

PERALTA COMMUNITY COLLEGE DISTRICT
Board of Trustees Agenda Report
For the Trustees' Meeting Date of July 14, 2015

ITEM TITLE:

Request Board Approval of Retainer Agreements with Nitasha Sawhney of Garcia, Hernandez, Sawhney & Bermudez, LLP (GHSB) and Ericka Curls-Bartling of Curls Bartling, P.C. to provide Acting General Counsel Services for the 2015-2016 year.

SPECIFIC BOARD ACTION REQUESTED:

Approval of retainer agreements for Fiscal Year 2015-16 for Garcia, Hernandez, Sawhney & Bermudez, LLP & Curls Bartling, P.C.

ITEM SUMMARY:

At the June 9 meeting, the Board approved the Interjurisdictional Exchange Agreement loaning the services of the District's General Counsel, Thuy Nguyen, to serve as the Interim General Counsel for the State Chancellors Office for the 2015-16 fiscal year. To maintain legal services to the District office and each College District Administration seeks to retain the services of Nitasha K. Sawhney, Esq. and Ericka Curls-Bartling, Esq. to provide Acting General Counsel services for the 2015-16 year. District administration requests Board approval of retainer agreements with Ms. Sawhney and Ms. Curls-Bartling to continue providing General Counsel Services. Ms. Sawhney will provide services at a flat monthly rate of \$12,500 with a not to exceed limit of \$150,000. Ms. Curls Bartling will provide services at a flat monthly rate of \$13,500 with a not to exceed limit of \$162,000.

All Board-approved contracts, including amendments thereto, are subject to final negotiation and execution by the Chancellor. The Chancellor recommends approval.

SOURCE OF FUNDS: General Funds/Legal Budget

BACKGROUND/ANALYSIS:

Curls Bartling P.C. has provided ongoing legal support to the District, primarily in the area of advice, drafting and negotiation of commercial contracts, grants, affiliation agreements and licenses, since 2005, including for the 2014-15 fiscal year.

Garcia, Hernandez, Sawhney & Bermudez, LLP has provided legal support to the District, primarily in the area of advice and counsel on issues of labor and employment, ethics, legal training, Brown Act, facilities and general matters since 2009.

Since January 2015, Ms. Sawhney and Ms. Curls Bartling have provided acting general counsel services to the Districts and each of the Colleges. Over the last six months, District administration has worked closely with Ms. Sawhney and Ms. Curls Bartling to assess the best way to continue to deliver excellent legal services to the District during Ms. Nguyen leave. For the 2015-16 year, Ms. Sawhney will provide on-site office hours two days per week. In addition, Ms. Curls Bartling will provide on-site office hours one day per week. Ms. Sawhney and Ms. Bartling will also be available to the Chancellor, Deputy Chancellor and other District administrators regularly and on an on-call basis.

The agreement with Ms. Sawhney provides 60 hours of legal services at the flat rate of \$12,500 per month. Additional specialized legal services can be authorized by the Chancellor or Deputy Chancellor at an hourly rate. The agreement not to exceed limit is \$150,000 for the 2015-16 year. The agreement can be terminated by the District at any time.

The agreement with Ms. Curls Bartling provides 60 hours of legal services at the flat rate of \$13,500 per month. Additional legal services can be authorized by the Chancellor or Deputy Chancellor at an hourly rate. The agreement not to exceed limit is \$162,000 for the 2015-16 year. The agreement can be terminated by the District at any time.

DELIVERABLES AND SCOPE OF WORK:

The Co-Acting General Counsels, under the direction of the Governing Board of The Peralta Colleges, provides legal advice to the Governing Board, the Chancellor, managers, faculty, and staff. However, at no time will an attorney-client relationship exist with any person or organization other than the Governing Board and those individuals acting vicariously on behalf of the Governing Board. The Co-Acting General Counsels do not represent any individual Board member, the Chancellor, or any individual manager. Thus, any written legal opinion requested by a Board member will be shared with the full Governing Board; any request by the Chancellor may be shared with the full Governing Board; and any request by a manager may be shared with the Chancellor.

