



**Request for Proposal and Qualification(RFP) No.  
1415-142**

**Investment Banking and Underwriting Services**

**Proposal Due Date**

**Friday, September 12, 2014**

**At 10:00AM**

**Procurement, Central Services and Risk Management**

**900 Otay Lakes Road, Room 1651**

**Chula Vista, CA 91910**

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## Notice to Investment Banking & Underwriting Firms Request for Proposal/Qualification (RFP) No. 1415-142

Notice is hereby given by the Southwestern Community College District of San Diego County, California, hereinafter referred to as the District, acting by and through its Governing Board, will receive up to, but not later than **10:00 AM on 9/12/2014**, responses to this Request for Proposal (RFP) for Investment Banking and Underwriting Services for the Southwestern Community College District.

Responses shall be received in the Office of Procurement, Central Services & Risk Management, Room 1651 located at 900 Otay Lakes Road, Chula Vista, CA 91910, on the date and at the time stated above.

All responses to this RFP shall conform and be responsive to the RFP, including its attachments/addenda.

All interested Firms may request a copy of this RFP by e-mailing [purchasing@swccd.edu](mailto:purchasing@swccd.edu), calling 619-482-6481 or by visiting the District's web-site at [www.swccd.edu/procurement](http://www.swccd.edu/procurement). Any requests for information may be directed to Priya Jerome, Director of Procurement, Central Services & Risk Management by e-mailing [purchasing@swccd.edu](mailto:purchasing@swccd.edu) no later than **2:00PM on Friday, September 5, 2014**.

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Melinda Nish, Ed.D.  
Secretary of the Governing Board  
Southwestern Community College District  
of San Diego, California

## RFP No. 1415-142 SCHEDULE

|   |  |
|---|--|
| <b>Date of Issue</b>  | <b>August 27, 2014</b>   |
| Advertisement Dates   | Sunday, August 15, 2013<br>Wednesday, September 3, 2014<br>August 29, 2014<br>September 3, 2014<br>September 5, 2014 |
| Publication<br>(Twice Each)   | Daily Transcript (SDDT) – 8/27 & 9/3<br>Union Tribune (UT) – 8/27 & 9/3<br>La Prensa (LP) – 8/29 & 9/5               |
| Request for Information Deadline                                    | Friday, September 05, 2014<br>2:00 PM  |
| Question Responses by District<br>(RFI Responses)                   | Tuesday, September 09, 2014<br>4:30 PM Via Addendum  |
| Due Date  | Friday, September 12, 2014<br>10:00 AM, Room 1651  |
| Proposing Firms are e-mailed with<br>Interview Schedule Information | Friday, September 19, 2014<br>By approximately 6:00 p.m.   |
| Interview/Presentations<br>Mandatory Presence Required              | Tuesday, September 23, 2014<br>8:00 a.m. to 4:00 p.m. Approximate time   |
| Anticipated Governing<br>Board Approval                             | Wednesday, October 08, 2014  |

## 1. DISTRICT OVERVIEW

The Southwestern Community College District (SCCD), located South of San Diego and extending to the U.S. – Mexico border, is one of seventy two community college districts in the California Community College system. It serves as the primary source of higher education for approximately 400,000 residents of the South San Diego County area including the communities of Bonita, Chula Vista, Imperial Beach, National City, Nestor, Otay Mesa, Palm City, San Ysidro, Sunnyside, and Coronado.

The college began offering classes to 1,675 students in 1961, with temporary quarters at Chula Vista High School. Groundbreaking for the present 156-acre campus was in 1963. By September of 1964, initial construction was complete and classes were held for the first time on the present Otay Lakes Road site in Chula Vista. In addition to its main campus in Chula Vista, Southwestern College has established four (4) center sites, the Southwestern College Education Center at San Ysidro (1988), the Higher Education Center in National City (1998), the Higher Education Center in Otay Mesa (2007), and Crown Cove Aquatic Center. The college also provides off-campus classes at several extension centers throughout the district. Current enrollment is nearly 23,000 students and more than 600,000 students have attended Southwestern College since it opened its doors fifty (50) years ago. The District employs approximately 800 employees (full and part time).

Southwestern Community College District has successfully passed two elections: Proposition AA in 2000 for \$89,000,000 and Proposition R in 2008 for \$389,000,000. The District has completed the Proposition AA authorization and approximately \$220,269,000 remaining authorization for Proposition R. The District is current considering refunding the 2005 Refunding Bonds.

The District's financial advisor is Keygent LLC and bond and disclosure counsel is Stradling Yocca Carlson and Rauth.

## 2. INSTRUCTIONS, INFORMATION AND GENERAL CONDITIONS

### PURPOSE OF RFP

Southwestern Community College District (SCCD) is seeking to retain a qualified firm to provide Investment Banking and Underwriting Services. The District plans to select one or more firm(s) with various specialized areas of expertise to assist the District as needed.

SCCD is requesting proposals of qualifications ("RFP") from financial advisory firms who are experienced in providing general and technical advisory services to California Community Colleges related to but not limited to refinancing of outstanding debt, the issuance of general obligation bonds, certificates of participation, and tax and revenue anticipation notes. The entirety of this RFP documents sets forth the District's requirements in detail. All responses should be submitted in accordance with the terms and conditions contained in the foregoing document.

### DEFINITION OF TERMS

The designation of District refers to the Southwestern Community College District, a political subdivision of the State of California.

The term "**Proposers**" refers to Firms that choose to submit proposals for Investment Banking and Underwriting Services.

The terms "**Contract**" and "**Agreement**" shall be used interchangeably within this document.

Throughout this document, the term "**District**" shall be used to designate the rights and responsibilities of the Southwestern Community College District

The term "**Proposer**" shall be used to designate the rights and responsibilities of the successful firm responding to this RFP.

### PROPOSAL QUESTIONS

All questions regarding this RFP should be sent, via e-mail to Priya Jerome, Director of Procurement, Central Services & Risk Management at [purchasing@swccd.edu](mailto:purchasing@swccd.edu)

Questions will only be accepted until 9/5/2014 no later than 2:00 P.M. The e-mail subject line should read: "Your company name/Questions regarding RFP No. 1415-142. No direct responses will be sent to the company/firm asking the question.

Questions we feel need to be responded, will be answered in the form of an **addendum**

and sent to all potential respondents on/about 4.00 p.m. Tuesday, September 9, 2014. All addendums to this RFP will be posted on the District's web site.

## PROPOSAL SUBMISSION

It shall be the responsibility of the Proposer to ensure that Proposals are received in the following two ways: (1) via email submission **and** (2) hard copy.

(1) For Email Submission: Proposals are to be submitted, via e-mail, to the Purchasing Department no later than 10:00 a.m. on Friday, September 12, 2014.

Submit Proposal to: [purchasing@swccd.edu](mailto:purchasing@swccd.edu)

The Proposal must be emailed to the address above as an attachment in Word, PDF, or Excel format and not exceed file size of 10MB. Proposals with documents exceeding 10MB in size should be saved to a smaller file size or split up and sent as separate emails. Subject line of e-mail containing submitted proposal should include and read "name of your company/submittal for RFP No. 1415–142 ("Email 1 of XX" if more than one)".

(2) For Hard Copy Submission:

Proposer must submit one (1) original and four (4) copies of the proposal, in a 3-ring binder, with tabs and one (1) USB Flash Drive with the proposal saved on it. Emphasis should be on completeness and clarity of contents. Proposals should be in 12 point type and not exceed fifteen (15) pages in length, excluding numerical analyses, Proposal Forms: A, C, D, E, F & G and all Appendices A through E. Proposals submitted in response to this RFP shall be in the following order and shall include:

- A. **General Information** - Provide a cover letter per the requirements of PROPOSAL FORM A.
- B. **Mandatory Responses** - Provide answers to the questions in both Sections 1 and 2 of PROPOSAL FORM B. Limit responses to no more than one page per question.
- C. **Personnel Experience** – For each individual being proposed, provide the name(s), title(s), qualification(s), license information, availability and location of key staff members and supervisory personnel expected to work on this project, using the format outlined on PROPOSAL FORM C. Please include an organizational chart for the proposed staff and indicate who will be the District's contact person for this Project.
- D. **Fee and Rate Proposal** – PROPOSAL FORM D.
- E. **General Terms and Conditions** – PROPOSAL FORM E.
- F. **References** – Provide four (three (3) current and three (3) previous) references using the format outlined in PROPOSAL FORM F.
- G. **Addenda Acknowledgement** – PROPOSAL FORM G



## H. Appendices

- A. Noncollusion Declaration – Must be notarized
- B. Equal Opportunity Affirmative Action Statement (requires Corporate Seal)
- C. Contractor's Certificate Regarding Worker's Compensation (requires Corporate Seal)
- D. Sample Agreement/Contract (For reference; especially if Proposer is recommending changes to the District Agreement and or is proposing different contract language).
- E. Check List

Oral, telephone, facsimile (fax machine) proposals **will not** be accepted. Each proposal shall be prepared simply, providing the straightforward, concise description of the proposer's ability to meet the requirements of the RFP.

