

**(ATTACHMENT 9) ACTION ON THE AWARD OF EXCEPTION TO BID REQUESTS**

**PROFESSIONAL SERVICES AGREEMENT**

for

District Partnership Deliverables and Certification Program Services

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is entered into as of August 1, 2021, (the "Effective Date"), by and between PACIFIC EDUCATIONAL GROUP, INC., a California corporation ("PEG") and Milwaukee Board of School Directors a Wisconsin Public School District ("Client").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Services.

**1.1. Services.** PEG will perform the professional services (the "Services"), including through its providing of the agreed-upon deliverables (the "Deliverables"), in accordance with the requirements set forth on both statements of work (the "Statement of Work"), attached hereto as Exhibit A and Exhibit B and incorporated herein, which may be amended from time to time by the written agreement of the parties. PEG agrees to perform the Services in a timely and professional manner and otherwise in accordance with this Agreement.

**1.2. Non-Exclusivity.** Client acknowledges and agrees that PEG will be providing services pursuant to this Agreement on a non-exclusive basis and that PEG performs the same or similar services from time to time for other clients. This Agreement shall not prevent PEG from performing such services for such other clients so long as such other client engagements do not materially interfere with PEG's ability to fulfill the Services outlined in any Statement of Work.

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### 2. Compensation.

#### 2.1. Fees.

**(a) District Partnership Deliverable Exhibit A Statement of Work** Pursuant to Section 2.3, in respect of PEG's Services hereunder, Client will pay a total fee of \$269,700.00 ("Fee") as follows:

Throughout the Initial Term (as this term is defined herein), PEG shall promptly submit invoices to Client contemporaneously as Services are performed. The grand sum total of invoices submitted by PEG relating to Exhibit A Services will be the \$269,700.00 Fee. Client shall make timely payments on these invoices pursuant to Section 2.3.

**(b) Certification Program Exhibit B Statement of Work** In respect of PEG's Exhibit B Services, Client will pay a total fee of \$30,000.00 ("Fee") as follows: (1) PEG shall submit an invoice in the amount of \$15,000.00 upon Client's completion of one-half of the Virtual Facilitator Certification Program; and (2) PEG shall submit a final invoice for \$15,000.00 upon the completion of the Virtual Facilitator Certification Program. The grand sum total of invoices submitted by PEG relating to Exhibit B Services will be the \$30,000.00 Fee. Client shall make timely payments on these invoices pursuant to Section 2.3. Additional Annual Fees will be charged as specifically set forth in Section 1.5 of Exhibit B.

**2.2. Expenses.** Omitted.

**2.3. Billing.** PEG shall invoice Client promptly upon provision of the applicable Services. Unless otherwise set forth in the Statement of Work, Client agrees to pay PEG within thirty (30) calendar days after receipt of PEG's properly submitted invoice, which will include any substantiating documentation. PEG shall submit to Client the final invoice no later than 60 days from the last day of services as outline in the Statement of Works for Exhibit A & B. Any invoices submitted thereafter may be denied by Client.

**2.4. Late Payment Terms.** If Client fails to make a payment of the invoice when due, Client shall pay to PEG a late payment charge equal to one and one-half percent (1.5%) of the unpaid amount of such invoice for each month beyond the original payment due date during which such amount remains unpaid, or, if less, a late fee in an amount equal to the maximum rate allowable under applicable law. In the event Client repeatedly makes late payments under this Agreement, PEG reserves the right to change the requirements as to terms of payment under this Agreement or terminate this Agreement pursuant to Section 4.2. Should Client be in default with respect to payment under this Agreement, PEG reserves the right to suspend some or all Services hereunder until arrangements satisfactory to PEG are made. Client may be ordered to pay PEG for any costs

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incurred (including reasonable attorneys' fees and court costs) in connection with PEG's attempts to collect any sums that are past due.

**2.5. Disputed Charge.** In the event of any dispute with regard to a portion of an invoice, Client shall notify PEG in writing (electronically or by hardcopy) of the disputed amount within ten (10) calendar days of receipt of the invoice and specifically identify the reason for the dispute. Notwithstanding any disputed invoice notification by Client pursuant to the preceding sentence, Client shall nevertheless be obligated to pay all undisputed amounts owed while the dispute is under negotiation.

### 3. Relationship of Parties.

**3.1. Independent Contractors.** The parties acknowledge and agree that they are dealing with each other as independent contractors. Neither this Agreement nor any terms and conditions contained in this Agreement is intended or shall be construed to: (a) give either party the power to direct and control the day-to-day activities of the other party; (b) create or constitute a partnership, joint venture, franchise, employment or agency relationship between or among the parties; or (c) allow either party to create or assume any obligation on behalf of the other party, not including such obligations related to completing the Services.

**3.2. PEG's Taxes.** PEG shall be solely responsible for all withholding, self-employment, social security, or other federal, state or local taxes attributable to all compensation paid by Client under this Agreement, including but not limited to the Fee. PEG shall be solely responsible for all workers' compensation insurance premiums relating to its employees, if any. Client shall be solely responsible for all use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local government entity on any amounts payable by Client hereunder.

### 4. Term and Termination.

#### 4.1. Term.

**Exhibit A Only:** The term of this Agreement commences as of the Effective Date and will continue in full force and effect until the Services and Deliverables are performed pursuant to the terms contained in Exhibit A, unless earlier terminated pursuant to the terms herein (the "Term").

**Exhibit B Only:** The term of this Agreement commences as of the Effective Date and will continue in full force and effect for a period of one (1) year following the Effective Date (the "Initial Term"), and, thereafter, for successive one (1) terms (each, a "Renewal Term," and together with the Initial

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Term, the "Term") unless earlier terminated pursuant to the terms herein. The termination date ("Termination Date") for the Initial Term is **July 31, 2022**.

The first Renewal Term under Exhibit B must be agreed to by the Parties in writing at least ninety (90) calendar days prior to the Termination Date. Similarly, either Party shall state its intent to terminate Exhibit B at least ninety (90) calendar days prior to the Termination Date.

The Termination Date may be extended by the Parties by written agreement to accommodate, *e.g.*, self-paced practitioner candidates who do not finish their training by July 31, 2022, however any such extension shall not extend the 90-day notice period described immediately above.

