

# Exhibit E

## STIPEND AGREEMENT FOR DESIGN-BUILD PROPOSAL

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This Stipend Agreement for Design-Build Proposal ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, between the Peralta Community College District ("District") and \_\_\_\_\_ ("Respondent") (each a "Party," and, together, "Parties").

### RECITALS

**WHEREAS**, pursuant to Education Code section 81700 et seq., District previously issued a Request for Qualifications ("RFQ") No. 20-21/06, to prequalify/shortlist design-build entities/teams for the District's 2118 Milvia Street Project ("Project");

**WHEREAS**, pursuant to Education Code section 81700 et seq., District has now issued a Request for Proposals ("RFP") No. 20-21/06, inviting each prequalified/shortlisted design-build entity/team to submit a competitive proposal for the Project ("Proposal");

**WHEREAS**, in order to encourage detailed and comprehensive Proposals, District wishes to pay a stipend in the amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000) to each prequalified/shortlisted design-build entity/team that submits a timely, complete and responsive Proposal in response to the RFP but that is not selected by District to negotiate the design-build contract for the Project ("Stipend"); and

**WHEREAS**, the Parties wish to set forth the terms and conditions associated with the Stipend.

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the Parties agree as follows:

### TERMS

- 1. Scope of Services.** Respondent shall provide a Proposal in response to the RFP that complies with and satisfies all of the Proposal requirements listed therein, including any addenda thereto.
- 2. Contract Time.** The services performed under this Agreement shall commence upon the release of the RFP and shall be completed on or before the deadline for submitting a Proposal to the RFP, unless this Agreement is terminated and/or otherwise cancelled prior to that time.
- 3. Stipend.** A Stipend in the amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000) shall be paid for a complete and responsive Proposal in response to the RFP that is not selected by District to negotiate the design-build contract for the Project. Respondent may only submit one (1) Proposal and only one (1) Stipend will be paid per complete Proposal, regardless of the number of members on Respondent's team. To be deemed "complete," the Proposal must be submitted by an eligible prequalified/shortlisted design-build entity/team and must comply with and satisfy all of the requirements of the RFP as determined by District. Incomplete Proposals will not be eligible for any portion of the Stipend.

Other than payment of the Stipend, in no event shall District be responsible for any costs incurred by Respondent in relation to the RFP. Respondent shall be solely responsible for any and all costs and expenses incurred by Respondent, including but not limited to the costs of hiring subconsultants, contractors and other

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professionals, review of the Project's Bridging or Criteria Documents, review and preparation of necessary documentation relating to the Project, all travel-related expenses, as well as for meetings with District and its representatives, long distance telephone charges, copying expenses, salaries of Respondent's staff and employees working on the Project, overhead, and any other reasonable expenses incurred by Respondent in performance of the services contemplated by this Agreement.

4. **Payment.** Respondent may invoice District for the Stipend up to thirty (30) days after the deadline for Proposals in response to the RFP. Provided that all conditions are met, District shall pay the Stipend within sixty (60) days of District's selection of a design-build entity to negotiate the design build contract for the Project or, if no selection is made, within sixty (60) days of the announcement that no selection shall be made.
5. **Ownership of Materials.** Upon payment of the Stipend, Respondent agrees that its Proposal becomes the property of District without restriction or limitation on its use. All Documents & Data (which includes but is not limited to record drawings, specifications and estimates prepared pursuant thereto, prepared or caused to be prepared by Respondent under this Agreement) shall be and remain the property of District for the purposes of repair, maintenance, renovation, modernization, or other purposes, only as they relate to the Project for which Respondent entered this Agreement. Nothing in this Section shall preclude District from using the plans, record drawings, specification, or estimates related to the Project for the purposes of additions, alignments, or other development on the Project site(s). In exchange for the Stipend, Respondent agrees that it shall not copyright any of the Documents & Data developed under this Agreement, unless otherwise agreed to in writing.
6. **Design-Build Contract.** In no event shall District be obligated to award or enter into a design-build contract. District reserves the right to enter into a design-build contract with parties other than Respondent. District shall not be responsible to Respondent for any claims or damages resulting from District's failure to enter into the design-build contract with Respondent.
7. **Termination.** By written notice to Respondent, District may, with or without reason, terminate this Agreement without compensation or liability to Respondent at any time prior to the deadline for submitting Proposals in response to the RFP.
8. **Indemnity.** Respondent shall indemnify, defend and hold harmless District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("Indemnified Parties") from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Respondent. Respondent shall, to the furthest extent permitted by California law, defend the Indemnified Parties at Respondent's own expense, including attorneys' fees and costs, from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Respondent. District shall have the right to accept or reject any legal representation that Respondent proposes to defend the Indemnified Parties.
9. **Limitation of District Liability.** District's financial obligations under this Agreement shall be limited to the payment of the Stipend provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this

