

**PERALTA COMMUNITY COLLEGE DISTRICT  
Board of Trustees Agenda Report  
For the Trustee Meeting Date of May 10, 2016**

**ITEM TITLE:**

Consider Approval of Amendment No. 1 to an Existing Contract with Maktinta Energy for project management, supervision, and commissioning of the Laney Swimming Pool Project.

**SPECIFIC BOARD ACTION REQUESTED:**

Approval is requested for Amendment No. 1 to an existing contract with Maktinta Energy to provide project management, supervision, and commissioning for the Laney College Swimming Pool Project, in the amount not-to-exceed \$19,825.

**ITEM SUMMARY:**

Maktinta Energy has provided the construction documents for the Laney College swimming pool equipment renovation work. Work encompasses new heaters, water treatment equipment, and ancillary equipment powered by the electrical infrastructure.

The Chancellor recommends approval.

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

General Fund

**BACKGROUND/ANALYSIS:**

This work effort is needed to ensure a fully operational swimming pool that campus and community stakeholders can use, as the equipment and commissioning activities are completed. The contract breakdown is as follows:

Description	Amount	Board Approval
Original Contract	\$9950.00	Not Required
Amendment No. 1	Budget Code Correction	Not Required
Amendment No. 2	\$19,825.00	May 10, 2016
<b>TOTAL CONTRACT AMOUNT:</b>	<b>\$29,775.00</b>	

**DELIVERABLES AND SCOPE OF WORK:**

The vendor will provide the deliverables and perform the scope of work as described in the Item Summary and as outlined in their proposal dated January 11, 2016.

**ANTICIPATED COMPLETION DATE:**

The anticipated completion date is June 30, 2016

**EVALUATION AND RECOMMENDED ACTION:**

The administration recommends the approval of this Amendment No. 1 for the vendor to perform project management, supervision, and commissioning of the Laney Swimming Pool Project.

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

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

COMMENTS:  
Not Applicable

WHO WILL BE PRESENTING THIS ITEM AT THE BOARD MEETING? Vice Chancellor Ikharo.

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

**DOCUMENT PREPARED BY:**

Prepared by: Dr. Sadiq B. Ikharo Date: May 1, 2016  
Vice Chancellor of General Services

**DOCUMENT PRESENTED AND APPROVED BY:**

Presented and approved by: Dr. Sadiq B. Ikharo Date: May 1, 2016  
Vice Chancellor of General Services

**FINANCE DEPARTMENT REVIEW**

X  Finance review required \_\_\_\_\_ Finance review *not* required

If Finance review is required, determination is:  X  Approved \_\_\_\_\_ Not Approved

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

Signature: Ronald D. Little II  
Ronald D. Little II, Vice Chancellor for Finance and Administration

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

X  Legal review required \_\_\_\_\_ Legal review *not* required

If Legal review is required, determination is:  X  Approved \_\_\_\_\_ Not Approved

Signature: Nitasha Sawhney  
Nitasha Sawhney, Acting General Counsel

**CHANCELLOR'S OFFICE APPROVAL**

X  Approved, and Place on Agenda \_\_\_\_\_ Not Approved, but Place on Agenda

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

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**Peralta College Pool Project Management Proposal**

Maktinta Energy ( "Maktinta" Hereafter) is pleased to present this proposal to Peralta College ( "CLIENT ") for project management, supervision, and commissioning of the Pool project as described in the construction documents submitted to the college.

System Type: Pool Retrofit  
Project #: 201555

**SCOPE OF SERVICES :**

1. Create production schedule
2. Create installation schedule
3. Assist in soliciting interested bidders and setting minimum qualifications
4. Attend job walk
5. Answer RFIs
6. Evaluate submittals
7. Assist in evaluating bids
8. Attend pre-construction meeting
9. Perform 2-4 interim inspections and approve progress billings
10. Create punch list
11. Attend commissioning and evaluate quality of construction and implementation of design intent
12. Approve job and work with utility to secure energy efficiency rebates

**PROPOSAL FEE**

The fee for the above described Scope of services would be \$14,875. Our fee will be invoiced every 15 days in accordance with our attached General Terms and Conditions.