This proposal package should be enclosed in a sealed envelope bearing the name of the Proposer and RFP No. 1415-142 clearly marked. All proposals must be received on or before the above mentioned due date and time of **Friday, September 12, 2014 at 10:00 AM**. Any proposal received after the scheduled closing time for receipt of proposal will be returned to the proposer unopened or rejected. All sealed proposals must be delivered to:

SOUTHWESTERN COMMUNITY COLLEGE DISTRICT  
Attention: Priya Jerome, Director of Procurement, Central Services & Risk Management  
Director of Procurement, Central Services and Risk Management  
900 Otay Lakes Road, Room [Company Address]  
Chula Vista, CA 91910  
(Room      is located in the back of Parking Lot D)

## RIGHT TO REJECT

This Request for Proposal does not constitute a commitment by the District to award a contract. The District reserves the right to waive any informalities and to reject any or all proposals and/or to cancel the Request for Proposal. The District expressly reserves the right to postpone the proposal opening date for its own convenience. The award shall be made on the proposal(s) that serve(s) the best interest of the District and will not be evaluated solely on a monetary basis; however proposers are encouraged to submit their best prices in their proposals. Award will be based on proposer's qualification and best fit as deemed by the District. No contract award shall exist until executed and approved by the District's Governing Board.

## MODIFICATIONS TO PROPOSALS

The proposal may be modified after its submission by written notice to the District of withdrawal and resubmission before the date and time specified for receipt of proposals.

Modification will not be considered if offered in any other manner. No modifications will be allowed after the RFP due date and time has passed.

### **PROPRIETARY INFORMATION**

In the event any Proposer shall include in the Proposal any information deemed "proprietary" or "protected", such information shall be separately packaged from the balance of the proposal and clearly marked as to any proprietary claim. The District discourages the submission of such information and undertakes to provide no more than reasonable efforts to protect the proprietary nature of such information. The District, as a public entity, cannot and does not warrant that proprietary information will not be disclosed due the Provisions of the California Public Records Act. The District shall have the right to use any or all information included in the proposals submitted unless the information is expressly restricted by the Proposer.

### **ORDINANCES, LAWS AND REGULATIONS**

The Proposer shall comply with all ordinances, laws, and regulations pertaining to the operation contemplated hereby, including, but not limited to, the California Workers' Compensation Act, the Federal Equal Employment Opportunities Act, and the Americans with Disabilities Act. The Proposer shall apply for, obtain, and maintain in force all permits and licenses required by the various agencies of Federal, State, and local government having jurisdiction over the Proposer operations. All operations and materials shall be in accordance with all applicable Federal, State, County and City laws, statutes and requirements.

### **WITHDRAWAL OF PROPOSALS**

Any Proposer may withdraw their proposal by written request via e-mail to [purchasing@swccd.edu](mailto:purchasing@swccd.edu) at any time **prior** to the deadline set for receipt of proposals. The subject line of the e-mail should include and read: "your company name/withdrawal of RFP No.1415-142. No proposal may be withdrawn or modified after that deadline. Withdrawn proposals may be resubmitted up to the time designated for the receipt of proposals provided that they are then fully in conformance with the general terms and conditions of the RFP.

### **IRREVOCABLE OFFER**

Proposals shall be considered irrevocable offers for a period of ninety (90) days from the date of receipt and may not be withdrawn during this period without consent of the District.

### **COST OF PREPARING PROPOSALS**

Any and all costs associated with the preparation of responses to this Request for Proposal, including site visits, oral presentations and any other costs shall be entirely the responsibility of the Proposer and shall not be reimbursable in any manner by the District.

## **COMPLETION OF PROPOSALS**

Proposals shall be completed in all respects as required by the instructions herein. A proposal may be rejected if it is conditional or incomplete, or if it contains alterations of form or other irregularities of any kind. A proposal will be rejected if, in the opinion of the District, the information contained therein was intended to erroneously and fallaciously mislead the District in the evaluation of the proposal.

## **EXAMINATION OF CONTRACT DOCUMENTS**

Proposers shall thoroughly examine the contents of this RFP. The failure or omission of any Proposer to receive or examine any contract document, form, instrument, addendum, or other document shall in no way relieve the firm from obligations with respect to this RFP or to the contract to be awarded. The submission of a proposal shall be taken as prima facie evidence of compliance with this section.

If any ambiguity, conflict, discrepancy, omission or other errors in the RFP is discovered, then the Proposer shall immediately notify the District of the error in writing and request modification or clarification of the document. All requests for clarifications shall be sent to the Director of Procurement, Central Services and Risk Management by email.

## **ERROR IN PROPOSAL**

Proposer shall be bound by the terms and conditions of the proposal. However, if material errors are found in a proposal, the District may notify the Proposer that the submitted proposal and requires correction of the errors. The District reserves the right to request additional information or clarification to allow corrections of errors or omissions.

## **INTERVIEWS**

Proposers may, after opening and prior to award, be required to make oral and visual presentations at the request of the District and based on the availability of the review committee. The District will schedule the date, time and location for any presentations as requested. Oral presentations will be evaluated and may be subjected to the selection criteria.

## **AWARD WITHOUT DISCUSSION**

The District reserves the right to make an award without further discussion of the proposals received. Therefore, it is critical that, all proposals be submitted initially in the most favorable terms possible, both economically and technically.

## **CONTRACT COMMENCEMENT/TERM**

It is the intent of the District to commence the resulting contract as soon as possible after evaluation of the proposals. Performance period for this contract is anticipated to be from October 9, 2014 to October 8, 2015 with two (2) one (1) year options to extend the term. Term shall not exceed three (3) years. After award, contract is subject to cancelation with 30-days written notice by either party.

## **INDEPENDENT CONTRACTOR STATUS**

It is expressly understood that the firm named in any contract entered into by the District is acting as an “independent contractor” and not as an agent or employee of the District.

## **SCCD MODIFICATIONS TO PROPOSALS**

Any interpretation, correction, or change of this RFP will be made by written Addendum. Interpretations, corrections, or changes of this RFP made in any other manner will not be binding, and Proposers shall not rely upon such interpretations, corrections, and changes. Any changes or corrections will be issued by SCCD. All Addenda issued to this RFP will be posted to the District web site at [www.swccd.edu/procurement](http://www.swccd.edu/procurement). Addenda will also be e-mailed to all that are known to have received a copy of the RFP. **Since failure to acknowledge any addendum(s) may be cause for rejection, Proposers must return the addendum-completed acknowledgment(s) prior to or with the proposal. (Proposal Form G)**

## **NEGOTIATION**

District reserves the right to negotiate the final pricing before award of business.

## **AWARD OF CONTRACT**

It is anticipated that a contract will be awarded by the Board of Trustees at a regularly scheduled meeting on October 8, 2014. The award will be made to one responsible firm judged to offer the most advantages for the District. At the time of the formal award, the apparent successful firm must have agreed to contract terms representing the understandings between the parties as to terms and conditions which will govern the relationship of District and Proposer and the obligation of each party for performance of the Agreement

## **FINAL CONTRACT**

The following documents are considered part of the final Agreement, in order of precedence:

- A. The final Agreement between SCCD and the Proposer.
- B. The Proposer’s proposal in total, including all addenda and attachments;
- C. This RFP as originally released, with Appendices and any addenda released prior to proposal opening.