**4.2. Termination with Cause.** Either party may terminate this Agreement or any Statement of Work for material breach of this Agreement by the other party on thirty (30) calendar days' prior written notice to the breaching party. If within the thirty (30) calendar day period the breaching party does not cure the material breach, or commence the cure of such material breach or default for items that are not reasonably curable within the thirty (30) calendar day time frame, this Agreement will automatically terminate on the date stated within the properly delivered notice of termination. In the wake of a termination under this Section 4.2, if the breaching party cures or begins to reasonably cure said breach to the satisfaction of the aggrieved Party, the Parties may agree, in writing and in the sole discretion of the aggrieved Party, that the termination is null and void and continue performance of this Agreement. Notwithstanding the foregoing, if Client (a) fails to make a payment as specified in this Agreement, PEG shall notify Client of such failure and if Client fails to cure such breach within fourteen (14) calendar days after receipt of such notification, (b) breaches any of its obligations under Sections 5, 6 or 7 of this Agreement, or (c) becomes insolvent or unable to pay its debt as they mature, makes an assignment for the benefit of creditors or seeks relief under any bankruptcy, insolvency or debtors relief law, then in any such case PEG may immediately terminate this Agreement or any Statement of Work without any further notice, in its sole and absolute discretion.

**4.3. Client's Post-Termination Obligations.** Upon termination of this Agreement pursuant to Section 4, Client shall be promptly: (a) remit payment to PEG for all Fees for Services rendered prior to the effective date of termination; (b) omitted; (c) return or destroy, at its election, all PEG IP, including all PEG IP in the custody, possession or control of any Practitioner or Facilitator (as such terms are used in the Statement of Work), (d) instruct all Practitioners and Facilitators that they must immediately cease using all PEG IP and other PEG materials, and (e) have an officer of Client certify in writing to PEG its compliance with the obligations set forth in the foregoing clauses (c) and (d).

Upon termination of this Agreement pursuant to Section 4, PEG shall, upon Client's request: (a) promptly return or destroy any Client Confidential Information (as further defined by Section 6.1) which includes Client's confidential, identifiable or private information which PEG received from Client during the Initial Term or any Renewal Term relating to any student or staff member including any data relating thereto and (b) have an authorized PEG representative certify in a writing to Client its compliance with the obligations set forth herein.

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**4.4 Cancellation.** Client may cancel and reschedule any Seminar(s) (as defined below) by sending written notice (“Notice of Cancellation”) to PEG by electronic mail addressed to: PEG Manager/Contact as referenced in Exhibit A in advance of any such Seminar. In the event of a cancellation under this Section 4.4, Client shall pay to PEG the cancellation fee (“Cancellation Fee”) set forth in Section 4.6 of this Agreement if PEG is not able to cancel or avoid such expenses after receiving Client’s notice of Cancellation.

**4.5 Cancellation Fees.** If Client cancels scheduled seminar(s)/training(s) (each a “Seminar”) under Section 4.4, Client shall pay to PEG a Cancellation Fee as follows: (i) if Client’s Notice of Cancellation is received by PEG within fourteen (14) calendar days of the planned Seminar, PEG is entitled to 100% of the Fee associated with such Seminar; (ii) if Client’s Notice of Cancellation is received by PEG between fifteen (15) calendar days and thirty (30) calendar days before a planned Seminar, then PEG is entitled to 50% of the Fee associated with such Seminar, and (iii) if Client’s Notice of Cancellation is received by PEG more than thirty (30) calendar days before a planned Seminar, PEG is not entitled to receive a Cancellation Fee. Irrespective of the date upon which PEG receives any notice of cancellation, Client is responsible for payment of travel/lodging cancellation, rescheduling and/or rebooking fees PEG incurs by virtue of a Client cancellation, together with all other costs and expenses that are not cancellable or otherwise avoidable.

Upon receiving Client’s Notice of Cancellation under this section, PEG shall promptly provide Client with the cancellation/rescheduling fees and expenses prior to the actual cancellation or rescheduling. Cancellation, rescheduling and/or rebooking fees shall be, thereafter, invoiced to Client pursuant to Section 2.3 provided that Client cancels/reschedules, in fact, after vetting the associated fees and costs. The payment of a Cancellation Fee in accordance with this Section 4 shall not relieve the Client of its obligation to compensate PEG for the applicable Seminar on the rescheduled date pursuant to Section 4.6 provided that PEG performs the Seminar, in fact, on any rescheduled date.

**4.6 Consequences of Cancellation.** As part of Client’s Notice of Cancellation, Client shall request that any cancelled Seminar(s) be rescheduled and the Parties will work together, in good faith, to reschedule such cancelled Seminar(s).

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**5. Intellectual Property Rights and Trademarks.** PEG (and its licensors, as applicable) shall retain full and sole title, copyright, patent, trademark and other proprietary rights in and to all of its (and their) intellectual property, including without limitation with respect to (i) the Services, the Deliverables and all training materials or protocols related thereto (for the purposes of this Section 5, collectively referred to as the "Training Protocols"), (ii) the underlying documents and materials with respect to the Services, the Deliverables and/or the Training Protocols, including without limitation user manuals, PowerPoint presentations, handouts, and any backup or archival copies of the aforementioned provided to Client by PEG and any modifications or translations thereof, (iii) "Pacific Educational Group, Inc.," "Pacific Educational Group," "PEG," and "Courageous Conversation," and any other trademarks, service marks, know-how and other proprietary property adopted by PEG to identify the Services, Deliverables, Training Protocols and other PEG products and services (collectively referred to as the "PEG IP"). Client shall not have any rights in or to the PEG IP, and Client shall not use the PEG IP in any way other than as specifically allowed for under this Agreement. Client shall keep visible all PEG copyright notices or other marks on the Deliverables and Training Protocols (including user manuals). Client shall take all reasonable steps to ensure that its employees, agents, contractors and clients are aware of and comply with the obligations of Client under this Section 5.