**EXCLUSIONS AND CLARIFICATIONS**

1. MAKTINTA is not the Engineer of Record
2. MAKTINTA is only providing consulting services on behalf of the CLIENT
3. This proposal includes the above described scope of services only
4. This proposal does not include value engineering. Value engineer efforts will be invoiced on a time and expense basis in accordance with our attached General Terms and Conditions.
5. The recommendations provided by MAKTINTA assume "best practices" installation of the products and systems referenced, including accessory items and components necessary to make the construction complete.
6. MAKTINTA is not the Architect of Record, so we recommended that Architect review our comments with Owner prior to incorporation into the construction documents. We cannot be held responsible for cost changes due to our recommendations.

**GENERAL TERMS and CONDITIONS California** (Updated October 2014)

The following General Terms and Conditions are incorporated into, and made part of, the attached AGREEMENT dated February 6 2015 between Maktinta (MAKTINTA) and the CLIENT (hereinafter referred to as "CLIENT"), and together are referred to as the "AGREEMENT".

**1. MAKTINTA SERVICES.**

- 1.1. **STANDARD OF CARE.** In performing professional services, MAKTINTA will use that degree of care and skill ordinarily exercised under similar circumstances by members of the profession practicing at the same time in the same or similar locality, but perfection is not promised. In accepting this AGREEMENT for professional services, CLIENT acknowledges the inherent risks associated with building evaluation, construction, and solar performance and therefore no warranty, express or implied, is made or intended by this AGREEMENT, by the foregoing statement of the applicable standard of care, by providing services or by furnishing oral or written reports of findings made.
- 1.2. **ASSUMPTIONS AS BASIS FOR SERVICES.** The CLIENT and MAKTINTA have relied upon certain assumptions stated in MAKTINTA's proposal. Both parties, however, recognize that such assumptions may materially change and, in that event, the CLIENT and MAKTINTA shall equitably adjust the schedule, MAKTINTA's scope of services, and compensation. MAKTINTA's services provided for remodeling, repair, rehabilitation, or new solar permitting of any structure rely upon certain assumptions regarding existing conditions. Because these assumptions are often not verifiable without expending significant sums of money, or may require destroying otherwise functioning and serviceable portions of the structure, the client understands and agrees to be responsible for and to defend, indemnify and hold harmless MAKTINTA from and against any claims arising out of the professional services provided under this agreement as a result of unforeseen conditions, including but not limited to conditions encountered where field verification of conditions is recommended by MAKTINTA but rejected by the Client.
- 1.3. **STAFFING.** As determined by MAKTINTA, the staff necessary to deliver our contracted scope of services will be provided. It is likely that our assigned staff will vary depending upon the type of project, experience and qualifications needed, and staff availability. Our estimated fee tables, when provided, are not a commitment, pledge, promise or assurance to provide exactly each type of staff member listed, to provide a specific individual, or a commitment to provide the exact hours estimated for each task, phase, person, staff type or activity. Fee tables, when provided, are only general best efforts at predicting the staffing and hours required to complete our scope of services based upon our initial understanding of client goals and preliminary assessment of the project.
- 1.4. **USE AND OWNERSHIP OF DOCUMENTS.** MAKTINTA retains all intellectual property rights including copyrights in all reports, field data, notes, calculations, estimates, plans, drawings, specifications and other documents, which MAKTINTA prepares as instruments of service. Upon full payment of MAKTINTA's invoices, MAKTINTA grants CLIENT a nonexclusive limited license to use the drawings, specifications, reports and other instruments of service furnished by MAKTINTA, or its agents, but only for the project for which they are prepared and intended. If MAKTINTA is not paid in full for all its services CLIENT shall, upon demand, return to MAKTINTA all drawings, specifications reports and other work furnished by MAKTINTA, or its agents, along with all copies, whether tangible or intangible, and refrain from using all such documents for any purpose whatsoever. MAKTINTA will retain records that it deems pertinent relating to its services for five years following performance of its services, during which period the records will be made available to CLIENT at CLIENT'S sole costs.
