

**AGREEMENT BETWEEN
HARTNELL COMMUNITY COLLEGE DISTRICT and**

This Agreement is entered into this _____ day of _____, _____, by and between HARTNELL COMMUNITY COLLEGE DISTRICT, hereinafter referred to as "District" and _____ hereinafter referred to as "Contractor."

WHEREAS: The District has need for certain work, services, labor and/or materials to be provided for the benefit of the District for valuable consideration; and

WHEREAS: The District finds the Contractor possesses the qualifications and abilities to perform the needed work, services, labor and/or materials for the District; and

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions, and stipulations hereinafter, expressed and intending to be legally bound, and in consideration of the mutual benefits to be derived therefrom, the parties hereto agree as follows:

1. SCOPE OF WORK. District hereby engages Contractor to perform and Contractor hereby agrees to perform the services described in detail in Exhibit A "Scope of Work" attached hereto and incorporated herein by this reference. Services to be provided are generally described as follows:

1.1.

2. DEFINITIONS. For purposes of this contract, the following definitions shall apply:

2.1. "Services" shall mean the services provided by _____.

3. TERM AND TERMINATION. The term of this Agreement is from _____ to _____. Either party may, at its option, terminate this Agreement upon giving thirty (30) days advance notice in writing to the other party in the manner herein specified by Paragraph 19, "Notices." Should such termination occur, both parties agree to use all reasonable efforts to mitigate their expenses and obligations thereunder. Prior to such termination which could not be avoided by reasonable efforts, payment shall occur for all satisfactory services rendered and expenses incurred, but not in excess of the agreed-upon maximum payable. Such termination shall be in addition to, and not in lieu of, any other legal remedies provided by this contract or by law. No work set forth in this contract shall commence until this contract is fully executed by all parties.

4. COMPENSATION FOR SERVICES. The District shall pay the Contractor as full consideration for complete and faithful performance of the Contractor's obligations as set forth in Exhibit B "Compensation" attached hereto and incorporated herein by this reference, or as set forth by this Agreement. The total amount payable to Contractor under this Agreement shall not exceed the sum of _____ (\$_____) as specified in Exhibit B attached hereto and incorporated herein by this reference.

5. PAYMENT OF CONTRACTOR INVOICES. Contractor will invoice District for services described in Exhibit A and in the amounts as set forth in Exhibit B, on a monthly basis on or about the last working day of the month, for services rendered in that month. Invoices are payable by the District within thirty (30) days of receipt of the invoice by the District. In order to resolve any dispute regarding any invoice submitted, the time period for payment shall be extended by a reasonable amount of time. Should a delay in payment occur beyond a reasonable time period, Contractor, at its discretion, may suspend performing services under this Agreement until payment is current.

6. COLLABORATION. Each party shall undertake a cooperative role in taking effective actions and timely execution of documents as appropriate for the mutual benefit of achieving the objectives of this Agreement. District understands and acknowledges that any delay in actions necessary to meet District's obligations under this Agreement, may result in additional fees levied by the Contractor or the Contractor's inability to meet specific obligations or deadlines required to fulfill this Agreement. The outcome of such an event shall not be considered non-performance by Contractor.

7. LIMITATION OF LIABILITY. In no event shall either party be liable for any indirect, incidental, or consequential damages or damages for loss of profits, revenue, data, or use incurred by either party or any third party, whether in an action in contract or tort, statute, or otherwise, even if the other party has been advised of the possibility of such damages. Contractor's liability to the District or any other third party, for damages hereunder shall in no event exceed the amount of fees paid by District under this Agreement for the particular service provided giving rise to the claim. The provisions of this Agreement allocate the risks between Contractor and District.

8. INDEPENDENT CONTRACTOR. It is expressly understood and agreed that this Agreement is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association between the parties. It is understood that this Agreement is by and between independent contractors. As such, District shall not be responsible for payment of unemployment insurance, workers' compensation insurance, Social Security or Medicare taxes or contributions of Federal or State income tax withholding for or on behalf of Contractor or any of Contractor's sub-contractors.

9. HOLD HARMLESS AND INDEMNIFICATION.

9.1. District agrees to defend, indemnify, and hold harmless Contractor, its officers, agents, and employees from and against any and all liability, loss, expense, attorney's fees, or claims for injury, death, or damages arising from or as a result of the negligent or intentional acts or omissions of District in the performance of this Agreement.

