



Article 4. Consultant's Fee. District shall pay to Consultant for the performance of all services rendered pursuant to and during the term of this Consultant Agreement the amount not to exceed \$

The Payment Provision, Exhibit "B" attached hereto and incorporated herein by reference will provide a fee schedule. These fees shall include normal operating and office expenses or costs associated with completion of the work to be done. District shall not be liable for any costs or expenses paid or incurred by Consultant in performing services for the District, unless specific exception is provided herein.

Article 5. Payments. Payment terms are Net 30. Payment of Consultant's fee shall be made within 30 days of receipt of a complete and accurate invoice, following completion and acceptance of the services provided, as defined within the scope of work. Consultant agrees and acknowledges that it is Consultant's sole responsibility to report as income all compensation received from District, and to make the requisite tax filings and payments to the appropriate federal, state and local tax authorities.

Article 6. Employee Benefits. Consultant is an independent contractor. Consultant is responsible for all salaries, payments, insurance and benefits for all of its officers, agents, and employees in performing services pursuant to this agreement.

Article 7. Workers' Compensation Insurance. Consultant agrees to procure and maintain in full force and effect Workers' Compensation Insurance covering its employees and agents while these persons are participating in the activities hereunder. In the event a claim under the provisions of the California Workers' Compensation Act is filed against District by a bona fide employee of Consultant participating under this Agreement, Consultant agrees to defend and indemnify the District from such claim.

Article 8. Insurance. Consultant agrees to carry comprehensive general and automobile liability insurance with limits of five hundred thousand dollars (\$500,000) per occurrence for bodily injury and property damage in a form mutually acceptable to both parties to protect Consultant and District against liability or claims of liability which may arise out of this Agreement. In addition, Consultant agrees to provide an endorsement to this policy stating, "Such insurance as is afforded by this policy shall be primary, and any insurance carried by District shall be excess and noncontributory." The District may require provision of a copy of the insurance policy in its entirety. Consultant agrees to provide District with certificates of insurance evidencing all coverages and endorsements upon request.

Article 9. Audit and Inspection of Records. At any time during the normal business hours and as often as District may deem necessary, and upon reasonable notice, Consultant shall make available to District for examination at District's place of business all data, records, investigation reports and all other materials respecting matters covered by this Agreement. Consultant will permit 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 Agreement.

Article 10. 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 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 District and, as a result of the use of any programs or materials developed by Consultant under this Agreement, District should be found in violation of any copyright restrictions or requirements, Consultant agrees to indemnify and defend District against any action or claim brought by the copyright holder.

Article 11. Administration of Agreement. This Agreement shall be administered on behalf of the parties hereto, and any notice desired or required to be sent to a party hereunder shall be addressed, as follows:

For **DISTRICT**:

Designated Project Manager

Address:

AND Rochelle Lowe, Director  
Business Support Services

Address: San Diego Community College District  
3375 Camino del Rio South, Suite 270  
San Diego, CA 92108

For **CONSULTANT**:

Project Representative

Address:

Article 12. Notice. 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 or certified mail, return receipt requested, with postage paid. 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 section. At the date of this Agreement, the addresses of the parties are as set forth above.

Article 13. Ownership of Work Product. All products of work performed pursuant to this Agreement, including, but not limited to, notes, tables, graphs, reports, files, computer programs, and source code, will be the sole property of District and no reproduction of any portions of the work product may be made in any form without the express written consent of District. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

Article 14. Termination for Cause. District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include: (a) a material violation of this agreement by Consultant, (b) any act by Consultant exposing District to liability to others for personal injury or property damage, or (c) if Consultant is adjudged bankrupt, Consultant makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Consultant's insolvency. Written notice by District of termination for cause shall contain the reasons for such intention to terminate and unless within five (5) days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the five (5) days cease and terminate.

In the event of such termination, the District may secure the required services from another consultant. If the cost to the District of obtaining the services from another consultant exceeds the cost of providing the service pursuant to this Agreement, the excess cost may be charged to and collected from Consultant. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District. Written notice by District shall be deemed given when received by the other party or no later than five (5) days after the day of mailing, whichever is sooner.

In the event of such termination, Consultant shall be paid the reasonable value of satisfactory services rendered up to the date of receipt of the notice of termination, less any payments theretofore made, as determined by District, and the Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement in the event of such termination, except as set forth herein.

Also, at the time of such termination, all finished or unfinished documents, data, studies, drafts, surveys, drawings, maps, reports, and other materials prepared by Consultant shall, at the option of the District, become the property of District.