- 1.5. **ESTIMATES OF CONSTRUCTION COSTS.** MAKTINTA has no control over the cost of labor, materials or equipment for construction not supplied by MAKTINTA, over any contractor's methodology for determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, MAKTINTA cannot, and does not, warrant or represent that bids or negotiated prices will not vary from any cost estimate or evaluation prepared by or under the direction of MAKTINTA. Any statements of estimated construction costs furnished by MAKTINTA are based on professional opinions and judgment, and MAKTINTA will not be responsible for fluctuations in construction costs.
- 1.6. **ON-SITE SERVICES DURING PROJECT CONSTRUCTION.** Should MAKTINTA's services be provided on-site during project construction, CLIENT agrees that the project contractor(s) shall be solely responsible for jobsite conditions, including safety in, on and about the site, safety of all persons and property during the performance of the work, in compliance with applicable OSHA regulations, and that these requirements shall apply continuously and not be limited to normal working hours. Under no circumstances shall MAKTINTA's services include any review of the adequacy of the contractor's safety measures in, on, or about the construction site.
- 1.7. **CONTRACTORS MEANS AND METHODS.** MAKTINTA shall not be held in any way responsible for or to guarantee any contractor's work, nor to assume responsibility for the means, methods, techniques, sequencing or appliances used by any contractor nor to assume responsibility for a contractor's compliance with laws and regulations or for contractor's acts, errors, omissions, or defective work. On-site services provided by MAKTINTA shall not relieve CLIENT's construction contractor of its responsibilities to perform the construction work in accordance with CLIENT's construction agreement, the project drawings and specifications, and applicable laws.
- 1.8. **CONTRACT ADMINISTRATION.** If MAKTINTA is retained as the designer of record, it is customary and may be required by law for MAKTINTA to also provide Contract Administration services. Contract Administration services may also include construction administration, construction observation, and construction monitoring services if expressly included in MAKTINTA's proposal. Contract Administration services may enable MAKTINTA to verify that MAKTINTA's design intent is being complied with and to address unforeseen conditions. If Client does not retain MAKTINTA to provide Contract Administration services, or if for any reason MAKTINTA is not able to provide the minimum level of construction observation required by law, then to the fullest extent permitted by law, CLIENT shall defend, indemnify and hold MAKTINTA harmless from and against any and all claims arising out of the professional services provided under this agreement and the failure to comply with MAKTINTA's design intent, except caused by MAKTINTA's sole negligence as determined by a court or arbitration.  
CLIENT agrees and acknowledges that Contract Administration services provided by MAKTINTA, including construction monitoring, or observations, are intended only to assist the CLIENT in reducing, but not eliminating, the risks associated with construction defects and poor workmanship. Despite MAKTINTA's diligent efforts, defects and failures in construction may occur. Therefore, it is agreed that CLIENT's contractors remain solely responsible for their acts, errors, omissions, and defects in their work and to install and protect fully functioning assemblies, systems, and components. MAKTINTA is not responsible for any State rebate amount. Each state has its own calculations and may be different from the actual system output.
- 1.9. **INSURANCE and LEGAL SERVICES.** MAKTINTA does not provide legal counsel or insurance consultation. Upon the written direction of CLIENT, MAKTINTA will provide to CLIENT's legal or insurance representatives for review, copies of reports; budgets; construction documents; agreements; and other project specific documents prepared by MAKTINTA.

**2. CLIENT'S OBLIGATIONS.**

- 2.1. **EXISTING DOCUMENTS.** Should MAKTINTA's services be provided for an existing structure, the CLIENT shall provide MAKTINTA with a full and complete set of "As-Built", "Record Drawings", construction documents and progressive development sets for all construction projects. If these documents are not provided, MAKTINTA's services required to perform field measurements and/or create electronic documentation shall be invoiced as additional services in accordance with the Schedule of Fees. CLIENT shall be responsible for, and MAKTINTA may rely upon, the accuracy and completeness of all documents, data and other information provided by CLIENT and its agents to MAKTINTA.

