

PERALTA COMMUNITY COLLEGE DISTRICT
Board of Trustees Agenda Report
For the Trustee Meeting Date of __October 26__, 2010

ITEM # 22

ITEM TITLE: *(Please define the subject; e.g., change order – Berkeley City College)*
Approval of Consulting Agreement for Emergency Preparedness

SPECIFIC BOARD ACTION REQUESTED:

Approval of consulting agreement for an amount not to exceed \$90,000

ITEM SUMMARY: *(PLEASE DISCUSS THIS ITEM)*

"Consider Approval of Consulting Agreement (i.e. Statement of Work) with Marsh Inc. to render consulting services to the District for Emergency Preparedness. Presenter: Director of Risk Management Greg Valentine. Approve a Statement of Work for Marsh Inc to render consulting services to the District and its Colleges for development, training and implementation of five (5) Emergency Preparedness Plans for the District including the District Administrative Emergency Operations Plan (EOP) and an EOP for each college, in the amount not to exceed \$90,000, subject to the availability of Measure A funding. In addition to the plans, the services also generate deliverables for Emergency Preparedness Policy and Program Structure and Crisis Communications. All Board recommended contracts are subject to negotiation and execution by the Chancellor."

BACKGROUND/ANALYSIS:

Emergency Preparedness Gap Analysis and Development Roadmap Report was presented to the Board on May 25, 2010.

ALTERNATIVES/OPTIONS:

Alternatives and options were analyzed and presented to the Board on May 25, 2010

EVALUATION AND RECOMMENDED ACTION:

SOURCE OF FUNDS (AND FISCAL/BUDGETARY IMPACT):

MEASURE A

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

YES X No

COMMENTS:

WHO WILL BE PRESENTING THIS ITEM AT THE BOARD MEETING? (COLLEGE PRESIDENT OR VICE CHANCELLOR)

GREG VALENTINE, DIRECTOR OF RISK MANAGEMENT

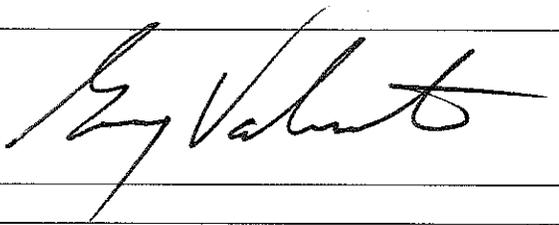
DID A BOARD STANDING COMMITTEE RECOMMEND THE ITEM? YES X No IF

"YES", PLEASE INCLUDE THAT INFORMATION IN YOUR SUMMARY.

Reviewed by Facilities and Land Use Committee.

DOCUMENT PREPARED BY:

Prepared by: Greg Valentine Date: October 19, 2010
[Enter Here - Your Name and Title of Individual]



DOCUMENT PRESENTED AND APPROVED BY:

Presented and approved by: Greg Valentine Date: October 19, 2010
[Enter Here - Name of College President, (if originating from a college) or Vice-Chancellor (if originating from the District)]

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: _____

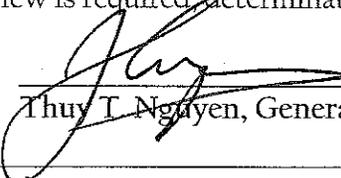
Signature:  _____
Finance and Administration Approval

Date: 10/20/10

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:  _____
Thuy T. Nguyen, General Counsel

