notify OPC in writing of any changes to such Customer information within ten (10) days of such change.

11.2. Disclaimer. OPC and its Suppliers are providers of the Services, not insurers, and as such, Customer acknowledges that electronic payment transactions and data processing involves the inherent risk of human and machine errors, omissions, delays and losses including inadvertent loss or misstatement of data. OPC and its Suppliers do not, and cannot, control the flow of data to or from the OPC System, which depends in large part on the Internet and third parties, including without limitation connectivity/access providers. Accordingly, neither OPC nor its Suppliers warrant that the Services will be error free, uninterrupted, and secure or virus free, and OPC and its Suppliers disclaim liability resulting from or related to such events. Except as expressly provided for herein, the Services are provided "AS IS" and "AS AVAILABLE", and OPC and its Suppliers make no other representations or warranties of any kind whatsoever, whether express or implied, by operation of law or otherwise, including, without limitation, any implied or statutory warranties of merchantability or fitness for particular purpose.

12. INDEMNIFICATION. The parties shall indemnify, defend, and hold each other harmless from any and all claims and suits for any losses, damages, or costs arising therefrom, including reasonable attorney's fees, alleged or asserted by a third party to the extent arising from the indemnifying party's gross negligence or willful misconduct which results in (i) bodily injury, sickness, disease or death or (ii) any loss, damage or destruction of personal tangible property. This obligation is further conditioned on the indemnifying party receiving from the other party prompt written notification of any such claim and the other party cooperating fully with the indemnifying party in the defense of any such action.

**13. LIMITATION OF LIABILITY.** OPC OR ITS SUPPLIERS SHALL NOT BE LIABLE FOR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, REVENUE, DATA OR DAMAGES FROM LOSS OF USE OR DELAY, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER ARISING UNDER ANY THEORY (INCLUDING BUT NOT LIMITED TO NEGLIGENCE, CONTRACT, STRICT LIABILITY OR UNDER STATUTE), EVEN IF OPC HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH POTENTIAL CLAIM, LOSS OR DAMAGE. OPC'S TOTAL AGGREGATE LIABILITY FOR DAMAGES FOR ANY ACTION ASSOCIATED WITH THIS AGREEMENT OR THE SERVICES PROVIDED SHALL IN NO EVENT EXCEED THE AMOUNT OF THE CONVENIENCE FEE PAID TO OPC IN CONNECTION WITH THE PARTICULAR PAYMENT TRANSACTION GIVING RISE TO DAMAGES HEREUNDER. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies. Customer acknowledges that without its agreement to the limitations contained herein, OPC would be compensated differently. Notwithstanding anything to the contrary contained herein, OPC shall not have any liability for delays in receipt or processing of Customer information or Payment Transactions due to causes beyond its reasonable control, including, without limitation, failures or limitations on the availability of third party telecommunications or other transmission facilities or Customer's or Customer Client's failure to properly enter and/or transmit information.

**14. CONFIDENTIALITY.** The term "Confidential Information" shall mean any and all information which is disclosed by either party to the other verbally, electronically, visually, or in a written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary, including but not limited to this Agreement and the terms, conditions and pricing contained herein, Customer and Customer Client personally identifiable data, the OPC System, and OPC and Customer trade secrets, computer programs, software formulas, inventions, techniques, marketing plans, documentation strategies, and forecasts. Each party agrees that it will not make use of disseminate, or in any way disclose the other party's Confidential Information to any person, firm or business, except as authorized by this Agreement and limited to the extent necessary for performance of this Agreement, except that OPC may use information as specifically permitted by federal or state law; may use personal information provided by Customer Clients to establish and maintain individual user accounts requested to be established by such Customer Clients with OPC for purposes of the Services; and may use certain non-personally identifiable transaction data and IVR, POS, and OPC Website traffic information which are compiled in aggregate for the purpose of preparing and distributing statistical reports and for public company reporting purposes. Each party agrees that it will disclose Confidential Information of the other party only to those of its employees and Suppliers who have a need to know such information and who have agreed to be bound by the non-disclosure terms and conditions of this Agreement prior to disclosure. Each party agrees that it will treat all Confidential Information of the other party with the same degree of care as it accords its own confidential information, and each party represents that it exercises reasonable care to protect its own confidential information. However, neither party has responsibility for safeguarding the Confidential Information of the other party that is (i) publicly available, (ii) already rightfully in such party's possession and not subject to a confidentiality obligation, (iii) obtained by such party from third parties authorized to make such disclosure, or (iv) independently developed by such party without reference to or use of the Confidential Information of the other party. Notwithstanding the foregoing, the party receiving Confidential Information shall not be in violation of this section with regard to a disclosure that was in response to a valid order by a court or other governmental body, provided that the receiving party provides the other party with commercially reasonable prior written notice of such disclosure in order to permit the other party to seek confidential treatment of such information, and provided that the receiving party has been advised by legal counsel that such disclosure is required by law, and such disclosure is limited to the minimum extent required by law. Within ten (10)