- 2.2. **RIGHT OF ENTRY.** Unless otherwise expressly included within MAKTINTA's proposal, CLIENT shall furnish MAKTINTA with right-of-entry onto the land and/or facility for MAKTINTA to perform its services. MAKTINTA will take reasonable precautions to minimize damage to the land and facilities which could be caused by its services or its use of equipment, but our fee does not include the cost for restoration of damage that may result from our services. If requested in writing by CLIENT and agreed to by MAKTINTA, restoration, or repair services for the facility or land shall be a reimbursable expense in addition to MAKTINTA's fees and costs.
- 2.3. **ON-SITE TESTING, EXPLORATION, AND ACCESS.** Should MAKTINTA's services be provided for an existing structure, the CLIENT shall retain and provide a qualified contractor ("CLIENT ACCESS CONTRACTOR") to provide MAKTINTA access to sites or portions thereof. CLIENT ACCESS CONTRACTOR shall provide scaffolding, swing stage, hydraulic man lift and other means required for MAKTINTA to safely access the site or portions thereof.
- 2.4. Unless specifically provided for in MAKTINTA's proposal, MAKTINTA's fee does not include the fees and expenses of CLIENT ACCESS CONTRACTOR. If requested, MAKTINTA will provide CLIENT with a list of contractors and/or service providers that CLIENT may retain. MAKTINTA shall have the right to approve CLIENT ACCESS CONTRACTOR, but those approvals will not be unreasonably withheld.
- 2.5. MAKTINTA may provide CLIENT with a list of contractor(s) or service providers, but it does not guarantee their work and is not responsible for the quality, performance, or accuracy of work performed by such contractor(s) or service providers.
- 2.6. **PERMITS.** Unless expressly included in MAKTINTA's proposal, CLIENT shall obtain, at its cost and expense, all approvals, permissions, and permits from all governing entities having jurisdiction over construction work associated with MAKTINTA's services.
- 2.7. **HAZARDOUS MATERIALS.** MAKTINTA does not provide hazardous material investigation, environmental engineering or consulting, laboratory analysis, or similar services that require specialized environmental training. Should these services become necessary, CLIENT shall retain and provide a qualified environmental consultant(s) to perform these services. Nothing in this agreement shall impose liability upon MAKTINTA for claims, lawsuits, or any damages arising from or related to the discovery of, exposure to, handling of, or disposal of asbestos containing materials, PCBs, mold, mildew or other microbial growths, or any material defined by the U.S. Environmental Protection Agency as hazardous.
- 2.8. **SERVICES OF OTHERS.** If expressly included within MAKTINTA's proposal, MAKTINTA may directly engage the specialized services of individual consultants or other companies to participate in the project. The cost of such services shall be invoiced to CLIENT in accordance with the REIMBURSABLE EXPENSES schedule outlined in Exhibit B (attached).
- 2.9. **REQUIRED OF CONTRACTORS.** CLIENT agrees to require in all construction contracts for the project, provisions that CLIENT and MAKTINTA shall be defended and indemnified by the contractor and its subcontractors and named additional insured on contractor's and subcontractor's insurance.