All of the above documents are intended to cooperate and be complementary so that any instructions or requirements called for in one and not mentioned in the other, or vice versa, are to be executed the same as if mentioned in all said documents. The intention of the documents is to include all labor, materials, equipment and transportation necessary for the proper delivery of all services called for in any contract which may arise as a result of this RFP.

## **NON-COLLUSION DECLARATION**

Declarations are required to be completed by the Proposer declaring that the proposal is in all respects fair and without collusion or fraud. Please see Appendix A.

## **EQUAL OPPORTUNITY AFFIRMATIVE ACTION STATEMENT**

Proposer must accept and sign the Equal Opportunity and Affirmative Action Statement set forth in Appendix B.

## **PROHIBITED INTEREST**

No official of the District who is authorized in such capacity and on behalf of the District to take part in negotiations or to make, accept or approve this contract, shall have direct or indirect financial interest in the award or any part thereof. Proposer shall receive no compensation hereunder should bidder aid, abet or knowingly participate in violation of this article or breach or violation of this article, the District shall have the right to terminate the contract either in part or in whole and any loss or damage sustained by the District in procuring the services on the open market which the Proposer agreed to perform, shall be borne and paid for by the Proposer.

## **QUALITY OF WORK**

The Proposer shall be responsible for the performance of all work as specified herein and shall guarantee that work will meet or exceed the specifications as set forth herein. If it is determined by the District that such services and/or materials do not meet requirements of the District, the Proposer shall be required to correct the same at their own expense.

## **QUALITY OF PERSONNEL ASSIGNED TO THE WORK**

The Proposer shall not employ on this account any unfit person or anyone not skilled in the work assigned to him/her and shall devote only its best qualified personnel to work under this contract. Should the District deem anyone employed under any contract which may arise as a result of this RFP to be incompetent or unfit for his/her duties and so inform the Proposer, the Proposer shall immediately remove such person from this work and he/she shall not again, without prior written permission of the District, be assigned to work under this contract.

## **PROPOSER CONDUCT**

During the RFP window (from release of this RFP to final award), proposer is not permitted to contact any SCCD employees or members of the Governing Board unless at the request of SCCD's designated contact person (Director of Procurement, Central Services & Risk Management) or to fulfill pre-existing contractual obligations. No gratuities of any kind will be accepted, including meals, gifts, or trips. Violation of these conditions may constitute immediate disqualification

### 3. EVALUATION OF PROPOSALS

The proposals shall be primarily evaluated based upon qualifications of the firm and personnel, innovativeness, demonstrated knowledge of the California bond market, demonstrated knowledge and experience with California community colleges, and estimated fees.

The RFP will be reviewed by a selection committee of District staff and advisors to determine the finalists selected for interviews. The District intends to determine the size and composition of the management group as part of the selection process.

| Evaluation Matrix   |           |
|---|-----------|
| Qualifications and Experience of Firm                                 | 30 Points |
| Qualifications and Experience of Personnel<br>Assigned to the Project | 25 Points |
| Quality and responsiveness of proposal                                | 25 Points |
| Fee/Costs for Services  | 20 Points |

Firm personnel may be invited to participate in oral interviews; this process would require the mandatory presence of all persons identified to work on this project. Following the interview, District staff may choose to negotiate a contract with one or more selected firms. Negotiations will require the mandatory presence of the representative responsible for binding the contract of the proposal submitting firm.

Proposals will be initially evaluated on the written responses to the RFP. Proposers will be allowed to enhance their initial proposals during negotiations.

### 4. SPECIAL REQUIREMENTS

- a. The underwriting spreads, including takedowns, proposed during the selection process represent maximum fees and will be negotiated and finalized at the time of pricing and will depend on an issue size, issue complexity and market conditions.
- b. Joint proposals will not be accepted.
- c. All team members serving the District must have at least three (3) years in investment banking and underwriting services in serving California Community Colleges.

d. All key members of the proposed underwriting team and all other consultants participating in this debt issuance shall provide a completed Form 700 to be kept on file with the District.

## 5. SCOPE OF SERVICES

The selected underwriter will be expected to work in conjunction with SCCD financial advisor on the following:

a. Marketing and Distribution

- i. Develop a pre-sale marketing and distribution program;
- ii. Develop and present to SCCD for its approval, a preliminary pricing scale for the Bonds;
- iii. Upon approval, establish an order period and release the Bonds for offering to the market;
- iv. Provide an order monitor screen during the pricing of the Bonds;
- v. Price and underwrite the Bonds on a firm commitment basis; and
- vi. Commit capital on behalf of SCCD to ensure a successful and orderly distribution and sale of the Bonds or to place into inventory any unsold balance of the Bonds.

b. Post-Sale Services

- i. Coordinate the final distribution and allocation of the Bonds;
- ii. Prepare a sales summary including composition of institutional and retail sales participation;
- iii. Obtain Committee on Uniform Security Identification Procedures (CUSIP) numbers and arrange for Depository Trust Company (DTC) registration or book-entry;
- iv. Assist with the preparation and review of all closing documentation with bond counsel;
- v. Assist with the closing of the Bonds, including preparation of closing instructions and flow of funds;
- vi. Make such calculations as may be required to enable bond counsel to prepare and finalize Form 8038-G or similar federal tax forms; and
- vii. Execute and deliver a certificate which evidences such matters relating to the sale of the proposed financing as may be required to enable bond counsel to conclude that interest on the Bonds is excludable from gross income for federal income tax purposes.

## PROPOSAL FORM A

### General Information

#### 1. Cover Letter

**Cover letter to District in addition to the Proposers narrative must include the information noted below in a letter format.**

The individual who is authorized to bind Investment Banking & Underwriting Services Proposal (hence, "Proposer") contractually must sign the cover letter, which must accompany the Proposer's RFP response. This cover letter must indicate the signer is so authorized and must indicate the title or position that the signer holds in the Proposer's firm. **An unsigned cover letter shall cause the proposal to be rejected.** The cover letter must contain a statement that the Proposer acknowledges that all documents submitted pursuant to this request for proposal process will become a matter of public record. The letter must also contain the following:

- The Proposer's name, address, e-mail, telephone, and facsimile number.
- The Proposer's Federal Employer Identification Number and Corporate Identification Number, if applicable.
- The name, title or position, and telephone number of the individual signing the cover letter.
- A statement indicating the signature is authorized to bind the Proposer contractually.
- The name, title or position, and telephone number of the primary contact and/or account administrator, if different from the individual signing the cover letter.
- A statement to the effect that the proposal is a firm and irrevocable offer, good for 90 days. Please complete Proposal Form A thru G and Appendices A thru F as part of your RFP response.
- A statement expressing the Proposer's willingness to perform the services as described in this RFP.



- A statement indicating that all forms, certificates and compliance requirements included in this RFP are completed and duly submitted in the proposal response.
- A statement expressing the Proposer's availability of staff and other required resources for performing all services and providing all deliverables within the specified time frames as described in the RFP.

## 2. Proposer Corporate Information

- Type of Firm:  
Corporation: \_\_\_\_\_ Proprietorship: \_\_\_\_\_ Partnership: \_\_\_\_\_  
Joint Venture: \_\_\_\_\_ Other (please describe): \_\_\_\_\_
- Business License Number: \_\_\_\_\_
- Number of years in business under firm name: \_\_\_\_\_
- Has the firm changed its name within the past 3 years?  
YES ☐ NO ☐  
If yes, provide former name(s): \_\_\_\_\_  
\_\_\_\_\_
- Have there been any recent (within the last three years) changes in control/ownership of the firm?  
YES ☐ NO ☐  
If yes, explain. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- Have officers or principals of the firm ever had their business license suspended or revoked for any reason?  
YES ☐ NO ☐  
If yes, please explain. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **PROPOSAL FORM B MANDATORY RESPONSES**

For each of the following questions please limit your response to no more than one page per question. Each proposal shall specifically address the following topics. Please refrain from submitting general marketing materials which do not explicitly respond to the questions below. Ensure each question is numbered per the RFP and each question is clearly identified and precedes the response.