business days following the date of any termination of this Agreement or upon expiration, Customer agrees to return all confidential information and materials provided by OPC to Customer.

## 15. GENERAL PROVISIONS.

15.1 Entire Agreement; Severability; Waiver. This Agreement, together with the attached exhibits constitutes the entire agreement between Customer and OPC with respect to the subject matter hereof, and supersedes any prior agreement, oral or written, between Customer and OPC and/or its representatives(s) in connection with this Agreement. Customer agrees that the failure of OPC to enforce any terms or conditions of this agreement is not a waiver of such or any other terms or conditions herein contained. Except as explicitly provided by this Agreement, this Agreement may not be changed or amended except by a writing executed by authorized representatives of both parties. If any provision herein is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision that most closely approximates the intent and economic effect of the invalid provision.

15.2 Remedies. Except as otherwise expressly provided in this Agreement, all remedies available to either party are cumulative and not exclusive, and termination, expiration or suspension shall not limit either party from pursuing other remedies available at law or in equity.

15.3 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party, provided, however, that the foregoing shall not prohibit OPC from assigning this Agreement or its rights hereunder, nor require the consent of the Customer, in connection with any change of control, corporate reorganization, merger or consolidation of OPC. Any purported assignment, transfer, or delegation in violation of this Section shall be null and void. Subject to the foregoing, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns.

15.4 Status of the Parties; Suppliers. The parties are independent contractors, and nothing herein shall be construed to create a partnership, joint venture, franchise, employer-employee relationship by or between Customer and OPC. No party shall have the authority to commit or bind any other party without such party's prior written consent. Customer acknowledges and agrees that certain portions of the Services which enable Payment Transactions may be provided by OPC Suppliers, including, but not limited to, processing and formatting of Payment Transactions and the debiting and crediting of the Customer Designated Account in accordance with the terms of this Agreement.

15.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, excluding its conflicts of law rules. Exclusive jurisdiction and venue for any claim or action arising out of or relating to this Agreement shall be in the state or federal courts located in the Commonwealth of Virginia.

15.6 Notices. Except as expressly provided herein, all notices and other communications required or permitted hereunder shall be given in writing and shall be delivered personally or sent by certified mail (return receipt requested), or by nationally recognized overnight courier, and shall be deemed to have been delivered upon receipted delivery to the respective addresses set forth below. Any party may change its address for notice by providing notice to all other parties as provided herein. Notices to OPC shall be sent to:

Contracts Administrator  
177 Technology Parkway  
Auburn, AL 36830

With a copy to:

General Counsel  
Official Payments Corporation  
10780 Parkridge Boulevard, 4<sup>th</sup> Floor  
Reston, VA 20191

Notices to Customer shall be sent to:

GARY PERKINS  
Chief Information Officer  
Peralta Community College District  
333 EAST 8th St.  
OAKLAND, CA 94606

15.7 Force Majeure. OPC shall not be considered in breach of or in default of any of its obligations under this Agreement, and shall in no way be liable to the Customer hereunder, to the extent its performance hereunder is delayed, impaired or rendered impossible by acts of God, natural disasters, acts of terror, war, riots, fire, storms, quarantine restrictions, floods, explosions, labor strikes, labor walkouts, extraordinary losses of utilities (including telecommunications services), external computer "hacker" attacks, delays of common carriers or similar cause that are beyond OPC's reasonable control.

15.8 No Third Party Beneficiary Enforcement. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this Agreement shall give or allow any claim or right of action whatsoever by any other person not included in this Agreement. It is the express intention of the undersigned parties that any entity other than the undersigned parties receiving services or benefits under this Agreement shall be an incidental beneficiary only.