### 3. FEES, REIMBURSABLE EXPENSES, AND INVOICES.

- 3.1. **SCHEDULE OF FEES AND REIMBURSABLES.** For time and expense contracts the Fees for services are based on the actual hours worked on the project by staff personnel, the billing rates will be in accordance with the fee schedule contained within Exhibit A. MAKTINTA expenses shall be invoiced to client in accordance with the Reimbursable schedule contained within Exhibit B. The Schedule of Fees and Reimbursable Expenses are subject to MAKTINTA's adjustment once per calendar year.
- 3.2. **EXPERT WITNESS AND CONSULTING FEES.** Fees for preparing for travel to and appearing at depositions, mediations, arbitrations, and trials, whether as an expert witness or a percipient witness, whether requested by CLIENT or subpoenaed by others, will be invoiced to CLIENT at 1.5 times MAKTINTA's base rates.
- 3.3. **DELAYS OR SUSPENSIONS OF SERVICES.** If MAKTINTA's services are delayed or suspended in whole or in part by CLIENT or CLIENT'S contractors for more than forty-five (45) cumulative days through no fault of MAKTINTA, then MAKTINTA shall be entitled to an equitable adjustment of its fees to reflect reasonable costs incurred by MAKTINTA in connection with such delay, suspension, or reactivation. MAKTINTA has the right to renegotiate its fee if the scope of its services is changed or not completed within 12 months. CLIENT shall provide MAKTINTA fourteen (14) days written notice of its intent to suspend MAKTINTA's services. MAKTINTA shall be entitled to invoice CLIENT for wind down costs upon suspensions and startup/mobilization costs during (re)startup.
- 3.4. **ADDITIONAL SERVICES.** MAKTINTA's fee includes a fixed quantity of time for meetings and other project related communication. Additional services such as conference calls, CLIENT meetings, written correspondences, email messaging, contractor meetings, subcontractor meetings, or other coordination meetings beyond those included in MAKTINTA's proposal will be considered an additional service, invoiced to CLIENT on a monthly basis in accordance with MAKTINTA's Schedule of Fees in Exhibit A and MAKTINTA's Reimbursable Schedule in Exhibit B.
- 3.5. **TAXES AND OTHER LEGISLATED FEES.** Unless expressly included in MAKTINTA's estimates and proposals, appropriate federal, state and local taxes and other fees or costs imposed by any level of government are not included in MAKTINTA's fee estimates and shall be added to all invoices as required by law prior to distributing said invoices to CLIENT for payment.
- 3.6. **INVOICES.** Invoices will generally be submitted once per month for services performed during the previous month. Payment of an invoice in full must be received by MAKTINTA within thirty (30) days of the date of such invoice.
- 3.7. **EFFECT OF INVOICE.** The services provided shall be deemed approved and accepted by CLIENT as and when invoiced unless CLIENT objects within fifteen (15) days of invoice date by written notice specifically stating the details in which CLIENT believes such work is incomplete or defective, and the invoice amount(s) in dispute. CLIENT shall pay undisputed amounts as provided for in the preceding paragraph.
- 3.8. **INTEREST; SUSPENSION OF WORK.** Failure of CLIENT to make full payment of an invoice so that it is received by MAKTINTA within thirty (30) days of the invoice date subjects the amount overdue to a delinquent account charge of one percent (1.5%) of the invoice amount per month, compounded monthly, (18% per annum), but not to exceed the maximum rate permitted by law. Failure of CLIENT to submit full payment of an invoice within thirty (30) days of the date thereof subjects this AGREEMENT and the work herein contemplated to suspension or termination at MAKTINTA's discretion, without penalty or breach of AGREEMENT.

### 4. TERMINATION.

This AGREEMENT may be terminated by either party by written notice should the other party fail substantially to perform its obligations under this AGREEMENT and continue such default after the expiration of a seven (7) day notice period. Either party may terminate this AGREEMENT without necessity of cause upon the expiration of a fourteen (14) day notice period. If this AGREEMENT is terminated by CLIENT in the absence of default by MAKTINTA, MAKTINTA shall be paid for services performed and costs incurred by it prior to its receipt of notice of termination from CLIENT, including but not limited to reimbursement for direct expenses due, wind down costs, not to exceed ten percent (10%) of charges incurred to the termination notice date, to cover services to orderly close the work and prepare project files and documentation, any additional direct expenses incurred by MAKTINTA including but not limited to cancellation fees or charges, plus MAKTINTA's anticipated profit of fifteen percent (15%) of the value of the services not performed by the Architect. MAKTINTA will use reasonable efforts to minimize such additional charges. Upon termination, CLIENT agrees to pay MAKTINTA's final invoice within fifteen (15) days of the invoice date. Within two (2) working days after receipt of final payment, MAKTINTA will mail to CLIENT one set of all completed documents and reports, if not already provided to CLIENT.