### **SECTION 1: GENERAL QUESTIONS:**

1. Describe the organizational structure of your firm as it relates to municipal investment banking and the underwriting and sales of municipal bonds and locations. Include brief summaries of municipal investment banking services, underwriting and trading, and the firm's sales organization.
2. State your firm's capital position (Total Capital, Equity Capital, Net Capital and Excess Net Capital) as of December 31, 2013.
3. Briefly describe your firm's underwriting experience in California with emphasis on Community College District general obligation bonds. Limit the discussion to issues for which your firm acted as Senior Manager. Please provide a list of your Community College and K-12 transactions for the past three (3) years to include par amount of bonds issued, type of bond, rating, final maturity and underwriter's discount as an appendix.
4. Describe your firm's experience, with local agencies or Districts within the Southwestern Community College District's geographical boundaries, and how that experience could benefit the District.
5. Identify the individual who will be the firm's senior representative for the daily management of the transaction and who will attend all meetings of the financing team as required. Who will be other team members who will support the District? For each of these individuals, please provide a summary of qualifications and a list of three California Community College or other public agency officials that the District may contact as personal references. Use Proposal Form C.
6. Provide a short narrative describing your firm's technical expertise.
7. Provide your firm's view with respect to the following matters:
  - a. Recommended structure (including rationale) for the District's proposed refunding of approximately \$30 million
  - b. Timing of the proposed bond issue given current and anticipated market conditions and interest rate environment.

8. Provide an analysis of the District's Prop R general obligation bond program. The District is considering issuing \$95 million general obligation bonds in 2015. What is your rational and recommended structure to secure the lowest cost of debt service to the taxpayers taking into consideration AB 182?
9. The District's ratings are currently Aa2/AA-. What would be your recommended approach to the rating agencies?
10. Discuss the strategies your firm would employ to allow local residents of the District to conveniently purchase bonds being sold by the District.
11. Provide your proposal for underwriter's spread, specifying management fee, takedown, and estimated expenses. Please specify expenses to be covered, including underwriter's counsel. For purposes of responding to this question and question #7, assume a single financing in the amount of \$30 million and a banking team of two firms. Use Proposal Form D
12. Summarize any other points that you wish the District to consider in its evaluation of your proposal to serve as Senior Manager for the bonds,
13. Please provide names and contact information for at least five (5) California community college districts that you firm have worked with in the past 5 years.

## **SECTION 2: LEGAL ISSUE QUESTIONS:**

1. Is there now pending any legal action alleging violations of the law in connection with an offering of municipal securities in a California transaction against the firm or any employee of the firm? Please describe such pending action.
2. Have there been any settlements of judgments involving such actions within the last seven years? Please describe each such settlement or judgment.
3. Are there pending legal or disciplinary matters involving such actions against the firm by any State or Federal regulatory agency and if yes, describe.
4. Has your firm been a party of an IRS settlement agreements or whether bonds you have underwritten been subject of an IRS investigation.

## PROPOSAL FORM C PERSONNEL EXPERIENCE

Please provide the name(s), title(s), qualification(s), license information, availability and location of key staff members and supervisory personnel expected to work on this project, using the form below. Use additional forms as necessary.

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

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

Office Location: \_\_\_\_\_

Qualification/License: \_\_\_\_\_

Role: \_\_\_\_\_

How Long in Current Position? \_\_\_\_\_ How Long with Relevant Experience \_\_\_\_\_

How Long Licensed in CA? \_\_\_\_\_ Community College Transaction  
Experience? \_\_\_\_\_

| Experience      |          |
|-----------------|----------|
| Number of Years | District |
|                 |          |
|                 |          |
|                 |          |
|                 |          |

Brief Profile: \_\_\_\_\_

Other Relative Experience: \_\_\_\_\_

## PROPOSAL FORM D FEE AND RATE PROPOSAL

Include in your proposal for underwriter's discount (spread), specifying management fee, takedown and estimate expenses. Please specify expenses to be covered including underwriter's counsel. For purposes of responding to this question assume a refinancing par amount of \$32 million using two firms. Please use to submit this information.

### \$31 million Southwestern Community College District Refunding

| 2014/15                       |          | 2015/16  | 2016/17  |
|-------------------------------|----------|----------|----------|
|                               | \$/1,000 | \$/1,000 | \$/1,000 |
| <b>Management Fee</b>         | \$       |          |          |
|                               |          |          |          |
| <b>Takedown</b>               | \$       |          |          |
| All Maturities                |          |          |          |
|                               |          |          |          |
| <b>Underwriter's Expenses</b> |          |          |          |
| Underwriter's Counsel         | \$       |          |          |
| Blue Sky Survey               |          |          |          |
| CDIAC                         |          |          |          |
| CUSIP                         |          |          |          |
| Day Loan                      |          |          |          |
| DTC Setup                     |          |          |          |
| Ipreo                         |          |          |          |
| Marketing Expenses            |          |          |          |
| MSRB                          |          |          |          |
| Travel                        |          |          |          |
| Out-of-Pocket Expenses        |          |          |          |
| Other                         |          |          |          |
| <b>Total Expenses</b>         | \$       |          |          |

List any other types of services generating a cost to the District which are not included in the fees shown above and typical for the work in the scope of services, plus a formula or explanation as to how these additional costs will be determined and billed to the District.

Fees for the first year are to be firm. Pricing should be submitted for years 1 through 3 . However, note that rate change requests for subsequent years will be subject to negotiation at the time of renewal, will require written approval by the District, and may also result in non-renewal of the contract.

## PROPOSAL FORM E GENERAL TERMS AND CONDITIONS

**Offer Held Firm:** The Proposer agrees that it will not withdraw its offer for a period of *ninety (90)* calendar days from the opening date.

**Right to Reject:** The Proposer understands that the District reserves the right to reject any or all proposals and to waive any informality in the evaluation of proposals. The District intends to verbally negotiate with the Proposers to reach a final agreement.

**Bidder Certification:** The Proposer certifies that this bid is made without previous understanding, agreement or connection with any person, firm, or corporation making a bid on the same services, and is in all respects fair and "without collusion or fraud."

**Execution of a Contract:** If awarded a contract, the Proposer agrees to execute a contract in accordance with this Proposal and the District's Instructions for Submittal of Proposals, Information for Proposers, General Conditions, and Service Requirements within twenty one (21) calendar days of receipt of written notice of acceptance of the Proposal by the District.

**Assumption of Contract:** The Proposer agrees to assume operations under the contract on October 9, 2014 or within ten (10) calendar days following the District's notification to proceed, as applicable.

**Exceptions to Specifications:** In submitting a proposal, the Proposer affirms acceptance of the complete Conditions Specifications and Requirements associated with the District's RFP document, unless otherwise stipulated. Any variances or exceptions which the Proposer wishes to note with respect to any of the Conditions, Specifications, or any District Service Requirements are to be stated herein or in an attachment to the bid submittal which is to be titled "Exceptions."

**Conflicts of Interest:** All Proposers must disclose the name of any Board of Trustees member, officer, director, or agent who is also an employee of the Southwestern Community College District, which includes any District employee. Further all Proposers must disclose the name of any District or District employee, or Board of Trustees member, who has, directly or indirectly, any financial interests in the Proposer's firm or any of its branches. Submit this information on an attachment to the proposal which is titled "Conflict of Interest" and include the person's name, interest or position, and percent of ownership, if applicable.

**Required Submittals:** The Proposer's detailed responses to the District's specifications and evaluation criteria must accompany this Proposal.

**District's Right to Award:** The signer hereby acknowledges that the District reserves the right to make the award to the Proposer which the District judges to have submitted the proposal most favorable to the District, with the District being the sole judge thereof.

**Legally Binding** it is further certified that the person whose signature appears below is legally empowered to bind the company in whose name the proposal is entered.

SUBMITTED BY:

Company Name: \_\_\_\_\_

Contact Person: \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

\_\_\_\_\_  
By: Signature (Manual)

\_\_\_\_\_  
By: Signature (Typed or Printed)

## PROPOSAL FORM F REFERENCES

Each Proposer must be able to present both current and past evidence of satisfactory experience in providing services requested. The District is particularly interested in evaluation references of 2-year public community colleges similar to size and function of Southwestern Community College. Please list three (3) current and three (3) past references for California educational or governmental entities that can be contacted for an assessment of current or past client satisfaction using the format outlined below.