15.9 Survival. Any Section of this Agreement that logically survives the expiration or termination of this Agreement shall survive, including Sections 1, 3.1.1, 4, 9, 12, 13, 14, and 15.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date (the "Effective Date") set forth below.

OFFICIAL PAYMENTS CORPORATION:

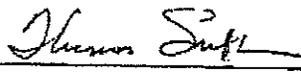
By: 

Name: Michael A. Lawler

Title: Senior Vice President

Date: 12/14/07

CUSTOMER:

By: 

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

Title: Vice Chancellor

Date: 12.7.07

Exhibit A

**SERVICES TO BE PROVIDED**  
*[PLEASE MARK APPROPRIATE BOXES]*

Services

Card Services

Cards Accepted: Visa, MC, Discover, and AMEX

-AND/OR-

Electronic Check Services

**INTERFACES**

Point of Sale Interface

-AND/OR-

Interactive Voice Response Interface

-AND/OR-

Simple Transaction Processor Interface

-AND/OR-

OPC Web Page Interface

**Exhibit B  
PRICING**

**A. SETUP FEE**

A setup fee of \$ none will be charged and is due upon the full execution of the Agreement.

**B. CONVENIENCE FEES-(Please mark appropriate box)**

**1. Paid By Customer**

The Convenience Fees set forth below shall be invoiced to Customer on a monthly basis.

**Option 1**

Customer shall pay a Convenience Fee of 2.5 % of the amount of each Payment Transaction.

-AND/OR-

**Option 2**

Customer shall pay a Convenience Fee of \$1.75 for each ACH Payment Transaction.

**2. Paid By Customer Client**

The Convenience Fees set forth below shall be added to the amount of the Payment Transaction.

**Option 1**

Customer Client shall pay a Convenience Fee of \_\_\_\_\_ % of the amount of the Payment Transaction.

-AND/OR-

**Option 2**

Customer Client shall pay a Convenience Fee of \_\_\_\_\_ for each ACH Payment Transaction.

**C. ACH RETURNED TRANSACTION FEE**

A Returned Transaction Fee shall be charged for each ACH check returned to OPC for whatever reason. A fee of \$4.50 shall be charged for each ACH Check returned.

## Exhibit C

## PCI Security Specifications

## (Applicable to Customer using STP and /or POS Payment Processing Only)

- A. Customer shall at all times comply with the Visa/MasterCard/American Express/Discover card acceptance requirements, as may be periodically updated, and the requirements set forth herein for the handling of Customer Client data. Customer hereby agrees to access the Association Requirements at: [http://usa.visa.com/business/accepting\\_visas\\_ops\\_risk\\_management/eisp.html](http://usa.visa.com/business/accepting_visas_ops_risk_management/eisp.html); and periodically review this site for any updates to the Association Requirements.
- B. Customer acknowledges and agrees that Customer Client data may only be used for assisting in completing a Card transaction, for fraud control services, for loyalty programs, or as specifically agreed to by Visa/MasterCard/American Express/Discover, OPC, or as required by applicable law.
- C. In the event of a breach or intrusion of or otherwise unauthorized access to Customer Client data stored at or for Customer, Customer shall immediately notify OPC, in the manner required, and provide OPC or its designee, Visa/MasterCard/American Express/Discover, and the acquiring financial institution and their respective designees access to Customer's facilities and all pertinent records to conduct a review of Customer's compliance with these requirements. Customer shall cooperate fully with any reviews of their facilities and records provided for in this paragraph. Customer agrees to keep confidential any breach of security involving the Customer Client data, and will defer all public communication to OPC or its designee.
- D. Customer shall maintain appropriate business continuity procedures and systems to ensure security of Customer Client data in the event of a disruption, disaster or failure of Customer's primary data systems which involve a risk to OPC data or Customer Client data. Customer shall provide access to its security systems and procedures, as reasonably requested by OPC or its designee.
- E. Any successors and/or assigns of Customer shall be bound by the obligations set forth herein. The obligations set forth herein shall survive termination of the Agreement. Customer and its successors and assigns shall comply with terms after termination of this Agreement, with respect to the handling and processing of OPC data and/or Customer Client data.