### 5. DISPUTES, NEGOTIATION, MEDIATION, ARBITRATION, AND ATTORNEY'S FEES.

- 5.1. **CHOICE OF LAW FORUM.** This AGREEMENT has been entered into under the laws of the State of California and shall be interpreted and enforced according to the laws of the State of California. The exclusive forum for all disputes shall be located in Santa Clara County, California.

- 5.2. **DISPUTES AND NEGOTIATION.** The parties will first attempt in good faith to resolve through negotiation between officers or principals of the highest levels of the parties any dispute, claim or controversy arising out of or relating to this AGREEMENT. To facilitate discussions, the parties shall exchange information and documents requested by the other party prior to the negotiations.
- 5.3. **MEDIATION.** Should a dispute not be resolved by face to face discussions, the parties agree to try to settle disputes through mediation before resorting to arbitration or litigation as required by this AGREEMENT. The mediator shall be an attorney or similar expert experienced in mediating construction and design professional disputes and shall be chosen by mutual agreement of the parties. If no agreement on a mediator can be reached, then a mediator shall be appointed by the Presiding Judge of the Superior Court in and for the County of Santa Clara, California. Each party shall bear its own costs and expenses of the mediation, including attorney's and expert's fees. The fees and costs of the mediator shall be borne equally by the parties.
- 5.4. **ARBITRATION.** At MAKTINTA's sole discretion, MAKTINTA may elect to have any claims or disputes arising out of this AGREEMENT decided by arbitration in accordance with the rules of JAMS in effect at the time of the demand for arbitration and as amended herein.
- 5.4.1. If MAKTINTA so elects, a demand for arbitration shall be filed with JAMS. Venue for such arbitration shall be in Santa Clara County, California.
- 5.4.2. The arbitrator shall be chosen by mutual agreement of all parties and the arbitrator shall follow all California Evidentiary, substantive and procedural law as if tried in a Superior Court of California.
- 5.4.3. The arbitration award shall be in writing, shall set forth detailed factual findings and conclusions of law supporting the award and shall be final and conclusive as to all parties to such dispute. Should any party fail to pay their fees required by JAMS, fail to appear, or fail to participate in such arbitration proceedings, the arbitrator may decide on the evidence presented in such proceedings by the other party to such dispute.
- 5.4.4. Rights of appeal shall follow the JAMS Arbitration Appeal Procedure, except the appeal to a JAMS Appeal Panel shall be as if appealed to a California Appellate Court.
- 5.5. **ATTORNEY'S FEES, COSTS AND EXPENSES.** Should litigation or arbitration occur between the parties, all reasonable litigation or arbitration expenses, collection expenses, witness fees, court costs, and attorney's fees incurred by the prevailing party shall be paid by the non prevailing party to the prevailing party.

#### 6. NO THIRD PARTY BENEFICIARIES.

Nothing contained in this AGREEMENT or by the action of any person, shall create a contractual relationship with, any obligation toward or a cause of action in favor of a third party against either MAKTINTA or its consultants or employees.

#### 7. INSURANCE.

MAKTINTA is protected by Professional Liability Insurance, and by General Liability Insurance. Upon request, MAKTINTA will furnish information and Certificates of Insurance. MAKTINTA will not be responsible for any loss, damage or liability beyond the amounts, limits and conditions of such insurance.

#### 8. WAIVER OF CONSEQUENTIAL DAMAGES.

CLIENT and MAKTINTA waive consequential, indirect, special, direct, delay, acceleration and interference damages for claims, disputes or other matters in question arising out of or relating to this AGREEMENT. This mutual waiver is applicable, including but not limited to and without limitation, to all consequential damages due to either party's termination in accordance with this AGREEMENT.