### REFERENCES

Name of Entity: \_\_\_\_\_

Contact Person: \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Dates of Services: From: \_\_\_\_\_ To: \_\_\_\_\_

Types of Services Provided: \_\_\_\_\_



## PROPOSAL FORM G

### Addenda Acknowledgement

**Addenda:** Changes or corrections to the proposal document will be issued via a numbered addendum format at the time of the pre-proposal conference or at least five (5) calendar days prior to submittal date. Record below the number(s) and date(s) of addenda received, if applicable.

Addendum # \_\_\_\_\_ Date Received: \_\_\_\_\_

Addendum # \_\_\_\_\_ Date Received: \_\_\_\_\_

Addendum # \_\_\_\_\_ Date Received: \_\_\_\_\_

Addendum # \_\_\_\_\_ Date Received: \_\_\_\_\_

Addendum # \_\_\_\_\_ Date Received: \_\_\_\_\_

Addendum # \_\_\_\_\_ Date Received: \_\_\_\_\_

Addendum # \_\_\_\_\_ Date Received: \_\_\_\_\_

Addendum # \_\_\_\_\_ Date Received: \_\_\_\_\_

Addendum # \_\_\_\_\_ Date Received: \_\_\_\_\_

**APPENDIX A**  
**Noncollusion Declaration**

**NONCOLLUSION DECLARATION TO BE EXECUTED BY PROPOSER AND  
SUBMITTED WITH PROPOSAL**

State of California        )  
                                      ) ss.

County of \_\_\_\_\_)

\_\_\_\_\_, being first duly sworn,  
deposes and says that he or she is \_\_\_\_\_ of  
\_\_\_\_\_ the party making the foregoing  
proposal that the proposal is not made in the interest of, or on behalf of, any  
undisclosed person, Proposer, company, association, organization, or corporation; that  
the proposal is genuine and not collusive or sham; that the Proposer has not directly or  
indirectly induced or solicited any other Proposer to put in a false or sham proposal,  
and has not directly or indirectly colluded, conspired, connived, or agreed with any  
Proposer or anyone else to put in a sham proposal, or that anyone shall refrain from  
submitting a proposal; that the Proposer has not in any manner, directly or indirectly,  
sought by agreement, communication, or conference with anyone to fix the proposal  
price of the Proposer or any other Proposer, or to fix any overhead, profit, or cost  
element of the proposal price, or that of any other Proposer, or to secure any  
advantage against the public body awarding the contract of anyone interested in the  
proposed contract; that all statements contained in the proposal are true; and, further,  
that the Proposer has not, directly or indirectly, submitted his or her proposal price or  
any breakdown thereof, or the contents thereof, or divulged information or data relative  
thereto, or paid, and will not pay, any fee to any corporation, Proposer, company  
association, organization, or to any member or agent thereof to effectuate a collusive  
or sham proposal.

I certify (or declare) under penalty of perjury that the  
foregoing is true and correct.

\_\_\_\_\_  
Signature

**APPENDIX B**  
**Equal Opportunity Affirmative Action Statement**

**SOUTHWESTERN COMMUNITY COLLEGE DISTRICT  
EQUAL OPPORTUNITY AFFIRMATIVE ACTION STATEMENT**

Proposer hereby certifies that in performing work or providing products for the District, there shall be no discrimination in its hiring or employment practices because of age, sex, race, color, ancestry, national origin, religious creed, physical handicap, medical condition, marital status, or sexual orientation, except as provided for in Section 12940 of the California Government Code. Proposer shall comply with applicable federal and California anti-discrimination laws, including but not limited to the California Fair Employment and Housing Act, beginning with Section

12900 of the California Government Code.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Non-Discrimination this \_\_\_\_\_ day of \_\_, 2014.

(Corporate Seal)

\_\_\_\_\_  
Name of individual, company or corporation

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

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

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

\_\_\_\_\_  
City State Zip Code

## **APPENDIX C**

### **Contractor's Certificate Regarding Worker's Compensation**

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

\_\_\_\_\_  
Name of individual, company or corporation

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

(Corporate Seal)

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

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

\_\_\_\_\_  
City State Zip Code

(In accordance with Article 5 (commencing at Section 1860), Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this contract.)

## APPENDIX D

### Sample Agreement

Proposer must submit all exceptions to the below agreement as part of the RFP submission for District review.

#### CONSULTANT SERVICES AGREEMENT

This AGREEMENT is made and entered into this <<Date>> day of <<Month>> in the year <<Year>>, between SOUTHWESTERN COMMUNITY COLLEGE DISTRICT, hereinafter referred to as "DISTRICT", and <<NAME OF CONSULTANT>>, hereinafter referred to as "CONSULTANT". The DISTRICT and the CONSULTANT are sometimes referred to herein as a "PARTY" and collectively as the "PARTIES". This AGREEMENT is made with reference to the following facts:

**WHEREAS**, DISTRICT requires specialized services and/or advice in connection with certain consulting, financial, economic, accounting, estimate and/or administrative matters where such services and advice are not available to the DISTRICT without cost either internally or from other public agencies;

**WHEREAS**, CONSULTANT has represented to the Governing Board that CONSULTANT is knowledgeable and qualified in skills required for this project and covenants that CONSULTANT is capable of performing the services required under this agreement; and

**WHEREAS**, DISTRICT desires to obtain specialized services and/or advice for <<TYPE OF SERVICES AND NAME OF PROJECT>>, hereinafter referred to as the "PROJECT", located within the DISTRICT; and

**WHEREAS**, CONSULTANT has indicated its willingness and commitment to provide its specialized services and/or advice to the DISTRICT on the terms hereafter set forth in this AGREEMENT.

**NOW, THEREFORE**, the PARTIES hereto agree as follows:

#### ARTICLE I

##### SCOPE OF SERVICES AND RESPONSIBILITIES

1. Services. The CONSULTANT shall provide to the DISTRICT on the terms set forth herein and all the services articulated in the CONSULTANT's scope of work ("Services"). The PARTIES agree if there is a proposal or similar document that the terms of this AGREEMENT shall be controlling over any of the terms contained within the CONSULTANT's proposal or similar document.

2. Contract Term. The term of this AGREEMENT shall begin <<start date>> and shall end <<end date>>, in accordance with the schedule. This contract is for a "Base Period" of one (1) year and two (2) Option Periods. The Base period shall consist of 12 months as determined by the District above. The District has the option to extend the terms of the contract for two (2) additional periods consisting of 12 months each. This agreement will not exceed three (3) years total.

3. CONSULTANT makes the following certifications, representations, and warranties for the benefit of the DISTRICT and CONSULTANT acknowledges and agrees that the DISTRICT, in deciding to engage CONSULTANT pursuant to this AGREEMENT, is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this AGREEMENT and the course of CONSULTANT's engagement hereunder:

a. CONSULTANT is qualified in all respects to provide to the DISTRICT all of the Services contemplated by this AGREEMENT and, to the extent required by any applicable laws, CONSULTANT has all such licenses and/or

governmental approvals as would be required to carry out and perform, for the benefit of the DISTRICT, such Services as are called for hereunder.

b. CONSULTANT, in providing the Services and in otherwise carrying out its obligations to the DISTRICT under this AGREEMENT, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including workers' compensation and equal protection and non-discrimination laws. CONSULTANT shall be liable for all violations of such laws and regulations in connection with Services.

4. The CONSULTANT will perform its Services hereunder in a professional manner, using the degree of care and skill ordinarily exercised by, and consistent with, the current professional practices and standards of a professional practicing in California. The CONSULTANT will furnish, at its expense, those Services that are set forth in this AGREEMENT SAO and represents that the Services set forth in said EXHIBIT are within the technical and professional areas of expertise of the CONSULTANT or any sub-CONSULTANT the CONSULTANT has engaged or will engage to perform the Service(s). The DISTRICT shall request in writing if the DISTRICT desires the CONSULTANT to provide Services in addition to, or different from, the Services described.. The CONSULTANT shall advise the DISTRICT in writing of any Services that, in the CONSULTANT's opinion, lie outside of the technical and professional expertise of the CONSULTANT.

5. The CONSULTANT shall provide any required DSA reports, certifications or forms for each of the DSA application numbers included under this PROJECT within ten (10) days of that specific DSA application number PROJECT completion.