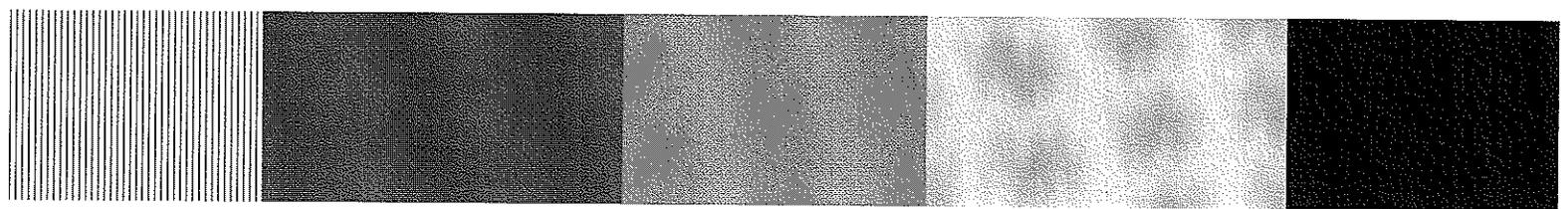
Date: 10/19/10

CHANCELLOR'S OFFICE APPROVAL

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

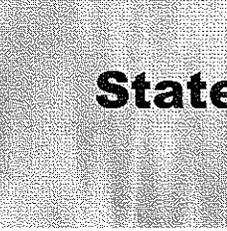
Signature: _____
Wise E. Allen, Chancellor

Date: _____



BUSINESS CONTINUITY
Proposed Statement of Work
For Peralta Community College
District

September 28, 2010

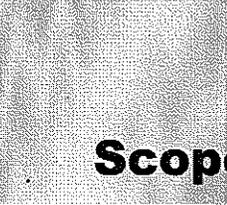


Statement of Work

This Statement of Work (SOW) defines the scope of services to be performed by Marsh Risk Consulting, a practice of Marsh USA Inc. (Marsh), for Peralta Community College District (Peralta).

This SOW is divided into the following sections:

- A. **Scope Definition:** Overview description of the work to be performed.
- B. **Success Criteria:** Means of evaluating the completion and quality of services performed.
- C. **Approach:** How Marsh will perform the services.
- D. **Assumptions and Constraints:** Assumptions upon which timing and costs indicated are based and constraints on the project taken into consideration in planning.
- E. **Deliverables:** Identifiable work products resulting from these services.
- F. **Project Timing:** Projected delivery dates and key milestones for deliverables.
- G. **Team Responsibilities:** Peralta obligations on which this project depends and Marsh role definitions.
- H. **Pricing and Payment Schedule:** Based on estimated not to exceed fees plus expenses.



Scope Definition

The Peralta Community College District (“District”) has embarked on an initiative to update and improve its Emergency Preparedness, Response and Recovery program across the District. This program comprises of Emergency Response, Crisis Management, Facilities Recovery, Continuity Plans and Information Technology Disaster Recovery tasks. This statement of work outlines the Phase 1 activities that will be performed over the next four months beginning on November 1, 2010 to remediate recovery gaps of the District’s program that were identified in the “Emergency Preparedness, Response & Recovery Program Review - Gap Analysis” dated December 30, 2009. Marsh will also prepare a detailed overall project timeline as part of the initial activities of this project.

The scope of this statement of work will be focused on creating and communicating policies and recovery tasks, improvement of existing documentation at the District office and colleges (Merritt College, Berkeley City College, College of Alameda, Laney College) and development of a crisis communication plan. The activities will be performed using limited informational interviews with executives and data validation meetings with key functions within Peralta. All interviews will be held at the Peralta district office or via conference call.



Success Criteria

The project will be considered a success if:

- Executive support is received and the importance of the project is communicated to all participants
- Peralta and Marsh develop a final project plan based on joint discussions to arrive at an agreed upon project schedule, Peralta resource requirements, and schedules to enable the project to be completed on-time.
- Peralta and Marsh provide information in an accurate, timely and efficient manner
- Peralta receives weekly updates on the project and all action items assigned are accomplished
- Peralta assigns a point person to assist with leading internal efforts
- Key Peralta personnel and management are available for interviews and discussions
- Peralta and Marsh performs timely, comprehensive development and reviews of project deliverables



Approach

Develop Overall Project Timeline

As part of the initiation of the project, Marsh will prepare a detailed project plan that outlines the activities, resource requirements, milestones, and timeline that will be used as the roadmap for the project.