Article 15. Termination for Convenience. Either party may terminate this Agreement at any time and for any reason by giving written notice to the other party of such termination, and specifying the effective date thereof, at least thirty (30) days prior to the effective date.

If the Agreement is terminated as provided in this Section, Consultant shall be entitled to receive compensation for any satisfactory work completed up to the receipt by Consultant of notice of termination,

less any payments theretofore made, and for satisfactory work completed between the receipt of notice of termination and the effective date of termination pursuant to a specific request by District for the performance of such work.

Also, at the time of such termination, all finished and unfinished documents and other materials described hereinabove shall, at the option of District, become District's sole and exclusive property.

Article 16. Status of Consultant. It is agreed that District is interested only in the results obtained from service hereunder and that Consultant shall perform as an independent contractor with sole control of the manner and means of performing the services required under this Agreement. Consultant shall complete this Agreement according to its own methods of work which shall be in the exclusive charge and control of Consultant and which shall not be subject to control or supervision by the District, except as to the results of the work. Consultant is, for all purposes arising out of this Agreement, an independent contractor, and neither Consultant nor its employees shall be deemed an employee of the District for any purpose. It is expressly understood and agreed that Consultant and its employees shall in no event be entitled to any District benefits to which District employees are entitled, including, but not limited to overtime, retirement benefits, insurance, vacation, worker's compensation, sick or injury leave or other benefits.

Article 17. Hold Harmless. District shall not be liable for, and Consultant shall defend and indemnify District and its officers, agents, employees and volunteers (collectively "District Parties"), against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), which arise out of or are in any way connected to the work covered by this Agreement arising either directly or indirectly from any act, error, omission or negligence of Consultant or its officers, employees, agents, contractors, licensees or servants, including, without limitation, Claims caused by the concurrent negligent act, error or omission, whether active or passive, of District Parties. Consultant shall have no obligation, however, to defend or indemnify District Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of District Parties.

Article 18. Conflict of Interest. Prior to execution of this contract, contractor shall disclose in writing to District any and all compensation, actual or potential, which contractor may receive in any form from a party other than the District as a result of performance of this contract by contractor. If contractor becomes aware of the potential for such compensation subsequent to the execution of this contract, contractor shall disclose such compensation within three working days of becoming aware of the potential for such compensation. Prior to or concurrent with making any recommendation of any products or service for purchase by the District, contractor shall disclose any financial interest that contractor may have in any manufacturer or provider of the recommended products or services. The term "financial interest" includes, but is not limited to, employment (current or prospective) or ownership interest of any kind and degree.

Article 19. Assignment. No portion of this Agreement or any of the work to be performed hereunder may be assigned by Consultant without the express written consent of District and without such consent all services hereunder are to be performed by Consultant, its officers, agents and employees.

Article 20. Compliance With Applicable Laws. Consultant agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to Consultant, Consultant's business, equipment and personnel engaged in activities covered by this Agreement or arising out of the performance of such activities.

Article 21. Permits/Licenses. Consultant and all of Consultant's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

Article 22. Nondiscrimination in Employment. Consultant agrees that it will not engage in unlawful discrimination in employment as delineated in the California State Fair Employment and Housing Act, and Section 12940 of the California Government Code.

Article 23. Non-Waiver. The failure of District or Consultant to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement, shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

Article 24. Severability. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, invalid, or void, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.

Article 25. Entire Agreement/Amendment. This Agreement and any exhibits attached hereto constitute the entire agreement between the parties and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated, and may be amended only by a written amendment executed by both parties to the Agreement.

Article 26. Governing Law/Venue. The terms and conditions of this Agreement shall be governed by the laws of the State of California. Any action or proceeding brought by any party against any other party arising out of or related to this Agreement shall be brought exclusively in San Diego County.

Article 27. Attorney's Fees. If either party commences any legal action or proceeding to enforce, interpret or construe this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and court costs, as determined by the court. "Legal action or proceeding" includes a declaratory relief action and any bankruptcy or insolvency proceedings.

Article 28. Alterations or Variance. No alterations to this Agreement or variance from the provisions hereof shall be valid unless made in writing and executed by both of the parties hereto.

Article 29. Debarment. By signing this agreement, Consultant certifies that it not its principles are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from providing services by and federal, state, or local governmental departments or agency.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date herein above first written.



## **EXHIBIT A**

### **Scope of Work**

(Insert Scope of Work)

**EXHIBIT B**

**Payment Provisions**

(Insert Payment Schedule)