**6. Client Obligations; Confidentiality.** Client shall be responsible for: (a) compliance with all laws and regulations applicable to Client's business; and (b) providing all cooperation reasonably requested by PEG in the performance of PEG's Services hereunder, including without limitation access to Client's premises, employees and equipment as reasonably required by PEG in connection with the Services. Client shall, at all times during the term of this Agreement and thereafter, treat as confidential all information provided by or on behalf of PEG to Client or Client's Representatives (referred to as "PEG Confidential Information"), including without limitation the Training Protocols and other PEG IP ("PEG IP" as defined by Section 5), and shall only use or disclose such confidential information as is strictly necessary for Client's performance of its obligations or as otherwise expressly permitted hereunder (and for no other purposes whatsoever).

Section 6 shall not apply to PEG Confidential Information that: (a) is or becomes public through no fault or breach by Client, (b) is or becomes known to Client (either directly or rightfully through a third party) without an obligation of confidentiality, (c) is independently developed by Client without use of or access or reference to PEG Information or (d) is disclosed with the prior written approval of PEG on a case-by-case basis. To avoid any doubt, irrespective of whether or not PEG IP (a) is or becomes public through no fault or breach by Client, (b) is or becomes known to Client (either directly or rightfully through a third party) without an obligation of confidentiality, or (c) is independently developed by Client without use of or access or reference to PEG IP, Client shall only use/disclose PEG IP as is strictly necessary for Client's performance of its obligations under this Agreement (and for no other purposes whatsoever).

**6.1 Client Confidential Information.** Absent the prior written consent of Jon Jagemann or his/her designee, PEG shall not, unless required by applicable law or court order: (1) disclose, publish, or disseminate any information, not a matter of public record, that it received from Client by reason of this Agreement ("Client Confidential Information"), regardless of whether PEG is or is not under contract at the time of the disclosure; or (2) disclose, publish, or disseminate any Client Confidential

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Information. PEG agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination Client Confidential Information.

Section 6.1 shall not apply to Client Confidential Information that: (a) is or becomes public through no fault or breach by PEG, (b) is or becomes known to PEG (either directly or rightfully through a third party) without an obligation of confidentiality, (c) is independently developed by PEG without use of or access or reference to Client Information or (d) is disclosed with the prior written approval of Client on a case-by-case basis.

a. In the event that PEG seeks to publish or otherwise use Client information received by PEG during the performance of this Agreement, PEG will provide manuscripts for drafts for review by Client prior to publication and consider Client's suggestions in good faith. PEG agrees not to publish or otherwise use such information until the earlier of thirty (30) calendar days from submission of same to Client, or upon receipt of Client's written or oral comments, information and ideas. Absent prior written consent, PEG will not identify Client as the subject of any published studies or analyses derived as a result of this Agreement.

b. **Public Records.** Both parties acknowledge and agree that Client is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21, et seq. PEG acknowledges that it is obligated to assist Client in retaining and producing records arising from this Agreement that are subject to disclosure under the Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Agreement if PEG refuses to produce records which are not exempt from disclosure as determined by a judicial court or tribunal having proper jurisdiction over such matter. PEG must defend and hold Client harmless from liability for any failure to produce non-exempt records under Wis. Stat. § 19.21, et seq.. Except as otherwise authorized, records arising under this Agreement shall be maintained for a period of seven (7) years after receipt of final payment under this Agreement.

**7. No Recordings.** Client shall not record, or allow any of its representatives to record, any of the Seminars (as defined below) or other Services provided by PEG, irrespective of whether such Seminars or other Services are provided in-person or through virtual or electronic means (e.g., through Zoom or a similar platform).

### **8. Indemnification.**

**8.1. Client's Indemnification of PEG.** Pursuant to Wis. Stat. 895.46 and Wis. 893.80, Client shall indemnify and hold harmless PEG and its affiliates, and its and their respective equity holder, directors, officers, employees and agents (collectively, "Representatives") from and against any loss arising from or relating to Client's or its representatives', including without limitation the Client's Practitioners and Facilitators (as such terms are used in the Statement of Work): (i) breach of any representation, warranty, covenant or other term or condition of this Agreement; or (ii) negligence or willful misconduct.

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**8.2. PEG's Indemnification of Client; Infringement Claims.** PEG shall indemnify, defend and hold harmless Client and its Representatives from and against any Losses arising from or relating to: (i) PEG's or its representatives breach of any representation, warranty, covenant or other term or condition of this Agreement; (ii) PEG's or its representatives' negligence or willful misconduct; and (iii) any claim or allegation that Client's permitted uses of the Services hereunder infringe any patent, copyright, trademark or other proprietary right, or misappropriate any trade secret, of any third party (an "Infringement Claim"). Upon notice of an Infringement Claim, or if in PEG's opinion, such a claim is likely, PEG shall have the right, at its option and expense, to: (a) procure for Client the right to continue using the Services in accordance with the terms hereof; or (b) replace or modify the Services so that they provide substantially the same or greater functionality and performance than the infringing Services. If in PEG's opinion neither of the foregoing options are reasonably available, then notwithstanding anything in this Agreement to the contrary, Client's sole and exclusive remedy shall be to return the infringing Services to PEG in exchange for a refund of the fees applicable to such returned Services, together with any pre-paid fees for Services not theretofore rendered.

**8.3. Commencement of An Action.** Upon the assertion of any claim or the commencement of any suit or proceeding by a third party against an indemnified party under Section 8.1 or Section 8.2 (the "Indemnitee") that may give rise to liability of the indemnifying party under Section 8.1 or Section 8.2 (the "Indemnitor") under this Section 8, the Indemnitee shall notify the Indemnitor of the existence of such claim and shall give the Indemnitor a reasonable opportunity to defend and/or settle the claim at its own expense and with counsel of its own selection. The Indemnitee shall at all times have the right fully to participate in such defense at its own expense and shall not be obligated to participate in or consent to any settlement which: (i) requires the Indemnitee to pay any monies; (ii) includes an admission of liability or wrongdoing with respect to the Indemnitee; (iii) does not include a full release of all claims in favor of the Indemnitee; or (iv) the Indemnitee reasonably believes would have an adverse effect on it or its business. The Indemnitee shall make available to the Indemnitor all books and records relating to the claim that are reasonably requested by the Indemnitor, and the parties agree to render to each other such assistance as may reasonably be requested in order to ensure a proper and adequate defense.