Implement the Policy and Program Structure

Based on our understanding of your needs, and our experience performing this type of work for numerous other higher education systems, Marsh will assist Peralta in developing a policy statement and governance document that:

- Articulates a policy statement that outlines the vision and mission of Peralta's Program to stakeholders, key vendors and suppliers
- Provides guidelines for individual departments / functional areas on the creation, maintenance and testing of plans through supporting policies
- Ensures strong business management leadership and accountability with clearly defined roles and responsibilities
- Accurately measures and reports the program through all levels of management to ensure a consistent roll-up at the district office level
- Meets District Managements' regulatory expectations and legal obligations
- Facilitates continuous improvement of the program

Revise PCCD EOP

Marsh will revise the PCCD Emergency Operations Plan (EOP) to create an improved operational plan that will outline Peralta's facilities response and short-term recovery activities, describe the EOP situation and assumptions and provide procedures for communicating to State Chancellor's office at the time of an incident. Marsh will also update plan to include missing SEMS/NIMS/ICS elements. The format will be improved to increase understanding and ease of use at the time of a disaster.

After updating the plan, Marsh will seek endorsement of the plan through conducting a one hour group meeting with key plan owners to seek feedback and approval on changes and to help train owners on the usage of the document. Marsh will be responsible for finalization and distribution to plan owners. Peralta will be responsible with any printing costs associated with the rollout.

Revise College Plan

Marsh will revise the College Emergency Operations Plan to create an improved operational plan that will outline the CBRNE emergency provisions, lines of responsibility up to three levels deep for each role within the plan, Emergency Operation Center roles and responsibilities, assembly areas, emergency notification, escalation and call tree mechanisms and arrangements for liaising with external agencies. Marsh will also update plan to include

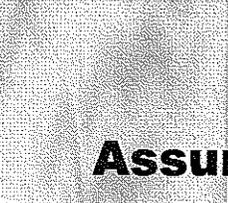
missing SEMS/NIMS/ICS elements. The format will be improved to increase understanding and ease of use at the time of a disaster.

After updating the plan, Marsh will seek endorsement of the plan through conducting a one hour group meetings with college leadership to seek feedback and approval on changes and to help train leaders on the usage of the document. Marsh will be responsible for finalization and distribution to plan owners. Peralta will be responsible with any printing costs associated with the rollout.

Develop Crisis Communications Plan

Marsh will review existing policies, procedures and crisis communication plans to help establish an integrated escalation and crisis communication plan. Marsh, with the assistance of Peralta participants, will prepare the organizational structure and the plan that details the roles and responsibilities for team members. The plan will also provide critical contact names, contact numbers, vital information and forms that can be used at the time of a disaster. Marsh will develop the Crisis Management Team organizational structure, recommend members, facilitate training and meetings, and provide assistance in identifying the emergency operations center.

The outcome of this segment of the project is a Crisis Management Team structure based on best practices, trained senior management staff, and a documented Crisis Management Team Action Guide (MS Word Document) that can be used at the time of a disaster. Marsh will also conduct a group scenario based table-top crisis communications plan exercise.



Assumptions and Constraints

The following list includes Marsh's assumptions and constraints on the project that have been taken into consideration when preparing this Statement of Work. If any prove to be inaccurate or unreliable, the project schedule or cost may require a change.

Assumptions

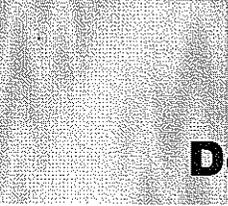
Peralta leadership, involvement, and responsiveness are all vital to the success of meeting this project's objectives. We request that Peralta:

- Provide the required information in an accurate, timely and efficient manner
- Designate a point person for this project to assist with leading the internal efforts and complete the tasks
- Provide Marsh with access to key Peralta management team and personnel to enable Marsh to provide guidance and assistance as needed during the course of the project
- Perform timely, comprehensive reviews of any draft project deliverables
- For on-site work, arrange for suitable working space with telephones, access to Peralta facilities, and access to copiers, fax, printers, and network connectivity (if possible) or analog phone lines for personal computer/network access for our team members
- Peralta and Marsh will develop a final project plan based on joint discussions to arrive at an agreed upon project schedule, Peralta resource requirements, and schedules to enable the project to be completed on-time
- Peralta will be able to arrange time for one-on-one interviews or group meetings to be held in person or via conference call and will be able to send management representatives with the authority to make decisions about recovery objectives, critical business processes, and tolerable outage periods.
- Peralta will schedule all on-site interviews in consecutive periods to help maximize Marsh staff time and minimize travel and lodging costs.
- Peralta and Marsh will implement an escalation process for tracking of delinquent requests or actions