9.2. Contractor agrees to defend, indemnify, and hold harmless District, its Board members, officers, agents, and employees from and against any and all liability, loss, expense, attorney's fees, or claims for injury, death, or damages arising from or as a result of the negligent or intentional acts or omissions of Contractor in the performance of this Agreement.

10. INSURANCE.

10.1. Both parties will each maintain general liability insurance with combined single limit coverage of not less than One Million Dollars (\$1,000,000) during the term of this Agreement and any extensions thereof. Such insurance will be maintained with an insurance company or companies authorized to do insurance business in the State of California, and with respect to District, a company

authorized to do business with joint powers agencies formed by college districts or other educational institutions for the purpose of liability insurance coverage, or by a system of self-insurance. The insurance policies in force will not be altered, reduced, or terminated without a prior ninety (90) day written notice to the other party as specified in Paragraph 19 "Notices."

10.2. Contractor shall endeavor to file a current Certificate of Insurance upon execution of this Agreement and with each renewal of policy throughout the term of this Agreement. In the event that liability insurance is terminated or altered, each party, in its sole discretion, will have the right to terminate this Agreement upon written notification to the other as specified in such termination to take effect immediately upon delivery of the written notification.

11. LICENSES & ASSURANCES. Contractor assures that Contractor possesses the required licenses or expertise to perform all of the services which it has agreed to perform pursuant to this Agreement. Contractor will maintain appropriate or required licensure in full force and effect during the term of this Agreement.

12. STANDARD OF CARE. The Contractor warrants that Contractor's services shall be performed by personnel possessing competency consistent with applicable industry standards. No other representation, express or implied, and no warranty or guarantees are included or intended in this Agreement, or in any report, opinion, deliverable work product, document, or otherwise. Furthermore, no guarantee is made as to the efficacy or value of any services performed. This section sets forth the only warranties provided by the consultant concerning the services and related work product. This warranty is made expressly in lieu of all other warranties, express or implied, including, without limitation, any implied warranties of fitness for a particular purpose, merchantability, non-infringement, title, or otherwise.

13. CONFIDENTIALITY. Contractor and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws that provide for the confidentiality of records and other information. Contractor shall not disclose any confidential records or other confidential information received from the District or prepared in connection with the performance of this Agreement, unless Contractor is specifically authorized in writing to disclose such records or information. Contractor shall promptly transmit to District any and all requests for disclosure of any such confidential records or information. Contractor shall not use any confidential information gained by Contractor in the performance of this Agreement except for the sole purpose of carrying out Contractor's obligations under this Agreement.

14. MAINTENANCE/RETENTION/ACCESS OF RECORDS.

14.1. Contractor shall prepare and maintain all reports and records utilized to perform services under this Agreement that may be required by federal, state, or District rules and regulations and shall furnish those reports and records upon request.

14.2. Contractor shall surrender to the District all reports and records that may be required by federal, state or District rules and regulations related to services performed under this Agreement. The District shall retain such records for a period of at least three (3) years after Contractor's receipt of final payment under this Agreement or any extension thereof. Should any litigation, claim, negotiation, audit exception, or other action relating to this Agreement be pending at the end of the retention period, the District shall retain said reports and records until such action is resolved.

14.3. Contractor shall permit access by the District and by representatives of any federal or state agency providing funds for, or as a result of, services performed under this Agreement, upon reasonable notice at any time, but in any case no less than twenty-four (24) hours' notice, to reports, records, and other sources of information as the inspecting party may deem appropriate for their purposes.

15. SUCCESSORS AND ASSIGNS. This Agreement and the rights, privileges, duties, and obligation of the parties hereunder, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

16. BREACH OF CONTRACT. Should either party breach this Agreement, the non-breaching party shall notify the breaching party of said breach in writing as specified in Paragraph 19 "Notices." Breaching party shall have fifteen (15) days in which to cure said breach or the non-breaching party may terminate the contract as specified herein as well as avail itself of any and all other legal remedies.