**9. Limitation of Liability.** IN NO EVENT WILL PEG OR ITS REPRESENTATIVES BE LIABLE FOR LOST REVENUES OR COST OF COVER, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND, EVEN IF PEG OR ITS AGENTS HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE MAXIMUM AGGREGATE LIABILITY OF PEG AND ITS REPRESENTATIVES FOR ANY REASON AND UPON ANY CAUSE OF ACTION OR CLAIM IN CONTRACT, TORT, OR OTHERWISE, SHALL BE LIMITED TO NO MORE THAN ONE MILLION DOLLARS (\$1,000,000.00). THE FOREGOING LIMITATION APPLIES TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, BREACH OF STATUTORY DUTY, AND OTHER TORTS.

**10. Publicity.** PEG may, with the prior written consent of Client, use Client's name, trademark(s), logo(s) and other non-confidential materials in PEG's portfolio, on PEG's web site, and in PEG's marketing materials (including press releases).



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### 11. General Terms.

**11.1. Insurance.** Each party shall maintain, at its sole cost and expense, policies of self-insurance or insurance providing adequate coverage for each party's general liability and professional liability, as may be necessary to protect each party or its employees, agents, or representatives in the discharge of its or their responsibilities and obligations under this Agreement.

PEG understands and agrees that financial responsibility for claims or damages to its employees and agents, shall rest with PEG. PEG and its subcontractors shall effect and maintain any insurance coverage, including, but not limited to, Workers' Compensation, Employers' Liability, General Liability, Contractual Liability, Automobile Liability and Umbrella Liability to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation, or benefits payable under Workers' Compensation laws or other insurance provisions.

The minimum limits of insurance required of PEG by MPS shall be:

Workers' Compensation	Statutory Limits
Employers' Liability	\$100,000 per occurrence
General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate
Auto Liability	\$1,000,000 per occurrence
Umbrella (excess) Liability	\$1,000,000 per occurrence

The Milwaukee Board of School Directors shall be named as an additional insured under PEG's and subcontractors' general liability insurance and umbrella liability insurance. Evidence of all required insurances of PEG shall be submitted electronically to Client via its third-party vendor, EXIGIS Risk Management Services. Waivers and exceptions to the above limits will be in the sole discretion of Client and shall be recorded in the EXIGIS system, which records are incorporated into this Agreement by reference. The certificate of insurance or policies of insurance evidencing all coverages shall include a statement that Client shall be afforded a thirty (30) day written notice of cancellation, non-renewal or material change by any of PEG's insurers providing the coverages required by Client for the duration of this Agreement.

**11.2. Force Majeure.** If either Party fails, refuses or is unable to render any service or performance hereunder by reason of any governmental law, ordinance, order or regulation or by reason of fire, flood, earthquake, accident, act of God, natural disaster, pandemic (including without limitation COVID-19 and the related public health crisis), epidemic or public enemy or by reason of any other cause, thing or occurrence of the same or any other nature not within the affected Party's control (each, a "Force Majeure Event"), then the Agreement shall be suspended for a period equal to the

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duration of the occurrence of the Force Majeure Event without additional performance or payment during such suspension. The affected Party shall promptly notify the other Party of such Force Majeure Event, setting forth the nature of the occurrence, its expected duration and how the affected Party's performance is prevented. No suspension shall relieve either Party's obligation to perform their obligations hereunder when and as required by the terms of this Agreement except during the continuance of a Force Majeure Event. Any such suspension shall end promptly after the cause of such suspension ceases, and all time periods and dates hereunder shall be extended by a period equal to the period of such suspension.

**11.3. Dispute Resolution.** Except as set forth in Section 11.3(c), any claim, controversy or dispute arising out of or relating to this Agreement (a "Dispute") shall be resolved in accordance with the procedures specified in this Section 11.3, which shall be the procedures for the resolution of any such Disputes. The parties intend that these provisions shall be valid, binding, enforceable and irrevocable and shall survive any expiration or termination of this Agreement. The language to be used in resolving any Dispute and in all documents related thereto shall be in English.

(a) **Informal Resolution.** Upon written notice from one party alleging a Dispute, the parties first agree to meet informally and make a good faith effort to resolve the Dispute; such meeting shall take place within ten (10) business days of the written notice of the Dispute and be between appropriate representatives of each party. If, after a reasonable time not to exceed thirty (30) business days after the meeting of such party representatives, the parties are unable to resolve the Dispute, the parties may pursue other lawful avenues to resolve the Dispute and/or secure a remedy. Informal Resolution is a prerequisite to the filing of any judicial complaint unless a Party requires immediate equitable relief as described in Section 11.3(e).

(b) Omitted.

(c) Omitted.

(d) Omitted.

(e) **Availability of Equitable Relief.** Notwithstanding the foregoing provisions of this Section 11.3, the parties acknowledge that a breach of this Agreement by a party may result in irreparable harm to Client or PEG for which there is no adequate remedy at law. Accordingly, if Client or PEG reasonably believes that the other party (a) has breached this Agreement and (b) said breach will cause irreparable harm to such non-breaching party for which there is not adequate remedy at law, the non-breaching party may secure preliminary, temporary or permanent equitable relief without the necessity of proving actual damages or posting a bond (or other security), in any court of competent jurisdiction.

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**11.4. Governing Law; Forum.** Any Dispute shall be governed by the substantive laws of the State of Wisconsin without regard to its conflict of law rules and, subject to Section 11.3, shall be heard by a court of competent jurisdiction within Milwaukee County, Wisconsin. Both parties irrevocably consent to personal jurisdiction in, and the exclusive venue of, the state and/or federal courts located in Milwaukee County, Wisconsin, for the purpose of any action or judgment with respect to this Agreement, regardless of where any alleged breach or other action, omission, fact or occurrence giving rise thereto occurred. Each party hereby irrevocably waives any claim that any proceeding brought in Milwaukee County, Wisconsin, has been brought in any inconvenient forum.