Constraints

We may provide our professional advice on project scope and plan. The overall definition and scope of the work to be performed, however, and its adequacy in addressing your needs, is your responsibility. We will rely on you to provide us access to systems, documents and personnel as required. Our fee estimate presented herein takes into account the agreed-upon level of preparation and assistance from Peralta personnel.

We will advise management on a timely basis if you do not provide the required information or resources, or should any other circumstances arise which cause actual time to exceed our estimate. It is agreed that responsibility for the implementation of findings Marsh identifies in the course of this engagement rests with Peralta, its management team and employees.



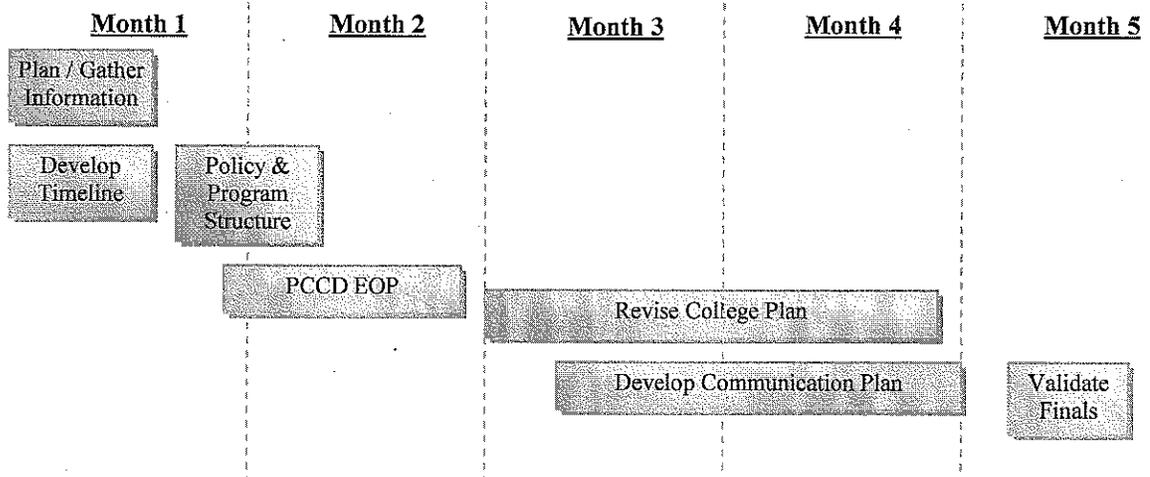
Deliverables

The project deliverables include the following:

- A detailed project plan with tasks and team assignments over time
- A PowerPoint presentation that will be used for project kick-off meetings and one-on-one meetings
- A policy statement document
- A revised PCCD EOP
- A revised College plan
- A Crisis Management decision framework and team exercise

Project Timing

The following table shows the approximate months to accomplish the deliverables.

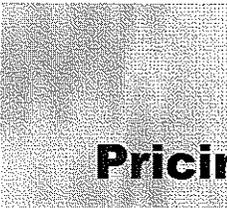


Marsh is prepared to start this engagement in November 2010 or as soon as reasonable after a signed agreement is in place. Assuming adequate access to information and Peralta personnel, we estimate that the overall project timeline (elapsed calendar time) is approximately four months.

