

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT ("Agreement") is made effective July 1, 2011 by and between PERALTA COMMUNITY COLLEGE DISTRICT ("PCCD") and PUBLIC FINANCE STRATEGIES LLC., DBA TBWB STRATEGIES, a California LLC ("TBWB").

RECITALS

- A. PCCD needs assistance evaluating the feasibility of a parcel tax measure, developing a measure for the ballot and implementing a public outreach and communications program to raise awareness of the PCCD's funding needs.
- B. TBWB is a professional consulting firm that provides ballot measure feasibility, public outreach and communication consulting services.
- C. PCCD desires that TBWB provide certain consulting services pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree as follows:

- 1. Engagement of TBWB. PCCD hereby engages TBWB to perform the following services:
 - a. Feasibility Assessment. TBWB shall:
 - 1) Collaborate with EMC Research to analyze voter opinion survey data to assess the feasibility of a parcel tax measure and recommend additional research as needed;
 - 2) Conduct a demographic analysis of voters in the District and how they break into key sub-groups by age, ethnicity, political party, length of residency, and other key criteria;
 - 3) Analyze past election results in the District and region to understand voter turnout trends and other relevant voting patterns;
 - 4) Research other local tax proposals that may be heading to an upcoming ballot that could compete with a PCCD ballot measure; and
 - 5) Make specific recommendations regarding an optimal election date, tax rate, duration, accountability provisions and other important ballot measure features.
 - b. Ballot Measure Development. If the Feasibility Assessment results in a decision to move forward with a ballot measure TBWB shall perform the following services to assist PCCD in preparing a parcel tax measure for the ballot:
 - 1) Refine the list of programs and services to be funded by the measure and prepare messaging that clearly articulates how these programs will benefit from the measure;
 - 2) Develop procedures for the taxpayer accountability protections, including a process for an independent citizens' oversight committee;

- 3) Work with legal counsel to develop a resolution calling for the election;
 - 4) Develop the 75-word ballot question, full text of the measure and other materials that will appear in the ballot pamphlet mailed to all voters;
 - 5) Present recommendations, documents and resolutions to the Board for approval; and
 - 6) Work with the Alameda County Registrar of Voters Office to complete the process of qualifying for the ballot.
- c. Public Information. TBWB shall perform the following services to raise awareness of PCCD's funding needs and ballot measure proposal:
- 1) Develop informational fact sheets to be distributed at each campus and college functions
 - 2) Provide content to be added to the PCCD website, included in email updates and added to newsletters
 - 3) Prepare PowerPoint presentations for campus and community meetings
 - 4) Write, design, and produce mailings to educate, inform and engage voters
 - 5) Develop strategies and plans to inform and engage key internal stakeholder groups, including faculty, staff, students, alumni, your foundation and others
 - 6) Develop strategies and plans to inform and engage influential external groups including elected leaders, business leaders, city leaders, ethnic community leaders, faith community leaders, taxpayer groups and others
2. Term of Agreement. The term of this Agreement shall commence on July 1, 2011 and shall continue until the earliest of:
- a. Board of Trustees action to adopt a resolution calling for a parcel tax measure;
 - b. At such a time as PCCD discontinues its ballot measure planning effort and has paid all fees and expenses described in Section 3 for consulting services performed up to the date of termination, including prorated payments for any partial months of service;
 - c. The death or incapacity of all six principal consultants at TBWB, Michael Terris, Barry Barnes, Erica Walters, Jared Boigon, Sarah Stern & Charles Heath;
 - d. Termination of this Agreement by TBWB upon ten (10) days written notice to PCCD. TBWB reserves the right to terminate this contract immediately, with ten days written notice, for non-payment of monies owed to TBWB for any of the fees described in Section 3; and
 - e. Termination of this Agreement by PCCD upon ten (10) days written notice to TBWB. At such a time PCCD shall have made payments for all fees and expenses described in Section 3 for consulting services performed up to the

date of termination, including prorated payments for any partial months of service.

3. Compensation of Operating Provisions. In consideration for the services to be rendered by TBWB pursuant to this Section 1 of this Agreement, PCCD shall pay the following fees to TBWB:

- a. Base Consulting Fee. TBWB shall be paid a Base Consulting Fee of \$7,500 per month, payable within 30 days of receipt of invoice by PCCD.
- b. Advance Payment for Media. All media and advertising goods and services shall be purchased or rented from TBWB by PCCD. The prices for specific media goods and services will be provided by TBWB to PCCD at the time of purchase. TBWB shall in turn subcontract the work to third party vendors at TBWB's discretion to meet the production specifications and timing requirements. Payment for media goods and services shall be made in advance by PCCD to TBWB, or to the third party vendor, at the discretion of TBWB.