**11.5. Prevailing Party.** If a suit, action, arbitration or other proceeding of any nature whatsoever is instituted in connection with any controversy arising out of or relating to this Agreement or to interpret or enforce any rights under this Agreement, the prevailing party in any such proceeding may recover reasonable attorneys' fees and other costs incurred in bringing such proceeding, in addition to any other relief to which such party may be entitled. The term "prevailing party" shall include, without limitation, a party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense.

**11.6. Remedies Cumulative.** Unless expressly stated otherwise, all the remedies under this Agreement, at law or in equity, are cumulative and shall not exclude any other remedies to which any party may be lawfully entitled.

**11.7. Rules of Construction.** This Agreement has been negotiated by the parties and their respective counsel and will be fairly interpreted in accordance with its terms and conditions without application of any rules of construction relating to which party drafted this Agreement in favor of, or against, either party. In the event of any conflict between this Agreement and a Statement of Work, this Agreement will control unless the Statement of Work expressly refers to the parties' intent to alter the terms of this Agreement with respect to such Statement of Work.

**11.8. Waiver.** No waiver of any provision or of any breach of this Agreement shall constitute a waiver of any other provisions or any other or further breach, and no such waiver shall be effective unless made in writing and signed by an authorized representative of both parties. Nor shall a one-time waiver of a single provision constitute a permanent waiver of that party's rights under said provision.

**11.9. Successors and Assigns; Assignment; Third Party Beneficiaries.** This Agreement binds and inures to the benefit of the parties to this Agreement and to their respective successors and assigns. Neither party may assign or delegate its rights hereunder without the prior written consent of the other party and any assignment or delegation in violation of this Agreement shall be null and void *ab initio*; provided, however, that PEG shall be permitted to assign this Agreement to an affiliate or the purchaser of all or substantially all of its assets so long as Client consents in writing to such an assignment and such consent shall not be unreasonably withheld. Except with respect to Indemnitees, the parties agree that this Agreement is solely for the benefit of the parties hereto and nothing in this Agreement is intended to or shall be construed as conferring on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

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**11.10. Notice.** All notices hereunder shall be in writing and be deemed given upon written verification of receipt from express overnight/next day courier (Federal Express Priority Mail or its equivalent). All notices shall be sent to:

<p><b>PEG:</b> Chris Lim Chief of Staff Pacific Educational Group, Inc. 795 Folsom Street, 1st Floor San Francisco, CA 94107 Email: <a href="mailto:clim@courageousconversation.com">clim@courageousconversation.com</a> Tel. (510) 520-5575</p>	<p><b>With a copy to:</b> William Malpica, Esq. Martin LLP 333 Ludlow Street South Tower, 8th Floor Stamford, CT 06902</p>
<p><b>Milwaukee Board of School Directors:</b> Martha Kreitzman Chief Financial Officer 5225 West Vliet Street Milwaukee, Wisconsin 53208 <a href="mailto:kreitzmj@milwaukee.k12.wi.us">kreitzmj@milwaukee.k12.wi.us</a> (414) 773-9820</p>	<p><b>Client Project Manager Contact:</b> Jon Jagemann Student Services 5225 West Vliet Street Milwaukee, Wisconsin 53208 <a href="mailto:jagemaj@milwaukee.k12.wi.us">jagemaj@milwaukee.k12.wi.us</a> (414) 475-8645</p>

Notwithstanding the foregoing, it is understood and agreed by the parties that approval to incur expenses may be provided to PEG by Client via e-mail. A party may change its address for notices by written notice given pursuant to this Section 11.10.

**11.11. Entire Agreement.** This Agreement, including any Exhibits attached hereto and any Commitment Statements entered into by Practitioners and/or Facilitators (as such terms are used in the Exhibit B Statement of Work), constitutes the entire agreement between the parties hereto with respect to the subject matter of this Agreement and supersedes all previous oral and written agreements, proposals, negotiations, representations, commitments, and other communications among the parties with respect to its subject matter. This Agreement may only be modified in a writing signed by the parties hereto provided, however, Section 5 of this Agreement may only be amended or modified by a document entitled "IP Modification Agreement" signed by an authorized representative of Client and PEG's Chief Executive Officer, Glenn E. Singleton.

**11.12. Severability.** In the event that any portion of this Agreement is held to be illegal or otherwise unenforceable, such portion shall be severed or construed as nearly as possible to reflect the original intent of the parties, and the balance of the Agreement shall continue in full force and effect.

**11.13. Counterparts.** The parties may execute this Agreement in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one instrument. Any signed

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counterpart delivered as a PDF or other electronic copies or by facsimile shall be deemed for all purposes to constitute such party's good and valid execution and delivery of this Agreement.

**11.14. Survival.** The rights and obligations of this Agreement, which by their nature are intended to survive expiration or termination shall survive, including but not limited to: Sections 4 through 11 (including all of the subsections) of this Agreement.

**11.15. Non-Solicitation.** Client agrees and covenants, during the term of this Agreement and for a period of one (1) year following its expiration or termination for any reason, not to directly or indirectly: (a) solicit, hire, recruit, or attempt to solicit, hire, or recruit, any person or entity who is employed by or an independent contractor to PEG, or has been employed by or was an independent contractor to PEG during the one (1) year period preceding the expiration or termination date of this Agreement (collectively, "Covered Persons"), or to induce or attempt to induce any Covered Person to terminate or modify their terms of employment or other business relationship with PEG; provided, however, that the foregoing restriction shall not be deemed violated by Client as a result of an employee's or independent contractor's response to a general advertisement not directed at PEG or its Representatives.

### **11.16. Client Requirements.**

a. During the period of this Agreement, PEG shall not hire, retain or use for compensation any member, officer, or employee of Client to perform services under this Agreement, or any other person who, to the knowledge of PEG, has a conflict of interest.

b. PEG hereby attests it is familiar with Client's Code of Ethics, providing in pertinent part, "[a]n employee of Milwaukee Public Schools may not accept any gift or gratuity in excess of \$25.00 annually from any person, persons, group or any firm which does business with or is attempting to do business with Client."

c. No person may enter into this Agreement for services that the Client employee would otherwise perform as an employee.

d. No current or former Client employee may perform services on a professional services contract without the prior written consent of the Client's Chief Human Capital Officer or his/her designee.