Team Responsibilities

The following is a list of Peralta responsibilities necessary for the successful completion of this effort. Marsh has used this information in establishing the schedule and pricing for the services. In the event an item identified below does not occur in the manner or timeframe shown, such circumstance shall constitute a change that will require an adjustment to the schedule and/or price.

| Role | Responsible for | Time Commitment |
|---|---|---|
| Executive Sponsors (District – Chancellor; Colleges – Presidents) | Project champion Decision-making and approval of strategies and plans Ensuring assignments are completed on time by their respective staffs | 1 – 2 hours monthly |
| Peralta Project Manager | Overall manager reporting to Peralta Team Regular status meeting and teleconference updates Performing action items from weekly status calls Coordinating interviews with participants Monthly status reports outlining progress and potential issues, if needed | 6-10 hours weekly |
| Project Team Participants | Participating in meetings, brainstorming sessions, interviews, and status calls or meetings Answering technical questions about the documents and the processes Reviewing drafts within timeframe indicated on project plan Facilitating with the rest of the project team Performing action items as necessary Providing overall support for project Attending one-on-one or group interviews | 1 - 3 hours weekly during the project |



Pricing and Payment Schedule

Marsh's fixed fees and expenses are listed below. Our fee estimates are based upon our experience with projects similar in scope and nature of that requested by Peralta. The costs may change based on the scope of work or changes in the Peralta organization. If the scope of our assistance changes based upon our findings or at your request, we will discuss the impact on the timing and fees with you before proceeding on this additional work. If Peralta agrees during the project that modifications in the scope, approach, or level of work are required, the resulting charges will be estimated and agreed upon in writing by Peralta and Marsh.

Marsh's fee estimate takes into account the agreed-upon level of preparation and assistance from Peralta personnel. It is agreed that responsibility for the implementation of actions identified in the course of this assignment rests with Peralta, its management and employees. Marsh will advise management on a timely basis if Peralta does not provide the required information or resources, or should any other circumstances arise which cause actual time to exceed our estimate. Marsh will rely on Peralta to provide access to systems, existing documents, and personnel as required.

The fees and travel expenses estimated at a maximum of 10% or \$7,970 for this project will be billed in three installments over this four month project. The first invoice will be issued in December 2010 for \$24,700 with the remaining two invoices of \$30,000 and \$25,000 payable in January and February respectively, depending on completion of deliverables. Expenses will be billed as incurred and submitted along with the monthly invoice.

The estimated cost breakdown is as follows:

2010

| | |
|---|----------|
| Develop Overall Project Timeline | \$1,200 |
| Implement the Policy and Program Structure..... | \$4,000 |
| Revise PCCD EOP | \$19,500 |

2011

| | |
|--|----------|
| Revise College Plan..... | \$30,000 |
| Develop Crisis Communications Plan | \$25,000 |

The engagement shall be governed by mutually agreed upon terms and conditions. Upon signed acceptance of this Statement of Work, the standard terms and conditions previously agree upon on August 26, 2009 as illustrated in Exhibit I below will govern the provision of Services.

Peralta Community College District

Marsh USA Inc.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

By: _____

Name: Greg Valentine

Title: Director of Risk Management

Date: _____



EXHIBIT I

MARSH USA INC.

RISK CONSULTING PRACTICE STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions are part of the attached Statement of Work and combined constitute an "Agreement" made as of the 28th day of September 2010, between Peralta Community College District ("*Peralta*"), and the Risk Consulting practice of Marsh USA Inc., a Delaware Corporation, ("*Marsh*"). The parties agree that the effective date of the Agreement shall be the date on which Marsh shall have commenced providing the services described on the Statement of Work at the request of the Peralta or the execution date of the agreement, whichever is earlier.

1. SERVICES

It is understood and agreed that Marsh's services may include advice and recommendations; however all decisions in connection with the implementation of such advice and recommendations shall be the sole responsibility of, and made by, Peralta. Solely with respect to the services contemplated by this Agreement, this Agreement supersedes all other agreements (if any) between the Peralta and Marsh.

2. PAYMENT OF INVOICES

Peralta agrees to pay properly submitted invoices within thirty (60) days of the invoice date (or any other date that we may agree to in writing). Marsh shall have the right to halt or terminate entirely its services until payment is received on past due invoices. All fees, charges and other amounts payable to Marsh hereunder do not include any sales, use, excise, value added or other applicable taxes, tariffs or duties, payment of which shall be Peralta's responsibility, including any amounts assessed by government authorities subsequent to Peralta's payment for Marsh's services.

