

**Board of Trustees Agenda Report
For the Trustee Meeting Date of , 2010**

ITEM TITLE: Request Board Authorization to Extend a Contracted Services Agreement with The ELS Group LLC – Laney College

Consider Approval of Office of the President, Laney College, to retain the services of Dr. George Kozitza as a consultant to the Laney College Administrative Services Division through The ELS Group LLC.

SPECIFIC BOARD ACTION REQUESTED: District administration request Board authorization to extend a Contracted Services Agreement with the ELS Group LLC to utilize the professional and technical services of George Kozitza as a consultant beginning January 4, ~~2010~~ through ~~June 30, 2010~~. The contracted services will be at a rate of \$11,500 per month. *2011 February 28, 2011*

ITEM SUMMARY: Contract services includes strategic planning for fiscal solvency and operational efficiency; analyses of business operations as part of documenting progress in advancing the Laney College Educational Master Plan agenda; completion of institutional protocols—the College standard operating procedures; assist planning for the operation needs of Laney College as well as insuring adherence to applicable statutes, regulations and internal accounting, purchasing, payroll, fiscal, and facilities reporting policies and procedures; and review and make recommendations regarding the work of the Division related to capital improvement projects, facilities maintenance and operations and leased facilities to assure optimum utility.

BACKGROUND/ANALYSIS: Not Applicable

ALTERNATIVES/OPTIONS: Not Applicable

EVALUATION AND RECOMMENDED ACTION:

SOURCE OF FUNDS (AND FISCAL/BUDGETARY IMPACT): The source of funds to accommodate the contract would be from Cost Center 531 (Laney College Business Office). The cost of hiring a consultant would substantially save the District in cost associated with health benefits, PERS contributions, and other payroll contributions.

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

YES _____ NO X

WHO WILL BE PRESENTING THIS ITEM AT THE BOARD MEETING?

Elñora T. Webb, Laney College President

DID A BOARD STANDING COMMITTEE RECOMMEND THE ITEM?

YES _____ NO X

PLEASE ACQUIRE SIGNATURES IN THIS ORDER:

DOCUMENT PREPARED BY:

Prepared by: *Lisa Watkins-Tanner*
Lisa Watkins-Tanner, Staff Assistant

Date: 11/15/10

DOCUMENT PRESENTED AND APPROVED BY:

Presented and approved by: *Elnora T. Webb*
Elnora T. Webb, Laney College President

Date: 11-15-10

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: *R G, electronically*
Finance and Administration Approval

Date: 12/3/10

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: _____

CHANCELLOR'S OFFICE APPROVAL

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

Signature: *Wise Allen*
Wise Allen, Chancellor

Date: 12/2/10

The ELS Group LLC

CONTRACTED SERVICES AGREEMENT

The following proposal, once executed and returned, outlines an agreement for contracted services to be provided by The ELS Group, to Peralta Community College District (Laney College). More specifically, The ELS Group (hereinafter "ELS"), agrees to contract with Peralta Community College District (hereafter "District") to utilize the professional and technical services of George Kozitza (hereafter "Consultant"), an independent *Consultant*, and to pay fees for time and delivery of those services as outlined herein.

It is also mutually agreed herein that:

1. To the extent allowed by law, the District and ELS, shall each defend, indemnify, and save harmless the other and its Board of Trustees, officers and employees against any and all claims, actions, liabilities and losses, by whomever asserted, of acts, errors, or omissions on the part of their respective officers, agents, students, or employees arising out of any activities in the performance of this Agreement, providing, however, that either party shall be given sufficient notice to enable it to participate and conduct an appropriate defense of any claims made.
2. It is understood that ELS is responsible for the actions of its officers and employees; that the Consultant is not an employee of the District regardless of nature and extent of the acts performed by the Consultant; that inasmuch as said Consultant shall not be an employee of the District, the District does not assume liability under law for any act of the Consultant performing or traveling pursuant to this Agreement. Furthermore, as the Consultant is a self-employed independent contractor, neither the District nor ELS shall be responsible for the payment of any unemployment insurance, Workers' Compensation Insurance, Social Security or Medicare taxes, or collection of federal or state income tax withholding for or on behalf of the Consultant.
3. Payment of fees in consideration of this agreement shall be as stipulated in Appendix "B". ELS will bill, at the beginning of each month for the services outlined in Appendix "A". The District will reimburse ELS for services provided by the Consultant within 30 days of receipt of a valid invoice from ELS.
4. It is expressly understood and agreed that this Agreement is not intended and shall not be construed to create the relationship of agent, employee, partnership, joint venture, or association between the District and ELS, but is, rather, an agreement by and between the independent contractors, these being District and ELS.