**11.17 Living Wage Requirement.** PEG shall comply with, and ensure its subcontractors performing work under this Agreement comply with, Milwaukee Board of School Directors' Administrative Policy 3.09(17), which requires that employees be paid a "living wage."

## (ATTACHMENT 11) ACTION ON THE AWARD OF EXCEPTION TO BID REQUESTS

**11.18 Non-Discrimination.** In the performance of work under this Agreement, PEG shall not discriminate in any way against any employee or applicant for employment on the basis of a person's sex, race, age, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, disability, or socio-economic status. This prohibition includes but is not limited to employment; promotions, demotions and transfers; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. PEG is required to include a similar provision in all subcontracts to this Agreement.

**11.19 Background Checks.** PEG will conduct, at PEG's expense, a criminal information records background check, (hereinafter referred to as "Background Check"), through the Wisconsin Department of Justice and other appropriate states' agencies, on all current and potential administrators, board members, officers, and employees ***who have, or who are anticipated to have, "direct, unsupervised contact" with Client's students in the performance of this Agreement.***

a. An out of state background check should be completed in the state(s) in which the individual resided for at least six months within the last two years and was eighteen years or older at the time.

b. PEG will submit to Client's Department of Employment Relations (DER), (via mail to Milwaukee Public Schools Background Checks, Attn: Department of Employment Relations, Room 116, 5225 West Vliet Street, Milwaukee, WI 53208, or via email at 564@milwaukee.k12.wi.us), all completed background checks. Such records will be reviewed and Client will notify PEG of any individual(s) who, based on Client's standards, are unfit and should not have contact with Client's students. All determinations made by Client with regards to whether an individual is fit to provide services pursuant to this Agreement are made in Client's sole discretion.

c. The following will each be a material failure to comply with the terms of this Agreement and cause for immediate termination of this Agreement by Client:

(1) failure to perform background checks as outlined in this Section 11.19;

(2) failure to submit background checks to Client as outlined in this Section 11.19;

(3) allowing services to be provided by an individual who has not be subjected to a background check; and

(4) allowing services to be performed by an individual who has been determined to be unfit by Client as outlined in this Section 11.19

**(ATTACHMENT 11) ACTION ON THE AWARD OF EXCEPTION TO BID REQUESTS**

**11.20 Contract Compliance Requirement.** The HUB requirement on this Contract is 25%. The student engagement requirement of this Contract is 300 hours. The Career Education requirement for this Contract is 10 hours. Contractor will report the spend via its contract records with CCRS. Failure to achieve these requirements may result in the application of some or all of the sanctions set forth in Administrative Policy 3.10, which is hereby incorporated by reference.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative as of the Effective Date.

PEG:

**PACIFIC EDUCATIONAL GROUP, INC.,**

a California corporation

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Chris Lim, as Chief of Staff  
Pacific Educational Group, Inc.  
795 Folsom Street, 1st Floor  
San Francisco, CA 94107  
Email: [clim@courageousconversation.com](mailto:clim@courageousconversation.com)  
Tel. (510) 520-5575

CLIENT:

**Milwaukee Board of School Directors**

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Martha Kreitzman, as Chief Financial Officer  
of Milwaukee Board of School Directors  
[kreitzmj@milwaukee.k12.wi.us](mailto:kreitzmj@milwaukee.k12.wi.us)  
(414) 773-9820

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Keith Posley, Ed.D, as Superintendent of Schools  
Milwaukee Board of School Directors

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Bob Peterson, President  
Milwaukee Board of School Directors

**(ATTACHMENT 11) ACTION ON THE AWARD OF EXCEPTION TO BID REQUESTS**

**EXHIBIT A & B Overview**

Name	Price	QTY	Subtotal
<p><b>VCC: The Exploration</b> The Protocol, as it is referred to, includes three components -- The Compass, Four Agreements, and Six Conditions™ -- designed specifically to help engage, sustain and deepen intra- and interracial dialogues. Together, these tools help to create a space that is authentic, safe, and generative for conversations that are insightful and compassionate. This three-block, virtual seminar guides an exploration of the impact of race in our lives and fosters the development of an essential literacy and competence through which to experience our personal, professional, and organizational ways of being.</p> <p>Agenda Breakdown: Three 90-minute blocks with 1 hour breaks in between; 6.5 hours total per day.</p> <p>Capacity: For up to 80 participants</p>	\$9,300.00	29 sessions	\$269,700.00
<p><b>Facilitator Certifications</b> The Facilitator Certification is a comprehensive training and coaching program designed to enable qualified applicants to serve as Courageous Conversation About Race (CCAR)™ Facilitators.</p>	\$3,000.00	10 participants	\$30,000.00
<p><b>(IP) Licensing Fees: 2022-2023 (5,001-15,000 staff, schedule D) *August 1, 2022 - July 31, 2023 (** Fees for 2023-2024 subject to increase)</b></p> <p>* IP Licensing Fees: Invoiced upon notification of pending final certification. Minimum of (2) Facilitators per organization required.</p>	\$30,000.00	1	\$30,000.00

Subtotal	<b>\$329,700.00</b>
Discount	<b>\$0.00</b>
Tax	<b>\$0.00</b>
<b>Grand Total</b>	<b>\$329,700.00</b>

*\*Please see Exhibit A and Exhibit B in the proceeding pages to review the breakdown of each.*



(ATTACHMENT 11) ACTION ON THE AWARD OF EXCEPTION TO BID REQUESTS

**EXHIBIT A STATEMENT OF WORK**

1. Work Administration.

**1.1 PEG Project Manager/Contact:**

Name/Title:	Chris Lim, Chief of Staff
Address:	795 Folsom Street, 1st Floor San Francisco, CA 94107
Phone:	(510) 520-5575
E-mail:	clim@courageousconversation.com

**1.2 Client Project Manager/Contact:**

Name/Title:	Jon Jagemann, Student Services
Address:	5225 West Vliet Street Milwaukee, Wisconsin 53208
Phone:	(414) 475-8645
E-mail:	jagemaj@milwaukee.k12.wi.us

**2. Description of Services and the Specifications.**

2.1 Time and Location of the Work

Date and time to be determined upon fully executed contract.