The following are responsibilities, inter alia, of the Co-Acting General Counsels:

- Provides legal services required in all areas of law affecting The Peralta Colleges.
- Coordinates and reviews specialized legal services provided by other outside counsel.
- Prepares and conducts litigation and participates in federal, state and local administrative proceedings as authorized by the Governing Board.
- Has as his/her priority the containment of legal costs for both the legal fees associated with litigation and the amounts awarded to plaintiffs by the courts or via a settlement agreement. Provides to the Governing Board quarterly briefings on legal expenses to date.
- Develops a position paper for each significant legal action underway or anticipated that includes (1) the basic elements of the legal claim, including names, dates, and financial damages sought; (2) insurance coverage; (3) range of options available to the Board, with a quantified probability of an outcome associated with each; (4) rationale for outsourcing, where utilized; (5) identity of the law firm assigned to each case and rationale for their selection; (6) predicted time horizon to successful termination; (7) overall general prognosis; (8) evaluation as to whether the claim involved is considered to be a relative one-of-a-kind issue or the result of a systemic problem in the operation of The Peralta Colleges; and (9) a recommendation, where appropriate, for actions to be taken to reduce the risk of a reoccurrence of this type of legal claim.
- Prepares formal and informal opinions, drafts proposed legislation and regulations, and drafts and reviews contracts and instruments effecting transfers of property, and all other legal documents or instruments, as needed or requested.
- Attends and provides legal advice at all meetings of the full Governing Board and other such meetings as the Board may direct.
- Serves as a liaison with other governmental entities in the area of legal affairs.
- Serves as the legal advisor to the Board Policy Committee to ensure that all policies are consistent with the law, regulations, and policies and to further ensure that administrative procedures are developed and approved by the Governing Board.. Apprise the Governing Board regularly all policies that do not have approved implementing administrative procedures in place.
- Serves as the custodian of all FPPC Form 700 disclosure documents required for Board members and applicable employees of The Peralta Colleges. Manages an electronic data bank of appropriate

information from the disclosure documents. Provides the information to the Governing Board by “sunshining” the information and noting any possible conflicts of interest, based on known information provided at the time, for contracts being recommended to be agreed upon between The Peralta Colleges and any and all outside entities.

- Provides certification as to legal form, by signature, on all documents of significance that are referred to the Governing Board for approval that the proposals are in compliance with all applicable laws, regulations, and policies.
- Assumes the legal role of Contract Administrator for The Peralta Colleges by developing and implementing a system of accountability on contract administration, and thereby has line authority to ensure full compliance.
- Plans and conducts legal trainings.
- Assists the Deputy Chancellor in supervising the staff of the Office of the General Counsel, including the risk manager and other professional, legal research and clerical staff.
- Signs a negotiated, annual performance contract that includes merit pay increases with the Governing Board and submits a report of accomplishments to be used by the Governing Board for an annual evaluation.
- Performs other duties as assigned by the Governing Board.

ANTICIPATED COMPLETION DATE: JUNE 30, 2016

ALTERNATIVES/OPTIONS:

EVALUATION AND RECOMMENDED ACTION:

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

YES _____ NO X

COMMENTS:

WHO WILL BE PRESENTING THIS ITEM AT THE BOARD MEETING? DR. ERIC GRAVENBERG, INTERIM DEPUTY CHANCELLOR

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

DOCUMENT PRESENTED AND APPROVED BY:

Presented and approved by: Dr. Eric Gravenberg
Dr. Eric Gravenberg, Interim Deputy Chancellor

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: *Susan Rinne*
Susan Rinne, Interim 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: _____

CHANCELLOR'S OFFICE APPROVAL

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

Signature: *Jowel Laguerre*
Dr. Jowel Laguerre, Chancellor