6. CONSULTANT warrants that all of CONSULTANT's employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. CONSULTANT further represents that it, its employees and subcontractors or sub-CONSULTANTS have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any of CONSULTANT's employees who are determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the PROJECT, a threat to the safety of persons or property, or any of CONSULTANT's employees who fail or refuse to perform the Services in a manner acceptable to District, shall be promptly removed from the PROJECT by the CONSULTANT and shall not be re-employed to perform any of the Services or to work on the PROJECT.

7. The CONSULTANT is not authorized to modify, waive, eliminate, or add any requirement to the PROJECT's specifications or other contract documents, nor to approve or accept any portion of the construction work, unless specifically authorized in writing by the DISTRICT or its authorized representative. The CONSULTANT shall not have the right to reject work or the right to stop work, except for such periods as may be required to conduct sampling, testing or inspection of work covered by this AGREEMENT.

## ARTICLE II

### PAYMENTS TO CONSULTANT

1. Basic Services: CONSULTANT agrees to perform basic Services provided by this AGREEMENT, and DISTRICT agrees to pay CONSULTANT for such Services. Compensation for Additional Services shall be dependent upon CONSULTANT's compliance with the provisions outlined in ARTICLE IV below and shall be calculated in accordance with the rates set forth.

2. Reimbursable Costs/Expenses: The DISTRICT recognizes that certain costs and expenses associated with the Services performed are reimbursable to the CONSULTANT. Provided that the CONSULTANT obtains the DISTRICT's prior written approval, costs and expenses will be reimbursed to the CONSULTANT in accordance with this ARTICLE. The DISTRICT's prior written authorization is an express condition precedent to any reimbursement to the CONSULTANT of such costs and expenses, and no claim for any additional compensation or reimbursement shall be valid absent such prior written approval by the DISTRICT and calculated in accordance with the rates set forth. The CONSULTANT's mileage and travel time shall not be considered as an allowable reimbursable expense. The descriptive categories of expenses that may be considered for reimbursement are as follows, and any other reimbursable expenses must be approved in writing by the DISTRICT:

- a. Approved reproduction of reports and/or other documents in excess of the copies required by this AGREEMENT;
  - b. Fees advanced for securing approval of authorities in connection with the Services rendered pursuant to this AGREEMENT;
  - c. Cost of UPS, Federal Express, and other deliverables; and
  - d. Cost of sub-CONSULTANTS hired by CONSULTANT with prior written approval of DISTRICT.
3. The CONSULTANT shall submit invoices monthly to the DISTRICT for the fees incurred during the billing period and reimbursable expenses (if any). Separate invoices shall be submitted for each PROJECT and Service Authorization Order. Invoice shall be processed within thirty (30) days upon receipt and approval by Southwestern Community College District of an invoice, in triplicate, showing services rendered for the period covered by the invoice.
4. All invoices submitted must contain the following certification statement: "I certify that payment requested is for appropriate purposes and in accordance with the provisions of the Contract." All invoices must be signed by CONSULTANT's Chief Financial Officer or designee.
5. CONSULTANT certifies that CONSULTANT has not and will not receive pay for the same services or days of Service by any other public agency.
6. DISTRICT shall not be liable to CONSULTANT for any costs or expenses paid or incurred by CONSULTANT in performing services for DISTRICT, unless otherwise specifically stated in the Contract.

The DISTRICT may withhold, or on account of subsequently discovered evidence, nullify the whole or a part of any payment to such extent as may be necessary to protect the DISTRICT from loss, including costs and attorneys' fees, on account of: (1) defective or deficient work product not remedied; (2) failure of the CONSULTANT to make payments properly to its employees or sub-CONSULTANTS; or (3) failure of CONSULTANT to perform its services in a timely manner so as to conform to PROJECT schedule.

### **ARTICLE III**

#### **TERMINATION**

1. This AGREEMENT may be terminated by either PARTY upon thirty (30) days written notice to the other PARTY in the event of an uncured substantial failure of performance by such other PARTY, including insolvency of CONSULTANT; or if the DISTRICT should decide to abandon or indefinitely postpone the PROJECT.
2. In the event of a termination based upon abandonment or postponement by DISTRICT, the DISTRICT shall pay to the CONSULTANT for all Services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement plus any sums due the CONSULTANT for Board approved Additional Services. In ascertaining the Services actually rendered hereunder up to the date of termination of this AGREEMENT, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings, reports and/or other documents whether delivered to the DISTRICT or in the possession of the CONSULTANT. In the event termination is for a substantial failure of performance, all damages and costs associated with the termination, including increased CONSULTANT and replacement CONSULTANT costs, shall be deducted from payments to the CONSULTANT.
3. In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience in accordance with Paragraph 4 below, and CONSULTANT shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by CONSULTANT.

4. This AGREEMENT may be terminated without cause by DISTRICT upon thirty (30) days written notice to the CONSULTANT. In the event of a termination without cause, the DISTRICT shall pay CONSULTANT for all Services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination plus any sums due the CONSULTANT for Board approved Additional Services.

5. In the event of a dispute between the PARTIES as to performance of the work or the interpretation of this AGREEMENT, or payment or nonpayment for work performed or not performed, the PARTIES shall attempt to resolve the dispute. Pending resolution of this dispute, CONSULTANT agrees to continue the work diligently to completion. If the dispute is not resolved, CONSULTANT agrees it will neither rescind the AGREEMENT nor stop the progress of the work, but CONSULTANT's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the PROJECT has been completed, and not before. The PARTIES may agree in writing to submit any dispute between the PARTIES to mediation and/or arbitration.

#### **ARTICLE IV**

#### **ADDITIONAL SERVICES**

1. CONSULTANT shall notify the DISTRICT in writing of the need for Additional Services required due to circumstances beyond the CONSULTANT's control. CONSULTANT shall obtain written authorization from the DISTRICT before rendering any Additional Services. The DISTRICT may also require CONSULTANT to perform additional services which are, in the DISTRICT's discretion, necessary. Compensation for all Additional Services shall be negotiated and approved in writing by the DISTRICT before CONSULTANT performs such Additional Services. CONSULTANT shall not be entitled to any compensation for performing Additional Services that are not previously approved by the DISTRICT in writing. Additional Services may include:

- a. Making material revisions in reports or other documents when such revisions are required by the enactment or revision of laws, rules or regulations subsequent to the preparation and completion of such documents;
- b. Preparing reports and other documentation and supporting data, and providing other Services in connection with PROJECT modifications required by causes beyond the control of the CONSULTANT which are not the result of the direct or indirect negligence, errors or omissions on the part of CONSULTANT;
- c. If the DISTRICT requests additional shifts to complete the Services articulated where the requests for additional shifts do not arise from the direct or indirect negligence, errors or omissions on the part of CONSULTANT, the CONSULTANT's compensation is expressly conditioned on the lack of fault of the CONSULTANT; and
- d. Providing any other services not otherwise included in this AGREEMENT or not customarily furnished in accordance with the generally accepted practice in the CONSULTANT's industry.

#### **ARTICLE V**

#### **SUCCESSORS AND ASSIGNS**

1. It is mutually understood and agreed that this AGREEMENT shall be binding upon the DISTRICT and its successors and upon the CONSULTANT, its partners, successors, executors, and administrators. Neither this AGREEMENT, nor any monies due or to become due thereunder, may be assigned by the CONSULTANT without the written consent and approval of the DISTRICT.

#### **ARTICLE VI**

#### **AUDIT AND INSPECTION OF RECORDS OF THE CONSULTANT**

1. At any time during the normal business hours and as often as DISTRICT may deem necessary, CONSULTANT shall make available to DISTRICT for examination at DISTRICT's place of business as specified herein, all data, records, investigation reports and all other materials respecting matters covered by this CONSULTANT and CONSULTANT will permit the DISTRICT to audit, and to make audits of all invoices, materials, payrolls, records of personnel and other data related to all matters covered by this Contract. CONSULTANT shall



allow inspection of all work, data, documents, proceedings, and records related to the Contract for a period of four (4) years from the date of final payment under this Contract.