#### 9. ALLOCATION OF RISK.

- 9.1. MAKTINTA and CLIENT have discussed the risks associated with this project and the extent to which those risks should be shared by MAKTINTA and CLIENT, and have agreed: (a) To the fullest extent permitted by law, CLIENT agrees to limit the liability of MAKTINTA, its officers, employees, and sub-consultants to CLIENT, all landowners, contractors, subcontractors, lenders, suppliers, manufacturers, third parties, and their employees such that the total aggregate liability, including all attorneys fees and costs shall not exceed \$50,000.00 or the total fees paid for MAKTINTA's engineering services on this project, whichever is greater, but in no case greater than the available proceeds under MAKTINTA's professional and general liability insurance. (b) All damages such as loss of use, profits, anticipated profits, and the like losses are consequential damages for which MAKTINTA is not liable. (c) MAKTINTA is not responsible for the acts, errors or omissions of CLIENT, any contractor or supplier. (d) CLIENT shall give written notice to MAKTINTA of any claim of negligent act, error or omission within one (1) year after the completion of the work performed by MAKTINTA. Failure to give notice herein required shall constitute a waiver of claims by CLIENT.
- 9.2. If prior to CLIENT's acceptance of MAKTINTA's proposal, CLIENT requests the limitation of liability to be greater than the limit specified above, MAKTINTA will obtain professional and general liability insurance coverage for the greater requested limits, if available. The cost to obtain the additional insurance coverage shall be paid by CLIENT.

#### 10. CORPORATE PROTECTION.

In no event shall the officers, directors, owners or employees of CLIENT or MAKTINTA be personally liable for any obligation under this AGREEMENT, for any alleged breach of this AGREEMENT, for any direct, indirect, incidental or consequential losses or damage of any kind or nature whatsoever. The Parties agree that the sole and exclusive remedy by all Parties for any and all obligations and claims shall be against the contracting entities (e.g., public entities, corporations, partnerships and sole proprietors) and not against any owner, shareholder, officer, director or employee. CLIENT and MAKTINTA expressly waive any applicable statute or regulation to the contrary.

11. The AGREEMENT represents the entire and integrated AGREEMENT between the CLIENT and MAKTINTA and supersedes any prior negotiations, representations or contracts, whether written or oral, and may be amended only by written instrument signed by both the CLIENT and MAKTINTA. If any provision or part of this AGREEMENT, including these General Terms and Conditions, are held to be ambiguous, void or unenforceable under any laws or regulations or by any arbitrator, court or administrative agency, then such ambiguous, void or unenforceable provisions shall be rewritten and enforced to the maximum extent permitted by law to accomplish as near as possible the intent of the original provision.

#### 12. PROPOSAL VALID FOR 60 DAYS.

This fee proposal will remain valid for 60 days from date of issuance.

#### 13. NOTICE.

Any notice required under this AGREEMENT shall be in writing addressed to the appropriate party at its address set forth in this AGREEMENT and either delivered personally to that party or mailed by registered or certified mail, postage prepaid, or by commercial courier service. All notices shall be effective as of the date of receipt.

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**14. SURVIVAL OF TERMS.**

All terms included in this AGREEMENT, including these General Terms and Conditions, shall not survive termination of AGREEMENT for any reason.

**15. NONWAIVER.**

Non-enforcement of any provision of this AGREEMENT by either party shall not constitute a waiver of that provision and shall not affect the enforceability of that provision or of the remainder of the AGREEMENT. One or more waiver of any term, condition or other provision of this AGREEMENT by either party shall not be construed as a waiver of a subsequent breach of the same or any other provision.

**16. PRECEDENCE OF CONDITIONS.**

Should any conflict exist between the terms herein and the terms of any purchase order or confirmation issued by CLIENT, the terms of these Standard Conditions shall prevail in the absence of MAKTINTA's express written agreement to the contrary.

**17. FORCE MAJEURE.**

Any delay or default in the performance of any obligation of MAKTINTA under this AGREEMENT resulting from any cause(s) beyond MAKTINTA's reasonable control shall not be deemed a breach of this AGREEMENT. The occurrence of any such event shall suspend the obligations of MAKTINTA as long as performance is delayed or prevented thereby, and the fees due hereunder shall be equitably adjusted.