2.2 Listing and Description of Services

**(ATTACHMENT 11) ACTION ON THE AWARD OF EXCEPTION TO BID REQUESTS**

Please see table below.

**2.3 Anticipated Individuals Who Will Perform Services**

Anticipated individual to be determined upon fully executed contract.

2.4 A list of Fees and expenses (if any) for the Services under this Statement of Work is as follows:

Name	Price	QTY	Subtotal
<p><b>VCC: The Exploration</b> The Protocol, as it is referred to, includes three components -- The Compass, Four Agreements, and Six Conditions™ -- designed specifically to help engage, sustain and deepen intra- and interracial dialogues. Together, these tools help to create a space that is authentic, safe, and generative for conversations that are insightful and compassionate. This three-block, virtual seminar guides an exploration of the impact of race in our lives and fosters the development of an essential literacy and competence through which to experience our personal, professional, and organizational ways of being.</p> <p>Agenda Breakdown: Three 90-minute blocks with 1 hour breaks in between; 6.5 hours total per day.</p> <p>Capacity: For up to 80 participants</p> <p>* Quantity reflects number of trainings</p>	<p>\$9,300.00</p>	<p>29 sessions</p>	<p>\$269,700.00</p>

<p>Subtotal</p>	<p><b>\$269,700.00</b></p>
<p>Discount</p>	<p><b>\$0.00</b></p>
<p>Tax</p>	<p><b>\$0.00</b></p>
<p><b>Total</b></p>	<p><b>\$269,700.00</b></p>

## (ATTACHMENT 11) ACTION ON THE AWARD OF EXCEPTION TO BID REQUESTS

**3. Billing Procedures.** PEG to send invoice to Jon Jagemann at [jagemaj@milwaukee.k12.wi.us](mailto:jagemaj@milwaukee.k12.wi.us). All invoices for Services rendered hereunder shall be submitted by PEG to Client in accordance with the following procedures:

### **Purchase Orders is required:**

- Please send an electronic copy of the Purchase Order to [aedmands@courageousconversation.com](mailto:aedmands@courageousconversation.com)
- PEG to send invoice to Client with PO number noted on invoice.
- Client to remit payment by ACH or Check per instructions below.

### **Paying by ACH:**

Client preferred method of payment by ACH.

(ATTACHMENT 11) ACTION ON THE AWARD OF EXCEPTION TO BID REQUESTS

EXHIBIT B STATEMENT OF WORK (CERTIFICATION PROGRAM)

1. Work Administration.

1.1 PEG Project Manager/Contact:

Name/Title:	David Gonzales, Certification Program Divisional Director
Address:	795 Folsom Street, 1st Floor San Francisco, CA 94107
Phone:	(415) 654-0282
E-mail:	dgonzales@courageousconversation.com

1.2 Client Project Manager/Contact:

Name/Title:	Jon Jagemann, Student Services
Address:	5225 West Vliet Street Milwaukee, Wisconsin 53208
Phone:	(414) 475-8645
E-mail:	jagemaj@milwaukee.k12.wi.us

2021-2022 CCAR™ Certification Program	Price	QTY	Subtotal
<b>Facilitator Certifications</b> The Facilitator Certification is a comprehensive training and coaching program designed to enable qualified applicants to serve as Courageous Conversation About Race (CCAR)™ Facilitators.  * Quantity reflects number of participants.	\$3,000.00	10 Participants	\$30,000.00

**(ATTACHMENT 11) ACTION ON THE AWARD OF EXCEPTION TO BID REQUESTS**

<b>(IP) Licensing Fees: 2022-2023 (5,001-15,000 staff, schedule D) *August 1, 2022 - July 31, 2023 (** Fees for 2023-2024 subject to increase)</b>  * IP Licensing Fees: Invoiced upon notification of pending final certification. Minimum of (2) Facilitators per organization required.	\$30,000.00	1	\$30,000.00
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<b>Subtotal</b>	<b>\$60,000.00</b>
<b>Total</b>	<b>\$60,000.00</b>

**1.3 Billing Procedures.** PEG to send invoice(s) to Jon Jagemann at [jagemaj@milwaukee.k12.wi.us](mailto:jagemaj@milwaukee.k12.wi.us) in a manner consistent with Section 2.1(b) of the Agreement.

All invoices for Services rendered hereunder shall be submitted by PEG to Client in accordance with the following procedures:

**Purchase Orders is required:**

- Please send an electronic copy of the Purchase Order to [aedmands@courageousconversation.com](mailto:aedmands@courageousconversation.com)
- PEG to send invoice to Client with PO number noted on invoice. (1) PEG shall submit an invoice in the amount of \$15,000.00 upon Client's completion of one-half of the Virtual Facilitator Certification Program; and (2) PEG shall submit a final invoice for \$15,000.00 upon the completion of the Virtual Facilitator Certification Program.
- Client to remit payment by ACH or Check per instructions below.

**Paying by ACH:**

Client preferred method of payment by ACH.

**1.4 Intellectual Property:** Client acknowledges that all PEG IP provided or otherwise made available to Client and its personnel (including without limitation participants in the PEG programs described below) shall be used solely in connection with Client's and such personnel's receipt of the Services

## (ATTACHMENT 11) ACTION ON THE AWARD OF EXCEPTION TO BID REQUESTS

hereunder. Client further acknowledges that all such rights to use PEG IP shall automatically terminate upon the expiration or earlier termination of the Agreement.

**1.5 Fees:** In consideration of PEG's Services hereunder, Client will pay PEG the following Fees: (a) with respect to each individual accepted by PEG into the practitioner's or facilitator's certification program described herein, the Practitioner Enrollment Fee (as defined below) or Facilitator Enrollment Fee (as defined below), as the case may be, with such Fee to be invoiced by PEG to Client in accordance with the terms of Section 2 of the Agreement; and (b) an annual license fee of **\$30,000.00 for FY 2022-23 will be invoiced upon notification of pending final Facilitator certifications. A Minimum of (2) Facilitators per organization is required**, with the first Annual Licensing Fee ("Annual Fee"), being due on a date selected by Client in its sole discretion (the "Commencement Date").