Upon termination of this Agreement for any reason, all amounts owed by PCCD to TBWB pursuant to this paragraph shall become immediately due and payable.

- c. Reimbursement of Expenses. PCCD shall pay TBWB expenses which shall be incurred by TBWB from time to time in connection with the performance of the services described herein, which shall include, but not be limited to, airfare, rental cars, hotel or meals if required due to travel, automobile mileage at the established IRS mileage reimbursement rate at the time of travel, copies, conference calls, postage and other out-of-pocket expenses. In regular invoices, TBWB shall submit a report of actual expenses, and within thirty (30) days thereafter, PCCD shall reimburse TBWB in full. Within thirty (30) days after termination of this Agreement, TBWB shall submit a final accounting of TBWB's expenses, and within twenty (30) days thereafter, PCCD shall pay TBWB for all expenses incurred on behalf of PCCD.
- d. Expenditure Authority. Only PCCD, or a person designated by PCCD, shall have the authority to approve an expenditure in excess of \$500 on behalf of PCCD. TBWB shall not commit PCCD to any expenditure, nor incur any obligation on behalf of PCCD, in excess of \$500 without verbal approval from PCCD or a person designated by PCCD. TBWB shall not spend more than the amount approved plus 5% without securing additional approval from PCCD, or a person designated by PCCD.
- e. Approval. PCCD approval is required of all written materials disseminated to voters within PCCD prior to distribution and/or prior to any printing or production costs being incurred. TBWB shall secure all necessary approvals and releases for copyrighted and/or trademarked material draft, prepared and/or distributed pursuant to this agreement. PCCD approval of materials does not waive this obligation to secure all such copyright and trademark

approvals. To the extent PCCD receives any claim, demand or suit based on alleged copyright or trademark violation in materials prepared or produced by TBWB, TBWB agrees to indemnify and hold harmless PCCD.

- g. Interest Clause. In the event that monies owed to TBWB are not paid when due, all unpaid amounts owed to TBWB will bear interest of 1.5% per month, calculated on the basis of a 30-day month.
4. Relationship Between the Parties. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or any relationship other than an independent consulting relationship between PCCD and TBWB, or cause TBWB to be responsible in any manner for the debts and obligations of PCCD.
5. Audits. Pursuant to Government Code section 8547.2, records concerning this contract shall be subject to the examination and audit of the State Auditor, at the request of the District or as part of any audit of the District, for a period of three (3) years after final payment under the contract.
6. Arbitration. Any dispute hereunder shall be resolved by binding arbitration under the auspices and commercial rules of the American Arbitration Association, with the decision of the arbitrator being binding and enforceable by any court of competent jurisdiction. Each party to bear its own costs and attorney fees.
7. Assignment. Neither party shall have the right to assign its rights or delegate its obligations under this Agreement without prior written consent of the other.
8. Exclusivity of the Agreement. During the term of this Agreement, PCCD shall not engage any other person or entity to perform any acts or services to be performed by TBWB under this Agreement without the prior written approval of TBWB. Nothing shall infringe upon the right of TBWB to perform consulting services or media management consulting services for any other person or party.
9. Notices. Any notice required or permitted under this Agreement will be given in writing, and will be deemed effectively given upon personal delivery to the party to be notified by hand, professional courier service or facsimile, one day after deposit with Federal Express or similar overnight delivery service, or two days after deposit with the United States Post Office, by registered or certified mail, postage prepaid and addressed to the party to be notified at the address set forth below, or at such address as such party may designate by five days' advance written notice to the other party.
10. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and it supersedes and replaces any prior or contemporaneous understandings or agreements, whether written or oral, between the parties with respect to such subject matter.

11. Applicable Law. This Agreement and the rights of the parties shall be governed by and construed and enforced in accordance with the laws of the State of California.
12. Severability. In case one or more of the provisions contained in this Agreement, or any application of the provisions, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement, and any other application thereof, shall not in any way be affected or impaired.
13. Captions for Convenience. The captions and headings in this Agreement are for convenience only and shall not be considered in interpreting any provision of this Agreement.
14. Waiver and Amendment. No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach. This Agreement may be amended only by a written agreement executed by the parties hereto at the time of the modification.
15. Binding Effect. This Agreement shall be binding upon, and inure to the benefits of, the parties and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of July 1, 2011.

PERALTA COMMUNITY COLLEGE DISTRICT
333 East 8th Street
Oakland, CA 94606

By: _____
Ronald P. Gerhard, Vice Chancellor for Finance
and Administration

TBWB STRATEGIES
400 Montgomery Street, Suite 700
San Francisco, CA 94104

By: _____
Charles Heath, Partner