3. CONFIDENTIALITY

Peralta anticipates that it will disclose certain technical, financial, strategic and other proprietary and confidential information relating to its business operations and properties ("Confidential Information") to Marsh for the purposes of Marsh providing the services specified in this Agreement. Marsh agrees to keep this information confidential. Neither Marsh nor any of its employees or agents directly or indirectly shall use any Confidential Information furnished by or on behalf of Peralta for any purpose except in furtherance of services to be rendered by Marsh pursuant to the Agreement. Marsh will not disclose any Confidential Information to any third party, without Peralta's consent. Marsh shall take all steps reasonably required to maintain the confidentiality of Confidential Information in its possession. The transmission of Confidential Information via electronic data transmission networks which provide for the security of users' data shall be deemed consistent with Marsh's obligations hereunder unless such use is contrary to Peralta's express instructions.

As between Peralta and Marsh, Confidential Information shall be the sole and exclusive property of Peralta, and, if requested by Peralta, all documents and records in Marsh's possession containing Confidential Information shall be returned to Peralta; provided, however, that Marsh



may retain copies of documents that may contain Confidential Information which are necessary for the conduct and proper record keeping of Marsh's business in accordance with standard operating procedures or applicable law.

The restrictions and agreements set forth herein shall not apply to any Confidential Information:

- (a) which at the time disclosed to or obtained by Marsh is in the public domain;
- (b) which becomes part of the public domain through no act, omission or fault of Marsh;
- (c) which Marsh's records demonstrate was developed independently by Marsh or was received by Marsh from a third party which Marsh had no reason to believe had any confidentiality or fiduciary obligation to Peralta with respect to such information;
- (d) which is required to be disclosed by law, including, without limitation, pursuant to the terms of a subpoena or other similar document; provided, however, Marsh shall give prior timely notice of such disclosure to Peralta to permit Peralta to seek a protective order, and, absent the entry of such protective order, Marsh shall disclose only Confidential Information that Marsh is advised by its counsel must be disclosed by law; or
- (e) following the lapse of two years after disclosure of such information to Marsh.

It is understood and agreed that money damages would not be a sufficient remedy for any breach of this Agreement and Peralta shall be entitled to injunctive relief as a remedy for such breach, without prejudice to any other rights or remedies available to Peralta under applicable law.

The foregoing confidentiality obligations of Peralta shall not apply to any INFORMATION that is required by law or the order of any court or governmental agency, or in any litigation or similar proceeding to be disclosed, provided that Peralta shall, prior to making any such required disclosure, notify Peralta in sufficient time to permit Peralta to seek an appropriate protective order.

4. VARIATION

Where Peralta seeks any variation in the services described in this Agreement, whether by way of addition, deletion and substitution or otherwise, the Peralta shall submit its proposal for such variation in such services in writing as soon as practicable to Marsh. Marsh shall not be obligated to accept such variation in such services unless the Peralta agrees to pay any additional sum or sums reasonably specified by Marsh and to extend any period agreed for provision of such services by any additional period reasonably specified by Marsh.

5. INDEPENDENT CONTRACTOR

At all times during the term of this Agreement, Marsh shall be an independent contractor and shall not be an employee of Peralta. Neither party shall have the authority to bind or commit the other party to any contract or obligation.

Marsh will comply with applicable federal, state and municipal laws, regulations, codes, Peralta Board Policies, ordinances, orders in performing the services described in this Agreement.

6. CONSULTANT WORK PRODUCT



All works of authorship, including but not limited to, designs, plans, specifications, programs, computer output, valuations, estimates, report, data, memoranda, findings, recommendations of every description and every innovation, conception, improvement, discovery or invention and any intellectual property rights associated therewith (herein known as the "Work Product") which are created, utilized or developed by the Marsh or its representatives in conjunction with this Agreement are and remain the property of Marsh; provided, however, that the Peralta shall have and is hereby granted the non-transferable right to use Work Product delivered for the Peralta by Marsh solely for the Peralta's internal risk management purposes (the "Purpose"). Notwithstanding the foregoing, Marsh shall acquire no rights of ownership in intellectual property rights subsisting in any material provided by Peralta to Marsh in connection with this Agreement.