## ARTICLE VII

### **REPORTS AND/OR OTHER DOCUMENTS**

1. The reports and/or other documents that are prepared, reproduced, maintained and/or managed by the CONSULTANT or CONSULTANT's CONSULTANTS in accordance with this AGREEMENT, shall be and remain the property of the DISTRICT (hereinafter "PROPERTY"). The DISTRICT may provide the CONSULTANT with a written request for the return of its PROPERTY at any time. Upon CONSULTANT's receipt of the DISTRICT's written request, CONSULTANT shall return the requested PROPERTY to the DISTRICT within seven (7) calendar days. Failure to comply with the requirements in this Article shall be deemed a material breach of this AGREEMENT.

## ARTICLE VIII

### **INDEMNITY AND INSURANCE**

1. Indemnification. To the fullest extent permitted by law, CONSULTANT shall defend (with counsel of District's choosing), indemnify and hold the DISTRICT, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of CONSULTANT, its officials, officers, employees, subcontractors, CONSULTANTS or agents in connection with the performance of the CONSULTANT's Services, the PROJECT or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys fees and other related costs and expenses, except for liability resulting from the sole or active negligence, or willful misconduct of the DISTRICT, its officers, employees, or agents. CONSULTANT shall reimburse DISTRICT and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. CONSULTANT's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the DISTRICT, its directors, officials officers, employees, agents, or volunteers. Notwithstanding the foregoing, to the extent CONSULTANT's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT. CONSULTANT agrees to waive all rights of subrogation against the DISTRICT.

a. THE PARTIES UNDERSTAND AND AGREE THAT ARTICLE VIII, PARAGRAPH 1 OF THIS AGREEMENT SHALL BE THE SOLE INDEMNITY, AS DEFINED BY CALIFORNIA CIVIL CODE § 2772, GOVERNING THIS AGREEMENT. ANY OTHER INDEMNITY THAT MAY BE ATTACHED TO THIS AGREEMENT AS AN EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE PARTIES.

b. ANY ATTEMPT TO LIMIT THE CONSULTANT'S LIABILITY TO THE DISTRICT IN AN ATTACHED EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE DISTRICT AND THE CONSULTANT.

2. Insurance. CONSULTANT shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to DISTRICT which will protect CONSULTANT and DISTRICT from claims which may arise out of or result from CONSULTANT's actions or inactions relating to the AGREEMENT, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

a. The CONSULTANT shall carry Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California. However, such amount shall not be less than ONE MILLION DOLLARS (\$1,000,000).

b. Commercial general liability insurance with limits of not less than TWO MILLION DOLLARS (\$2,000,000) and automobile liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) for bodily injury and property damage liability, per occurrence, including coverage for the following:

- i. Owned, non-owned and hired vehicles;
- ii. Blanket contractual;
- iii. Broad form property damage;
- iv. Products/completed operations; and
- v. Personal injury.

c. Professional liability insurance (errors and omissions), including contractual liability, with limits of ONE MILLION DOLLARS (\$1,000,000), per claim. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least five (5) years thereafter and/or at rates consistent with the time of execution of this AGREEMENT adjusted for inflation. Failure to maintain professional liability insurance is a material breach of this AGREEMENT and grounds for immediate termination.

d. Valuable Document Insurance: The CONSULTANT shall carry adequate insurance on all reports, drawings, specifications, record drawings and/or other documents as may be required to protect the DISTRICT in the amount of its full equity in those reports, drawings, specifications, record drawings and/or other documents, and shall file with the DISTRICT a certificate of that insurance. The cost of that insurance shall be paid by the CONSULTANT, and the DISTRICT shall be named as an additional insured.

e. Each policy of insurance required in Paragraph b above shall name DISTRICT and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of CONSULTANT hereunder, such policy is primary and any insurance carried by DISTRICT is excess and non-contributory with such primary insurance; shall state that written notice shall be given to DISTRICT prior to cancellation; and, shall waive all rights of subrogation. CONSULTANT shall notify DISTRICT in the event of material change in, or failure to renew, each policy. Prior to commencing work, CONSULTANT shall deliver to DISTRICT certificates of insurance as evidence of compliance with the requirements herein. In the event CONSULTANT fails to secure or maintain any policy of insurance required hereby, DISTRICT may, at its sole discretion, secure such policy of insurance in the name of and for the account of CONSULTANT, and in such event CONSULTANT shall reimburse DISTRICT upon demand for the cost thereof.

f. In the event that CONSULTANT subcontracts any portion of CONSULTANT's duties, CONSULTANT shall require any such sub-CONSULTANT to purchase and maintain insurance coverage for the types of insurance referenced in ARTICLE VIII, Paragraphs 2a, b, c, and d above in amounts which are appropriate with respect to that sub-CONSULTANT's part of work which shall in no event be less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per occurrence.

## **ARTICLE IX** **MISCELLANEOUS**

1. Control and Payment of CONSULTANT and its Subordinates. CONSULTANT, in the performance of this AGREEMENT, shall be and act as an independent contractor. CONSULTANT understands and agrees that CONSULTANT and all of CONSULTANT's employees shall not be considered officers, employees or agents of the DISTRICT, and are not entitled to benefits of any kind or nature normally provided employees of the DISTRICT and/or to which DISTRICT's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. CONSULTANT assumes the full responsibility for the acts and/or omissions of CONSULTANT's employees or agents as they relate to the Services to be provided under this AGREEMENT. CONSULTANT shall assume full responsibility for payment of any applicable prevailing wages and all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective CONSULTANT's employees.

2. Prevailing Wages: If applicable and required under California Labor Code section 1720 *et seq.*, Contractor shall pay, and shall cause all sub-CONSULTANTS and/or subcontractors of every tier to pay, not less than the specified prevailing wage rates, to the extent applicable, to all workers employed to perform work or Services under this AGREEMENT.

3. Ownership of Materials and Confidentiality.

(a) All materials and data, including but not limited to, data on magnetic media and any materials and data required to be made or kept pursuant to federal, state or local laws, rules or regulations, prepared or collected by CONSULTANT pursuant to this Agreement, shall be the sole property of the District, except that CONSULTANT shall have the right to retain copies of all such documents and data for its records. District shall not be limited in any way in its use of such materials and data at any time, provided that any such use not within the purposes intended by this Agreement shall be at District's sole risk and provided that CONSULTANT shall be indemnified against any damages resulting from such use, including the release of this material to third parties for a use not intended by this Agreement.

(b) All such materials and data shall be provided to the District, or such other agency or entity as directed by District or required by law, rule or regulation, immediately upon completion of the term of this Agreement as directed by District. Should District wish to obtain possession of any such materials or data during the term of this Agreement, it shall make its request in writing. Such information shall be provided to the District within forty-eight (48) hours of its request.

4. No Third Party Beneficiaries. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of any third party against either the DISTRICT or CONSULTANT.

5. Conflicting Provisions. THIS AGREEMENT SHALL NOT INCLUDE OR INCORPORATE THE TERMS OF ANY PROPOSAL, GENERAL CONDITIONS, CONDITIONS, MASTER AGREEMENT OR ANY OTHER BOILERPLATE TERMS OR FORM DOCUMENTS PREPARED BY THE CONSULTANT. THE ATTACHMENT OF ANY SUCH DOCUMENT TO THIS AGREEMENT SHALL NOT BE INTERPRETED OR CONSTRUED TO INCORPORATE SUCH TERMS INTO THIS AGREEMENT UNLESS THE DISTRICT APPROVES OF SUCH INCORPORATION IN A SEPARATE WRITING SIGNED BY THE DISTRICT. ANY REFERENCE TO SUCH BOILERPLATE TERMS AND CONDITIONS IN THE PROPOSAL OR QUOTE SUBMITTED BY THE CONSULTANT SHALL BE NULL AND VOID AND HAVE NO EFFECT UPON THIS AGREEMENT. PROPOSALS, QUOTES, STATEMENT OF QUALIFICATIONS AND OTHER SIMILAR DOCUMENTS PREPARED BY THE CONSULTANT MAY BE INCORPORATED INTO THIS AGREEMENT AS **EXHIBIT "A"** BUT SUCH INCORPORATION SHALL BE STRICTLY LIMITED TO THOSE PARTS DESCRIBING THE CONSULTANT'S SCOPE OF WORK, RATE AND PRICE SCHEDULE AND QUALIFICATIONS.