With respect to the FY 23-24 Annual Fee and subsequent Annual Fees : (i) on the Commencement Date, the Term of the Agreement shall be deemed extended to the date that is one (1) year following the Commencement Date, provided that PEG submits electronic notice to Jon Jagemann [jagemaj@milwaukee.k12.wi.us] or his/her designee 60 calendar days prior to any extension and no objection to the extension is stated within the notice period; (ii) on or before each anniversary of the Commencement Date Client shall pay PEG the Annual Fee as invoiced pursuant to Section 2.3 unless, on or before such anniversary date, this Agreement has expired or been terminated in accordance with the terms of the Agreement; and (iii) only at such times as the Agreement is effective and an Annual Fee has been paid in respect of the applicable year of the term of this Agreement shall Client be permitted to have Certified Facilitators facilitate seminars or trainings in accordance with the terms of the Agreement and this Statement of Work. For the avoidance of doubt, all Practitioner Enrollment Fees, Facilitator Enrollment Fees and Annual Fees shall be non-refundable.

*\*Annual IP fees subject to increase year to year.*

### 2. Time and Location of the Work (IF APPLICABLE for Newly Certifying Co-Facilitator Certifications at \$3000.00 each)

Courageous Conversation requires Practitioners to serve in that role for nine (9) to twelve (12) months before applying for Certification as a Facilitator. However, PEG and MPS have agreed to create an accelerated pathway to waive the 9-12 months implementation period to allow Level 2 certification to commence in February 2022. Certified Facilitators facilitate seminars or trainings in accordance with the terms of the Agreement and this Statement of Work.

The Fee of \$3,000 per participant plus the annual licensing fee in the Co-Facilitator Certification program will be invoiced to Client promptly following the acceptance by PEG of each such participant into the program (the "Facilitator Enrollment Fee"). Client acknowledges that all decisions regarding the acceptance or rejection of candidates for any PEG program hereunder shall be made by PEG in its sole and absolute discretion. For the avoidance of doubt, the Agreement must be in effect and all Annual Fees (if applicable) must have been paid by Client in order for its designees to participate in PEG programs, to use PEG IP or to act as Certified Facilitators.

Each accepted applicant shall be required to sign a Facilitator Certification Commitment Statement, in form and substance determined by PEG in its sole discretion, prior to entering the Co-Facilitator Certification program. Client shall be responsible for any breach by any participant of the terms or conditions of the Facilitator Certification Commitment Statement provided that any breach by a participant occurs within the scope of the participant's employment by Client.

## (ATTACHMENT 11) ACTION ON THE AWARD OF EXCEPTION TO BID REQUESTS

### 2.1a Listing and Description of Deliverables and Services

Online course, webinars, certification review and resource center:

Enrollment in the CCAR Facilitator online course connects Facilitators both regionally and nationally as they explore their personal and professional practice in the Protocol for Courageous Conversations About Race to apply it to individual work roles, discussions, leadership and organizational/district led Professional Development/trainings/meetings/etc. This is a facilitated course that provides resources, connections and interactions with nationally and internationally certified PEG Facilitators. PEG does not review nor supervise the district/organizations' trainings but does coach Facilitators through the application of the Protocol for CCAR™ to be used during the district/organizational trainings. The "Individuals Who Will Perform Services" and the "Specific Objectives to be Accomplished" are the same as set forth below in 2.1(b) and 2.1(c).

### 2.1b Individuals Who Will Perform Services

Certification specialists will teach online course, webinars, live virtual training day, and provide ongoing coaching and feedback to certification candidates.

### 2.1c Specific Objectives to be Accomplished

The Certification Program provides a certification process to develop partners to lead Courageous Conversations About Race (CCAR)™ at the Practitioner and Facilitator levels. The virtual certification courses combine online learning, video teleconferencing and field practice when mutually agreed upon.

**2.1d (Certified Facilitators)** – Upon successful completion of PEG's extensive coaching, online and live training, participants will receive Facilitator certification. The Facilitator Certification will allow for the Facilitator to facilitate seminars and trainings in the following categories (subject to in each case completion of any and all addition training(s) required by PEG and strict compliance with the terms of the Agreement, this Statement of Work and the Facilitator Certification Commitment Statement):

#### a. Level I:

- i. Intro to CCAR (2.5 hours)
- ii. VCC – Exploration (5 hours)
- iii. TBD face to face equivalent

#### b. Level II:

- i. VCC – The Experience (8 hours)
- ii. Beyond Diversity (16 hours)

## (ATTACHMENT 11) ACTION ON THE AWARD OF EXCEPTION TO BID REQUESTS

**Certified Facilitators** continue to contribute as Certified Practitioners when not facilitating a Courageous Conversation About Race™ (CCAR) seminar. Upon certification, Certified Facilitators are ready to lead trainings based on their level of endorsement as outlined above. CCAR™ curriculum and seminars will take place in their own sectors in co-facilitated and inter-racial pairs. \*Certification is rigorous and we do not guarantee that each individual that enters the certification process will meet the standard to facilitate the curriculum and hold the participants in Protocol with competency and fidelity. In some instances, Certified Facilitator candidates will be asked to remain at the Certified Practitioner level until they build their skills and demonstrate their effectiveness with the curriculum and Protocol to PEG.

Certified Facilitators are expected to continue in all of the skills from the Certified Practitioner level and can:

Facilitate each component of the CCAR Protocol™ through:

- VCC – Intro / Exploration / The Experience
- 1-Day / Beyond Diversity
  - Analyze and synthesize their own, and others, ability to understand and apply CCAR Protocol
  - Understand, apply, and synthesize mindful inquiry techniques
  - Effectively navigate and use a facilitative process within the CCAR curriculum series
  - Articulate own assets and leverage others to support areas of growth
  - Establish system capacity and sustainability within their organization

**2.2** Districts may partner with other licensed districts in their region to meet Co-Facilitation requirements

In the event that the Client or any Certified Facilitator is interested in partnering with other licensed organizations in their region to collaborate when providing seminars/trainings, please contact the PEG Project Manager listed in this Statement of Work for additional information, including contractual requirements, associated with any such collaboration.