5. The Consultant shall perform the services as defined in Appendix "A". To the extent that the law allows, the Consultant may discharge the duties which are consistent with his/her status as an independent contractor. The District shall designate an employee(s) to discharge those duties and exercise those powers which can only be vested in a person employed by the District, and in that capacity the designated employee(s) and the Consultant shall coordinate to ensure the orderly and consistent administration of the area of consultation. It is further understood and agreed, it is the District's responsibility to ensure that a true independent contractor relationship is established and maintained.
6. This agreement month to month portion and shall remain in full force and effect beginning March 1, 2010 and shall thereafter be automatically renewed, without comment, on a month to month basis indefinitely until cancelled in writing by either party giving 30 days notice.
7. Compliance with the laws
 - a. Compliance with Laws. ELS shall fully comply with all laws, executive orders, regulations, DISTRICT Board Policies, and other legal requirements applicable to ELS and to the services. Failure to comply with this Article shall constitute a material breach of the AGREEMENT. (Board Policies can be found on the DISTRICT website.)
 - b. Equal Opportunity in Contracting. DISTRICT is committed to ensuring equal opportunity and equitable treatment in awarding and managing its public contracts. Therefore, it is the policy of DISTRICT to encourage and facilitate full and equitable opportunities for small local business enterprises and small emerging local business enterprises to participate in prime contracting and subcontracting with DISTRICT. DISTRICT policy prohibits discrimination in DISTRICT programs and services, including contracting, subcontracting, personal and professional services, goods and maintenance, repairs, and operations. ELS shall fully comply with the DISTRICT'S equal opportunity and equitable treatment policies and implementing procedures and shall not discriminate against or grant preferential treatment to any subcontractor on the basis of race, color, religion, creed, national origin, sex, actual or perceived sexual orientation, transgender status at any stage, marital status, disability, medical status or conditions, age, ancestry, gender identity, political affiliation, veteran status, or other personal characteristic protected by law in the performance of the AGREEMENT.
 - c. Non-Discrimination. ELS agrees to comply with Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11246, DISTRICT Board Policy 4.03, and all applicable laws, rules, and regulations in regard to non-discrimination and equal opportunity. ELS agrees and assures that it will not discriminate against, permit discrimination against, harass, or permit harassment against any individual, including but not limited to employees, applicants for employment, or students, because of race, color, religion, creed, national origin, sex, actual or perceived sexual orientation,

transgender status at any stage, marital status, disability, medical status or conditions, age, ancestry, gender identity, political affiliation, veteran status, or other personal characteristic protected by law. ELS will, in all solicitations or advertisements for employees, placed by or on behalf of ELS, state that all qualified applicants will receive consideration for employment without regard to the aforementioned protected personal characteristics. ELS certifies that it does not and will not maintain segregated facilities.