Peralta shall not use the Work Product provided by Marsh to Peralta for any purpose other than the Purpose. Peralta covenants and agrees that Work Product shall not be disclosed by the Peralta to any third party, shall not be used for any other purpose whatsoever, or reproduced, disseminated, quoted from or referred to in whole or in part at any time, in any manner or for any purpose, nor shall any public references be made concerning the Marsh or the Work Product or disclosure of the Marsh's role in connection with this Agreement made by Peralta, or public reference to this Agreement or the terms and conditions of this Agreement be made by Peralta, without the prior written consent of the Marsh in each specific instance.

Where Peralta makes any alteration or modification to any of the Work Product, all references to Marsh shall be removed therefrom.

7. TERMINATION

Peralta or Marsh may terminate this Agreement, with or without cause, effective immediately upon notice to the Peralta or to Marsh unless otherwise provided in said notice. Marsh's obligation to render Services shall terminate immediately upon termination of this Agreement for any reason. Rights and obligations accrued prior to termination shall survive termination. Without limiting the generality of the foregoing, upon termination, Marsh shall be entitled to receive a prorated portion of the fee set out in the Statement of Work based upon hourly charges for services rendered through the date of termination using Marsh's standard billing rates.

8. ENTRY AND COOPERATION

Peralta shall arrange for access to and make all provisions for Marsh to enter Peralta's property as required by Marsh to perform the services described in this Agreement. Peralta shall arrange for and make provisions for entry to work space for Marsh in order for Marsh to perform such services in a timely manner. Peralta shall make available in a timely manner, the documents and information necessary for Marsh to complete such services. Peralta shall inform Marsh promptly upon Peralta discovering that any such information or document is, or becomes, untrue, incomplete or inaccurate. In performing the Services, Marsh shall, and shall be entitled to, rely upon all information and documents provided to it by or on behalf of the Peralta. Marsh shall not be responsible for the accuracy or verification of any such information or document.

9. INDEMNITY

Marsh's scope of work and fees do not contemplate Marsh's being involved in any legal proceedings or subject to third-party claims. Accordingly Peralta will indemnify, defend and hold harmless Marsh, its directors, officers, shareholders and employees (collectively "Indemnified Persons") from and against any and all claims, liabilities, losses, damages, costs,



demands, judgments, actions, causes of action and expenses in connection therewith (including reasonable attorneys' fees) in connection with actual or threatened actions ("Losses") relating to or arising out of the Services or any matter relating to the Services; provided, however that Peralta will not be liable under this indemnity to the extent any of the foregoing Losses are determined, in a final judgment by a court of competent jurisdiction, not subject to further appeal, to have resulted primarily from the gross negligence, willful misconduct or bad faith of any Indemnified Person in connection with the performance of Services.

Marsh will indemnify, defend and hold harmless Peralta's Indemnified Persons from and against any and all Losses relating to or arising out of Marsh's negligence or willful misconduct in the course of providing the Services or any matter relating to the Services; provided, however that Marsh will not be liable under this indemnity to the extent any of the foregoing Losses are determined, in a final judgment by a court of competent jurisdiction, not subject to further appeal, to have resulted primarily from the gross negligence, willful misconduct or bad faith of any Indemnified Person in connection with the performance of Services.

10. LIMIT OF LIABILITY

In no event shall either party to this agreement be liable for any indirect, special, incidental, consequential or punitive damages or for any lost profits arising out of or relating to any services provided by Marsh or its affiliates. The aggregate liability of Marsh, its affiliates and its and their employees to you or your affiliates arising out of or relating to the provision of services by Marsh or its affiliates shall not exceed the total compensation paid to Marsh for such services hereunder. This provision applies to the fullest extent permitted by applicable law.