**AGREEMENT**

Our Agreement consists of this executed proposal and the enclosed General Terms and Conditions. We will initiate this project upon receipt of your written authorization to proceed. If this Agreement is acceptable, please sign and return one copy by email (gal@maktinta.com), US Mail to P. O .Box 110426 Campbell, CA 95011, or FAX (408-872-4142).

Thank you for this opportunity to be of service to your company. Please call us if you have any questions regarding this proposal or other aspects of our capabilities.

Very truly yours,  
The Maktinta Engineering Team

\_\_\_\_\_  
Authorized Signature                      Printed Name                      Title                      Date

*This proposal and already accepted General Terms and Conditions are accepted by the CLIENT*

\_\_\_\_\_  
Authorized Signature                      Printed Name                      Title                      Date

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**EXHIBIT A**  
**MAKTINTA**  
**Standard Schedule of Fees**  
(Updated October 2013)

When Fees for services are based on the actual hours worked on the project by position, the billing rates will be in accordance with the following schedule:

Position	Rate	Position	Rate
Principal	\$ 120.00	Building Technologist	\$ 120.00
Associate	\$ 120.00	Admin Services	\$ 75
Consultant	\$ 120.00	CAD Graphics Specialist	\$ 95.00
Project Manager	\$ 120.00	IT Consultant	\$ 120.00

**EXHIBIT B**  
**MAKTINTA**  
**Standard Reimbursable Schedule**  
(Updated October 2013)

1. All invoices for sub-contractors and sub-consultants retained by MAKTINTA shall be reimbursed based on sub-consultants or sub-contractors invoice plus a 15% service charge. Alternately, CLIENT may enter into an agreement with the subcontractor or sub-consultant directly.
2. All outside vendors, rental costs, travel costs and expenses utilized for the project such as, airline travel, car rental, man lift rental, staging costs, reproduction, etc. shall be invoiced to CLIENT, plus a 15% service charge.
3. Automobile expenses for personal or company vehicles will be charged at the Internal Revenue Service reimbursement rate in effect at the time the expense was incurred. Travel time is calculated from portal to portal, or round trip to the local MAKTINTA office.
4. Reproduction costs for in-house plotting are \$2.50 per square foot; color photocopying is \$0.85 per 8 ½" x 11" pages. Cost of black and white photocopying is \$0.10 per 8 ½" x 11" pages. Black and white printing on special paper is \$0.20 per page. Cost of color printing and photocopying is \$0.85 per 8 ½" x 11" pages.
5. Purchase of specialized equipment and rental of equipment from outside vendors.
6. Photographs for project records and reproductions of drawings and reports. Photographs are charged at a flat rate of \$35/roll of film including processing and handling. Digital photos are charged at a flat rate of \$0.25 per image. Digital photos copied on to a CD or DVD are charged at a flat rate of \$35 per disk. Digital photo reproduction for reports will be invoiced at \$1.50/sheet.
7. Airfare, rental vehicles, other transportation, and living expenses incurred for out-of-town projects. Principals will travel on business class or better for flights longer than 2 hours in order to make efficient use of travel time.
8. For out-of-town travel, per diems will be charged according to published U.S. government rates.
9. Equipment and Other Reimbursable Expenses: Ultrasonic flow meter usage will be invoiced at \$30 per day.



P.O.Box 110426  
Campbell, CA 95011

# Invoice

Date	Invoice #
11/13/2015	IN0108

**Bill To**

Peralta College  
Olivia Rocha  
333 E. 8th Street  
Oakland, CA 94606

P.O. No.	Terms	Due Date	Account #	Project
	Net 15	11/28/2015		
Description		Qty	Rate	Amount
Laney Pool system Engineering		1	4,950.00	4,950.00
Sales Tax			8.75%	0.00
			<b>Total</b>	\$4,950.00
			<b>Payments/Credits</b>	\$0.00
			<b>Balance Due</b>	\$4,950.00

Phone #	Fax #	E-mail	Web Site
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