17. WAIVER. No waiver of any breach of this contract shall be construed to be a waiver of any other breach or any subsequent breach. All remedies afforded in this contract shall be taken and construed as cumulative; that is, in addition to every other remedy provided herein or by law. The failure of the parties to enforce at any time any of the provisions of this Agreement, or require at any time performance by the other party of any of the provisions thereof, shall in no way be construed to be a waiver of such provisions nor in any way affect the validity of this Agreement or any part thereof or the right of the parties to thereafter enforce each and every such provision.

18. AMENDMENTS/ADDENDUM. This Agreement may not be modified; neither amended nor written directions provided within the general scope of any services under this contract, except in writing signed by a duly authorized representative of each party as stipulated by Paragraph 19, "Notice." No other act, usage, or custom shall be deemed to amend or modify this Agreement.

19. NOTICES. Any notice, demand, amendment, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within seventy-two (72) hours (three (3) days) from the time of mailing if mailed as specified in this paragraph. Any notice, demand, amendment, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed as follows:

Hartnell Community College District

Attention: Vice President of Administrative
Services
411 Central Avenue
Salinas, CA 93901

Attention: _____

20. RULES OF CONSTRUCTION. The parties hereto participated jointly in the negotiation and preparation of this Agreement. Accordingly, it is agreed that no rule of construction shall apply against any party or in favor of any party. This Agreement shall be construed as if the parties jointly prepared this Agreement, and any uncertainty or ambiguity shall not be interpreted against any one party and in favor of the other.

21. **SEVERABILITY.** If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provisions of this Agreement.

22. **NON-EXCLUSIVITY.** Each party acknowledges and agrees that the rights granted to the other party in this Agreement are non-exclusive and, that without limiting the generality of the foregoing, nothing in this Agreement shall be deemed or construed to prohibit either party from contemplating, or participating in, similar business arrangements as those described herein, with other parties.

23. **RIGHTS GRANTED.** The District and Contractor shall each have the right to use all data, reports, or records collected or generated under this Agreement only in the context and for the purposes intended, without written permission by the other party. Nothing in this Agreement shall prohibit or limit the use of ideas, adaptations, formats, concepts, know-how, methods, models, data, techniques, skill knowledge, or experience utilized, developed or gained by either party in connection with this Agreement. The Agreement shall not create any rights or benefits to any persons or entities other than the District and Contractor.

24. **NON-SOLICITATION OF EMPLOYEES.** During and for one (1) year after the term of this Agreement, District will not solicit the employment of, or employ the Contractor's personnel, without the Contractor's prior written consent.

25. **NON-DISCRIMINATION.** During the performance of this Agreement, neither the District nor the Contractor will unlawfully discriminate, harass, or allow harassment against any employee or student on the basis of sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (including cancer), age, marital status, or sexual orientation. Both parties will ensure that the evaluation and treatment of their employees and all persons requesting and receiving services, are free from such discrimination and harassment.

26. **ENTIRE AGREEMENT.** This Agreement represents the entire Agreement between the two parties hereto with respect to the subject matter herein and supersedes any other agreements, restrictions, representations, or warranties, if any, between the parties hereto with regard to the subject matter herein, notwithstanding amendments duly made in writing and signed by both parties. No waiver, alteration, or modification of any of the provisions herein shall be binding on any party unless in writing and signed by the party against whom enforcement of such waiver, alteration, or modification is sought.

27. **ASSIGNABILITY & BINDING EFFECT.** Neither party shall assign, subcontract, or transfer any of its rights or obligations under this Agreement to a third party without prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. If there is a valid assignment, subcontract, or transfer, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

28. **DEBARMENT, SUSPENSION, AND OTHER REPRESENTATION.** Contractor certifies as required by Executive Orders 12549 and 12689, that Contractor and its principles are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency, are not presently indicted, criminally or civilly charged by a governmental entity, and have not, within a three (3) year period preceding this Agreement, been convicted or had a civil judgment rendered against them for commission of fraud or criminal offense in connection with obtaining or performing a public transaction or contract, or had one or more public transactions terminated for cause or default, nor have any appropriated funds been paid by or on behalf of

the contractor to any person for influencing or attempting to influence any employee or officer of the federal government or in connection with the making of any federal grant or cooperative agreement.

29. DRUG-FREE WORKPLACE. Contractor certifies that it will or will continue to provide a drug-free workplace as required by the Drug-Free Workplace Act of 1998.