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Agreement for the services performed in connection with this Agreement.

- 10. Compliance with Laws.** Respondent shall observe and comply with all rules and regulations of the governing board of District and all applicable federal, state, and local laws, ordinances, and regulations. Respondent shall give all notices required by any applicable law bearing on the services under this Agreement.
- 11. Disputes.** All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, Respondent shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to Respondent's right to bring a civil action against District.
- 12. Attorney's Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
- 13. Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission or electronic mail, addressed as follows:

**District:**

Peralta Community College District  
Department of General Services  
333 East 8<sup>th</sup> Street  
Oakland, CA 94606  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
ATTN: \_\_\_\_\_

**Respondent:**

[NAME]  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
ATTN: \_\_\_\_\_

Any notice personally given or sent by facsimile transmission or electronic mail shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) calendar days after deposit in the United States mail.

- 14. Independent Contractor.** Respondent, in the performance of this Agreement, shall be and act as an independent contractor. Respondent represents and warrants that: (A) Respondent is free from the control and direction of District in connection with the performance of the Services, both under the Agreement and in fact; (B) Respondent's Services are outside the usual course of District's business; and (C) Respondent is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Services.

Respondent understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of District, and are not entitled to benefits of any kind or nature normally provided employees of District and/or to which District's employees are normally entitled, including, but

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not limited to, State Unemployment Compensation or Workers' Compensation. Respondent shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Respondent's employees. By checking the applicable box below, Respondent hereby represents and warrants to District the following:

- ☐ Respondent is and shall be a resident of the State of California or is otherwise exempt from withholding. To the extent an exemption is sought, Respondent will provide District with appropriate evidence including, without limitation, FTB Form 590. Respondent shall still be responsible for payment of all state and federal taxes.
- ☐ Respondent is not a resident of the State of California or otherwise not exempt from withholding, and Respondent authorizes District to withhold from all payments made to Respondent under this Agreement all taxes required to be withheld by law. (See, e.g., California Revenue & Taxation Code section 18661 et seq.)

- 15. No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
- 16. Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- 17. California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which District's administrative offices are located.
- 18. Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 19. Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
- 20. Assignment.** The obligations of Respondent pursuant to this Agreement shall not be assigned by Respondent.
- 21. Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
- 22. Authority to Bind Parties.** Neither Party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

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- 23. Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
- 24. Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
- 25. Signature Authority.** Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.
- 26. Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
- 27. Incorporation of Recitals.** The Recitals are hereby incorporated herein by reference.

[SIGNATURE PAGE FOLLOWS]

# Exhibit E

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

Dated: \_\_\_\_\_, 2020

Dated: \_\_\_\_\_, 2020

**Peralta Community College District**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

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**Information regarding Respondent:**

License No.: \_\_\_\_\_

Registration No.: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Type of Business Entity:

- ☐ Individual  
☐ Sole Proprietorship  
☐ Partnership  
☐ Limited Partnership  
☐ Corporation, State: \_\_\_\_\_  
☐ Limited Liability Company  
☐ Other: \_\_\_\_\_

\_\_\_\_\_  
Employer Identification and/or  
Social Security Number

**NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, District requires Respondent to furnish the information requested in this section.**