- d. Sexual Harassment. ELS assures that it will not sexually harass or permit sexual harassment against any individual, including but not limited to employees, applicants for employment, or students. DISTRICT shall have the right to remove an alleged offender from performance of the WORK pending the results of a sexual harassment investigation.
- e. DISTRICT Conflicts of Interest. ELS represents that it is familiar with California Government Code Sections 1090 et seq. and 87100 et seq., and that it does not know of any facts that constitute a violation of said sections or DISTRICT'S conflict of interest code, Board Policy 6.86. ELS represents that it has completely disclosed to DISTRICT, and if applicable will disclose in the future, all facts bearing upon any possible interests, direct or indirect, which ELS believes any member of DISTRICT, or other officer, agent, or employee of DISTRICT or any department presently has, or will have, in the AGREEMENT, or in the performance thereof, or in any portion of the profits thereunder. If ELS subsequently becomes aware of any such facts, ELS shall promptly provide NOTICE to DISTRICT of same, along with a proposal for remedying the violation. DISTRICT, at its sole discretion, may determine whether the proposal or any other proposed resolution is satisfactory.
- f. ELS Conflicts of Interest. ELS represents that it does not presently have, and shall not have during the AGREEMENT PERIOD, any direct or indirect interest that would conflict in any manner or degree with the performance of WORK required by the AGREEMENT. ELS further represents that it will not employ, subcontract to, or otherwise involve any person or entity having such conflicts of interest in the performance of the AGREEMENT. If ELS subsequently becomes aware of any such conflicts of interest, ELS shall promptly provide NOTICE to DISTRICT of same, along with a proposal for remedying the violation. DISTRICT, at its sole discretion, may determine whether the proposal or any other proposed resolution is satisfactory.
- g. Fraud or Misappropriation. ELS certifies that none of its officers has been convicted of fraud or misappropriation of funds.

8. Duty to Keep Information Confidential.

(a) The DISTRICT shall furnish to ELS such information (e.g., proprietary data and private student data) access to the DISTRICT'S personnel, equipment, and materials as may be reasonably necessary and appropriate for ELS to provide the services in this AGREEMENT, the confidentiality of which gives the DISTRICT a competitive advantage in its business (all such information and access so furnished being the

"INFORMATION"). As used herein, the term "INFORMATION" is to be broadly defined and includes, but is not limited to, (a) presentations, ideas, trade secrets, processes, systems, techniques, formulas, source and object code, data, programs, know-how, flowcharts, methods, compounds, diagrams, drawings, models, specifications, improvements, discoveries, developments, designs, and other works of authorship, whether patented or registered for trademark or copyright protections, if any, information regarding marketing, sales, licensing, accounting, product development, competitive analyses, unpublished financial statements, budgets, forecasts, prices, costs, business plans, research and development plans, students, student marketing, research and any other confidential student, supplier,

or employee information, and (c) any other information of the type which the DISTRICT has a legal obligation (e.g, Family Educational Rights and Privacy Act (FERPA)) to keep confidential or which the DISTRICT treats as confidential or proprietary, whether or not owned or developed by the DISTRICT. As a material condition to ELS providing the WORK, ELS acknowledges a continuing responsibility with respect to the Information and agrees:

(i) that the INFORMATION is, shall be, and shall remain the exclusive property of the DISTRICT and ELS shall neither have nor acquire any right, title, or interest therein;

(ii) to keep all INFORMATION confidential and not to copy, publish, transmit, or disclose to others or allow any other party to copy, publish, transmit, or disclose to others any INFORMATION, except in accordance with ELS's responsibilities to the DISTRICT pursuant to this AGREEMENT and in furtherance of the interests of the DISTRICT; and,

(iii) to use the INFORMATION exclusively for the purpose of providing the WORK under this AGREEMENT.

(b) During the time that this AGREEMENT remains in effect and at all times thereafter, ELS agrees to keep the INFORMATION confidential and not to copy, publish, transmit, or disclose to others or allow any other party to copy, publish, transmit, or disclose to others, any INFORMATION without the DISTRICT's prior written approval.

(c) Upon termination of this AGREEMENT, ELS shall return to the DISTRICT any and all INFORMATION, Third Party INFORMATION (as defined below), and any other materials, notes and copies relating to the DISTRICT and/or any assignments ("DISTRICT Materials") in ELS's possession or under ELS's control and shall not subsequently use the INFORMATION, Third Party INFORMATION or DISTRICT Materials in any manner, whether adverse to the DISTRICT or otherwise.