30. DISPUTE RESOLUTION. Any and all disputes that may arise out of or relate to obtaining services, products, or other Agreements or any other relationship involving District and Contractor, whether occurring prior to, as part of, or after the signing of this document, shall first be resolved by good faith negotiations between the parties with the assistance of non-binding mediation. District shall notify Contractor of any dispute arising under this Agreement as specified under Paragraph 19 "Notices." Contractor shall continue to perform under this Agreement during any dispute. In the event either party determines that they are not able to resolve the dispute through negotiation and mediation, then the dispute shall be submitted to, and resolved by final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Negotiation, mediation, and arbitration shall be the exclusive means of dispute resolution between District and Contractor and their respective agents, employees, beneficiaries, or members. Arbitration shall be before a single arbitrator who shall apply California substantive law. Any party may bring an action in any court of competent jurisdiction in the County of Monterey, state of California, if necessary; (i) to compel arbitration under this arbitration provision, or (ii) to obtain preliminary relief in support of claims to be prosecuted in arbitration, or (iii) to enter a judgment of any award rendered pursuant to such arbitration.

31. ATTORNEYS' FEES. In the event of arbitration and/or any action at law or in equity (including but not limited to specific performance) between District and Contractor arising out of this Agreement or to enforce any of the provisions or rights hereunder, the prevailing party in such arbitration, action, or proceeding shall be paid all reasonable attorneys' fees and costs including, without limitation, court costs, expert witness fees, investigation costs, to enforce such rights by the other party, such fees to be set by the court and to be included in the judgment entered in such proceeding.

32. FORCE MAJEURE. Neither party shall be liable for nonperformance, defective performance, or late performance of any of its obligations under this Agreement to the extent and for such periods of time as such nonperformance, defective performance, or late performance is due to reasons outside either party's control, including acts of God, war (declared or undeclared), terrorism, action of any governmental authority, civil disturbances, riots, revolutions, vandalism, accidents, fire, floods, explosions, sabotage, nuclear incidents, lightning, weather, earthquakes, storms, sinkholes, epidemics, failure of transportation infrastructure, disruption of public utilities, supply chain interruptions, information systems interruptions or failures, breakdown of machinery or strikes (or similar nonperformance, defective performance or late performance of employees, suppliers or subcontractors); provided, however, that in any such event, each party shall use its good faith efforts to perform its duties and obligations under this Agreement.

33. COMPONENTS AND REFERENCES. All components and representations contained herein are incorporated by reference. Should elements of Agreement and/or proposal be in disagreement, then Agreement shall control. The following documents attached hereto, as well as any and all components and representations contained in the proposal, are expressly incorporated herein by reference and made a part hereof:

Exhibit A – Scope of Work
Exhibit B - Compensation

34. HEADINGS. Headings or captions on the paragraphs, sections, or subsections of this Agreement are solely for convenience and reference only, and shall not be interpreted to explain, modify, amplify, or aid in the interpretation, construction, meaning, or validity of the provisions of this Agreement or affect any rights, obligations, or responsibilities of the parties arising hereunder.

35. TENSE, NUMBER, AND GENDER. Each tense, number and gender in this Agreement shall include any other tense, number, or gender where the context and the parties hereto or the context and references herein shall require.

36. TIME IS OF THE ESSENCE. Time is of the essence for each and every provision of this Agreement.

37. APPLICABLE LAW. The laws of the State of California shall govern the validity, performance, and enforcement of this Agreement.

38. JURISDICTION. Any and all disagreements between the parties hereto shall be adjudicated in the courts of Monterey County, Salinas, California.

39. EXECUTION IN COUNTERPARTS. This Agreement may be executed in counterparts. Each counterpart executed as original or facsimile of original, shall have the full force and effect of an original.

40. AUTHORITY. An individual executing this Agreement on behalf of an entity hereby represents and warrants that he or she has the requisite authority to enter into this Agreement on behalf of such entity and bind the entity to the terms and conditions of same.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives effective on the date first above-written.

Hartnell Community College District

By: _____
Michael Gutierrez
Superintendent/President

By: _____
Name
Title

Date: _____

Date: _____

EXHIBIT A: SCOPE OF WORK and

EXHIBIT B: COMPENSATION

EXHIBIT A: Describe work being performed

EXHIBIT B: Compensation