11. NO THIRD PARTY BENEFITS

The parties hereto mutually agree that this Agreement is intended by them to be solely for the benefit of the parties hereto and that no third parties may rely on any reports, analysis or other material provided by the Marsh or shall obtain any direct or indirect benefits from the Agreement, have any claim or be entitled to any remedy under this Agreement or otherwise in any way be regarded as third party beneficiaries under this Agreement

12. LIMITATION ON WARRANTIES

THIS IS A SERVICES ENGAGEMENT. MARSH WARRANTS THAT IT WILL PERFORM SERVICES HEREUNDER IN GOOD FAITH CONSISTENT WITH THE STANDARD OF CARE OF SIMILAR CONSULTANTS PERFORMING SIMILAR SERVICES. MARSH DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED.

ALL CONSULTING ACTIVITIES PERFORMED BY MARSH ARE ADVISORY IN NATURE. ALL REPORTS WILL BE BASED UPON CONDITIONS OBSERVED AND INFORMATION SUPPLIED BY PERALTA. MARSH DOES NOT GUARANTEE OR WARRANT THE SAFETY OF ANY PERALTA'S PROPERTIES OR OPERATIONS OR THAT PERALTA OR ANY SUCH PROPERTIES OR OPERATIONS ARE IN COMPLIANCE WITH FEDERAL, STATE OR LOCAL LAWS, CODES, STATUTES, ORDINANCES, STANDARDS OR RECOMMENDATIONS.

13. FORCE MAJEURE

Neither party shall be in breach of the Agreement if there is a total or partial failure by it in its duties and obligations occasioned by any act of God, fire, act of foreign, federal, state or local



government, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, labor disputes of whatever nature, or any other reason beyond its reasonable control. In the event of delay in performance due to any such cause, the date of the delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.

14. BINDING EFFECT

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors by merger, sales or consolidation and their permitted assigns.

15. ASSIGNMENTS

No party hereto shall assign or transfer this Agreement or any interest in this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Marsh may delegate all or a portion of its duties hereunder to affiliates or subcontractors or Marsh, such delegation not to relieve Marsh of its obligations hereunder.

16. SEVERABILITY

In the event that any term or provision of this Agreement shall be held to be invalid, void or unenforceable, then the remainder of this Agreement shall not be affected, impaired or invalidated, and each such remaining terms and provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

17. GOVERNING LAW

This Agreement shall be governed by the laws of the State of California, without giving effect to the choice of law rules thereof.

18. VENUE/ JURY WAIVER

The state and federal courts in and for California shall be exclusive forum for any litigation arising out of or relating to this Agreement or any breach hereof, and each of the parties hereby irrevocably consents to the jurisdiction of such courts in connection with any such litigation. Each party, on behalf of itself and its affiliates, to the fullest extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury in any action or other legal proceeding arising out of or relating to this Agreement or any services provided by Marsh or its affiliates. The waiver applies to any action or legal proceeding, whether sounding in contract, tort or otherwise. Each party, on behalf of itself and its affiliates, also agrees not to include any employee, officer or director of the other party or its affiliates as a party in any such action or proceeding.

19. NOTICES

Notices required or permitted by this Agreement shall be served by certified mail, return receipt requested, or reputable overnight courier services to a party at the following address:

For Marsh:

Scot Ferrell
Marsh Risk Consulting



Managing Director
345 California Street
San Francisco, CA 94502

Fred Klapetzky
Marsh Risk Consulting
Managing Director
Business Continuity Risk Management – National Practice Leader
St. Louis, MO

For Peralta:

Greg Valentine
Director of Risk Management
Peralta Community College District
333 East 8th Street
Oakland, CA 94606

Such addresses may be changed by notice given in accordance with this Agreement. Notices given hereunder shall be effective upon receipt.

20. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between Client and Marsh and supersedes all prior negotiations, representations or agreements, either written or oral, relating to the subject matter hereof. This Agreement may be amended only by written instrument signed by each of the parties hereto. All waivers must be in writing. No waiver by any party hereto, whether express or implied, of its rights under any provisions of this Agreement shall constitute a waiver of such party's rights under such provision at any other time or a waiver of such party's rights under any other provision of this Agreement. No failure by any party hereto to take action with respect to any breach of this Agreement or default by another party hereto shall constitute a waiver of the first party's right to enforce any provision of this Agreement or to take action with respect to such breach or default or any subsequent breach or default by such other party.