(d) The foregoing confidentiality obligations of ELS shall not apply to any INFORMATION that (a) is a matter of public knowledge (from a source or sources other than ELS), (b) is independently developed by a person not a party to this AGREEMENT without the use, directly or indirectly, of INFORMATION, or

(c) 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 ELS shall, prior to making any such required disclosure, notify the DISTRICT in sufficient time to permit the DISTRICT to seek an appropriate protective order.

(e) Upon termination of this AGREEMENT or upon request by the DISTRICT, ELS will promptly deliver to the DISTRICT all drawings, notes, memoranda, presentations, brochures, specifications, programs, reports, and other documents and manifestations, with all copies and any other materials containing or disclosing any Third Party INFORMATION, INFORMATION or any other materials related to the DISTRICT, whether prepared by ELS or another party. ELS agrees not to retain any written or other tangible material containing any material concerning or disclosing any Third Party INFORMATION or INFORMATION of the DISTRICT and to maintain the confidentiality of this INFORMATION and materials in the future.

(f) Duration of Obligation. The obligations of the PARTIES pursuant to this article shall extend indefinitely beyond the AGREEMENT PERIOD.

FOR: The ELS Group (ELS)

Larry L. Carrier

February 23, 2010

Larry L. Carrier
Senior Partner
The ELS Group

Date

FOR: District

Sam A. Arnes

Chancellor
Peralta Community College District

02/11/10

Date

Stana Pelt

President
Laney College

3-10-10

Date

Approved as to Form:

Date: *[Signature]*

3/10/10

Office of the General Counsel
Peralta Community College District

APPENDIX "A"

Contract Between The ELS Group and Peralta Community College District Services of Consultant George Kozitza

Services to be performed:

Fiscal Solvency & Budget Development

- Assess financial health of College, recommend control programs and systems designed to assure compliance with budget allocations
- Develop and provide periodic budget reports and financial projections
- Coordinate audits of campus and student activities, review financial accounts for Associate Students and the College and the Bookstore and advise college administration
- Review and recommend improvements to budget development process
- Review revenue and expenditure assumptions and determine efficacy of 2009/10 budget
- Recommend actions necessary to balance 2010/11 budget

Operational Protocols & Procedures

- Review business office organizational structure and recommend changes as needed consistent with the planning agenda and operational needs of the college as well as applicable statutes, regulations and internal accounting, purchasing, payroll, fiscal, and facilities reporting policies and procedures
- Review work of the department and provide recommendations for fiscal and general business activities, including custodial services, time sheets, requisitions, duplicating services, telephone and switchboard operations, cash collection and disbursement of funds
- Consistent with District policies, procedures and union agreements, assess activities related to records maintenance, selection, evaluation, discipline and grievance processing for personnel and recommend related changes
- Make recommendations regarding the maintenance of campus equipment inventory control records in coordination with District records and procedures
- Review/revise/write business operational procedures as needed and develop a college standard operating procedures manual

Facilities

- Consult with the Director of Physical Plant and other appropriate officials regarding the overall maintenance and operation functions of the college's physical plant and property including leased facilities, to assure optimum availability and utility of facilities.

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- Provide recommendations regarding facilities planning, including expansion, design and modification of existing facilities and construction of new facilities.
 - Develop and evaluate procedures and plans regarding community and campus groups use of college facilities.

Institutional Resource

- Act as consultant between the College and District Administrative and Financial Services Offices and assists in the development of District policy and regulations
- Serve as resource person for College management regarding grant agreements and other external financial and service relationships
- Act as a resource person for health and safety programs and committees and act as chair of College health and safety committees.
- Participate in the college governance committees; participates in the development of policies and goals.
- Other services as agreed upon by the parties

APPENDIX "B"

Contract Between
The ELS Group and Peralta Community College District (Lancy College)
Services of Consultant George Kozitza

ELS will bill, at the beginning of each month for the services outlined in Appendix "A".
The District will reimburse ELS for services provided by the Consultant within 30 days
of receipt of a valid invoice from ELS as stipulated below.

Consultant's Fee	\$10,000.00
Consultant Expenses	\$ 500.00
ELS Group Fee	<u>\$ 1,000.00</u>
Total Monthly Fees	<u><u>\$11,500.00</u></u>