6. Consultation with Legal Counsel. Each of the PARTIES have had the opportunity to, and have to the extent each deemed appropriate, obtained legal counsel concerning the content and meaning of this AGREEMENT. Each of the PARTIES agrees and represents that no promise, inducement or agreement not herein expressed has been made to effectuate this AGREEMENT. This AGREEMENT represents the entire AGREEMENT between the DISTRICT and CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be amended or modified only by an agreement in writing signed by both the DISTRICT and the CONSULTANT.

7. Time is of the Essence. Time is of the essence with respect to all provisions of this AGREEMENT.

8. Attorneys' Fees. If either PARTY becomes involved in litigation arising out of this AGREEMENT or the performance thereof, each PARTY shall bear its own litigation costs and expenses, including reasonable attorney's fees.

9. Exhibits and Recitals. All exhibits and recitals referenced herein and attached hereto shall be deemed incorporated into and made a part of this AGREEMENT by each reference as though fully set forth in each instance in the text hereof with the exception of those documents or provisions that are subject to the exclusions specifically set forth in this AGREEMENT.

10. Interpretation. This AGREEMENT shall be liberally construed to effectuate the intention of the PARTIES with respect to the transaction described herein. In determining the meaning of, or resolving any ambiguity with respect to any word, phrase or provision of this AGREEMENT, neither this AGREEMENT nor any uncertainty or ambiguity herein will be construed or resolved against either party (including the PARTY primarily responsible for drafting and preparation of this AGREEMENT), under any rule of construction or otherwise, it being expressly understood and agreed that the PARTIES have participated equally or have had equal opportunity to participate in the drafting hereof.

11. Non-Waiver. None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is expressly specified in writing.

12. Counterparts. This AGREEMENT may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, all of which shall be sufficient evidence of this AGREEMENT.

13. Confidentiality and Use of Information:

(a) CONSULTANT shall hold in trust for the DISTRICT, and shall not disclose to any person, any confidential information. Confidential information is information which is related to the DISTRICT's research, development, trade secrets and business affairs; but does not include information which is generally known or easily ascertainable by nonparties through available public documentation.

(b) CONSULTANT shall advise the DISTRICT of any and all materials used, or recommended for use by CONSULTANT to achieve the project goals, that are subject to any copyright restrictions or requirements. In the event CONSULTANT shall fail to so advise the DISTRICT and as a result of the use of any programs or materials developed by CONSULTANT under this Contract the DISTRICT should be found in violation of any copyright restrictions or requirements, or the DISTRICT should be alleged to be in violation of any copyright restrictions or requirements, CONSULTANT agrees to indemnify, defend and hold harmless, DISTRICT against any action or claim brought by the copyright holder.

(c) Notwithstanding the above requirements, to the extent any records or documents associated with the CONSULTANT's services and/or the project are or become public records, they shall be subject to disclosure pursuant to the Public Records Act and applicable California law.

14. Governing Law: This AGREEMENT shall be governed by the laws of the State of California.

15. Severability: If any portion of this AGREEMENT is held as a matter of law to be unenforceable, the remainder of this AGREEMENT shall be enforceable without such provisions.

16. Notices: All notices or demands to be given under this AGREEMENT by either PARTY to the other shall be in writing and given either by: (a) personal service; or (b) by U.S. Mail, mailed either by registered, overnight, or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served or if mailed on the fifth day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either PARTY may be changed by written notice given in accordance with the notice provisions of this Paragraph. At the date of this AGREEMENT, the addresses of the PARTIES are as follows:

To the DISTRICT:

Priya Jerome

Southwestern Community College District

Attn: Purchasing & Contracts Branch

900 Otay Lakes Road

Chula Vista, CA 91910

Telephone:

Facsimile:

To the CONSULTANT:

<<Name of Contractor>>

Attn: <<Name>>

<<Address>>

<<City, State, Zip>>

Telephone:

Facsimile:

With a copy to:

Prop R Program Management

Southwestern Community College District

900 Otay Lakes Road Room 1688

Chula Vista, CA 91910

Attn: Mark Claussen

Telephone:

Facsimile:

17. Conflict of Interest. For the term of this Agreement, no member, officer or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

18. Equal Opportunity Employment. CONSULTANT represents that it is an equal opportunity employer and it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. CONSULTANT shall also comply with all relevant provisions of District's Minority Business Enterprise program, if any, or other related programs or guidelines currently in effect or hereinafter enacted. CONSULTANT must make a good faith effort to contact and utilize DVBE subcontractors or sub-CONSULTANTS and suppliers in securing bids for performance of the Agreement and shall be required to certify its good faith efforts towards retaining DVBE subcontractors or sub-CONSULTANTS and suppliers and identify DVBE firms utilized in performance of the Agreement.

19. Tobacco Prohibited: any tobacco use (smoking, chewing, etc.) by anyone, is prohibited at all times on any SWCCD property.

20. Mandatory Dress. Appropriate dress is mandatory. Therefore, tank tops, cut-offs and shorts are not allowed. Additionally, what is written or pictured on clothing must comply with the requirements of acceptable language, no profanity or other offensive language shall be permitted.

21. Images: If applicable, the CONSULTANT is prohibited from capturing on any visual medium images of any property, logo, student, or employee of the DISTRICT, or any image that represents the DISTRICT without express written consent from the DISTRICT.

22. Board Approval. In accordance with California Education Code section 81655, this AGREEMENT is not a valid or enforceable obligation against the DISTRICT until approved or ratified by motion of the Governing Board of the DISTRICT duly passed and adopted.

## ARTICLE X

### ENTIRE AGREEMENT

1. All of the AGREEMENT between the PARTIES is included herein, and no warranties expressed or implied, representations, promises, or statements have been made by either PARTY unless endorsed hereon in writing, and no charges or waiver of any provision hereof shall be valid unless made in writing and executed in the same manner as the AGREEMENT.

2. Neither amendments to nor modifications of this AGREEMENT shall be effective unless signed by officials of the CONSULTANT and the DISTRICT having authority equal to or greater than that of the officials signing this AGREEMENT. The DISTRICT and the CONSULTANT hereby agree to the full performance of the covenants contained herein.

\*\*\*signatures on following page\*\*\*

The PARTIES, through their authorized representatives, have executed this AGREEMENT as of the day and year first written above.

**“CONSULTANT”**

<<NAME OF CONSULTANT>>

Name:

Title

SS#/Federal Tax ID:

Address:

City/State/Zip:

Telephone:

**“DISTRICT”**

**SOUTHWESTERN COMMUNITY COLLEGE DISTRICT (**

Name **Melinda Nish EDD.**

Title: **Superintendent/President**

SS#/Federal Tax ID:

Address **900 Otay Lakes Road**

City/State/Zip **Chula Vista, CA 91910**

Telephone **619-482-6302-6301/Fax: 619 482-6413**

Melinda

Superin

900 Ota

Chula V

Telepho

**Signature:** \_\_\_\_\_

Date: \_\_\_\_\_

**Signature:** \_\_\_\_\_

Date: \_\_\_\_\_

Are you a District employee? ☐ Yes ☐ No

Is a Credential or Special License required for

this consultancy? ☐ Yes ☐ No

If yes, please specify and attach a copy of  
current License. \_\_\_\_\_

**Signature:** \_\_\_\_\_

Date: \_\_\_\_\_

**Signature:** \_\_\_\_\_

Date: \_\_\_\_\_

**Account No.:**

Originator:

Account No.:

**Original**

**Account**

**APPENDIX E**  
**- Submission Checklist**  
**Southwestern Community College District**  
**Investment Banking and Underwriting Services**

| Item  | Included in RFP Response  |
|---|---|
| Proposal Form A: General Information  |   |
| Proposal Form B: Mandatory Responses  |   |
| Proposal Form C: Personnel Experience   |   |
| Proposal Form D: Fee and Rate Proposal  |   |
| Proposal Form E: General Terms and Conditions                                 |   |
| Proposal Form F: References   |   |
| Proposal Form G: Addenda Acknowledgement                                      |   |
| Appendix A: Non-Collusion Declaration   |   |
| Appendix B: Equal Opportunity Affirmative Action Statement                    |   |
| Appendix C: Contractor's Certificate Regarding Workers' Compensation          |   |
| Appendix D: Sample Agreement for Investment Banking and Underwriting Services | Not necessary to include with proposal if no changes are being requested, but receipt acknowledge |
| Appendix E: Submission Checklist  |   |