

**Grant Sub-Agreement between  
Cabrillo Community College District  
and  
Chabot-Las Positas CCD on behalf of Las Positas College**

This grant agreement (hereinafter “Agreement”) is between Cabrillo Community College District (hereinafter “CCCD”) and Chabot-Las Positas CCD on behalf of Las Positas College (hereinafter “SUBGRANTEE”). CCCD and SUBGRANTEE may be referred to individually as a “Party” and collectively as the “Parties” in this Agreement.

**WHEREAS**, CCCD is the Fiscal Agent for the Career Technical Education Enhancement Fund (Grant No. 14-187-007) (hereinafter “Grant”) from the California Community Colleges Chancellor’s Office (hereinafter “PRIME SPONSOR”), and the purpose of the Grant is to develop, enhance, retool and expand quality Career Technical Education offerings that build upon existing community college regional capacity to respond to regional labor market needs;

**WHEREAS**, CCCD has been designated as the Fiscal Agent for the CTE Enhancement Fund for the 28-college Bay region and is responsible for distributing funds to each community college within the region, following certification by the Bay Area Community College Consortium that the courses and programs submitted to the districts and colleges for funding meet the criteria;

**WHEREAS**, CCCD has the right to enter into agreements with outside entities for various services with the approval of its Board of Trustees;

**WHEREAS**, SUBGRANTEE has agreed to participate in the purpose of this Grant according to the terms and conditions hereinafter set forth;

**NOW, THEREFORE** CCCD and SUBGRANTEE do covenant and agree as follows:

**ARTICLE I**

**1. Statement of Work**

SUBGRANTEE agrees to provide the necessary personnel, services, equipment and facilities to conduct the work as described in Exhibit C, Statement of Work, (“Work”) which is attached hereto and incorporated by reference in this Agreement. SUBGRANTEE agrees that funds will be used for CTE equipment, curriculum development, professional development, and other related costs necessary to develop, enhance, retool and expand quality CTE offerings in the program areas as described in the Application documents submitted by SUBGRANTEE and certified by both the SUBGRANTEE and by the Bay Area Community College Consortium and attached hereto as Exhibit C. As needed, the Application can be amended and modified to augment or adjust the use of funds, with written agreement between the Parties.

**2. Period of Performance**

The period of performance for this Agreement shall be from January 1, 2015 through February 28, 2016 unless terminated earlier in accordance with this Subcontract or modified by mutual written agreement.

### 3. Total Cost

The total cost to CCCD for the performance of this Agreement is specified in Exhibit C, the Subgrantee's Certified Application, Scope of Work. This amount may be augmented as SUBGRANTEE submits additional Program Areas for funding from: unallocated 60% funds if any; the allocation of \$46,429 to each college for regionally oriented college-based projects; approved 40% multi-college proposals. A form will be provided by CCCD for proposing new Program Areas and indicating that these Program Areas have received certification that they meet the CTE Enhancement Fund criteria by the SUBGRANTEE.

Funding for this project is provided by the PRIME SPONSOR. CCCD's obligation to pay the Subcontractor is conditioned upon receipt of funding from the PRIME SPONSOR and upon the Subcontractor's compliance with the terms and conditions of this Subcontract. Subcontractor acknowledges that any work performed prior to approval of the state or federal budget, as applicable, will be rendered on a voluntary basis, and shall not be compensated unless and until funding is authorized.

### 4. Budget and Budget Changes

- (a) Budget. SUBGRANTEE agrees that the expenditures of funds under this Agreement will be in accordance with the Scope of Work (*Exhibit C*), SB 852, (*Exhibit A*), and the Terms and Conditions set by the PRIME SPONSOR (*Exhibit B*).
- (b) Budget Changes. SUBGRANTEE must submit a budget revision request to CCCD if expenditures are planned for a cost category (i.e., object code – 1000s, 2000s, etc.) that was not submitted in the Certified Application, if the change would impact project outcomes or objectives identified in the Certified Application, or if change is not clearly within the scope of allowable expenditures as specified in the authorizing legislation and the FAQs posted on the CTE EF website.

### 5. Payments

Payment is contingent upon satisfactory performance as evidenced by progress reports including appropriate support documents, and the CCCD provided Invoice. CCCD will initiate advance payment of 40% of the total grant amount upon receipt of this signed and complete Agreement from SUBGRANTEE. An additional payment of 25% will be made in August 2015 provided satisfactory progress is reported in the second quarterly report. A third payment of up to 25% or the expenditures-to-date as reported in the third quarterly report, whichever is lower, will be made in November 2015. The final payment of up to, but no more than the total expenditures authorized under this subgrant will be made no later than June 2016 and is contingent upon submission and approval of Final Report and receipt of funds by CCCD from PRIME SPONSOR.

### 6. Reporting

- (a) Progress Reports. SUBGRANTEE agrees to submit quarterly progress reports in reference to the Scope of Work (*Exhibit C*) included in this Agreement. Reports are to be submitted utilizing an on-line reporting system to be provided by CCCD and are due on a quarterly basis.

- (b) Final Report. SUBGRANTEE agrees to submit a final report in a format to be provided by CCCD. This report will include a certification that the funds received were used in accordance with the State Budget language as set forth in Exhibit A. Failure to certify may subject SUBGRANTEE to the annual contract audit process set up by PRIME SPONSOR.
- (c) Reporting Schedule. The schedule of reporting dates will be provided to the SUBGRANTEE points of contact and may be adjusted at the direction of PRIME SPONSOR. A minimum of thirty (30) days advance notice will be given by CCCD to SUBGRANTEE of the first reporting date and of any subsequent changes to the reporting schedule.

#### **7. Expenditure of Grant Funds.**

SUBGRANTEE agrees to comply with all Grant requirements and that it is solely responsible for the appropriate expenditure of all Grant funds received and for any misappropriation or disallowment of Grant funds. Funds unexpended by March 15, 2016 will be returned to CCCD which will in turn return the funds to the PRIME SPONSOR.

#### **8. Modifications**

The Parties hereto agree that program components and service levels detailed in the Scope of Work (*Exhibit C*) may be modified so long as the Total Cost under this Agreement is not increased, the objectives of the project are not significantly altered, and no cost categories are added. However, colleges will need to submit a modification request to CCCD for any changes that would represent a significant deviation from the Certified Application or Scope of Work (*Exhibit C*), thereby impacting objectives of the project, or that would add cost categories not included in the Scope of Work, or if change is not clearly within the scope of allowable expenditures as specified in the authorizing legislation and the FAQs posted on the CTE EF website: <http://doingwhatmatters.cccco.edu/WEDDGrants/CTEEenhancementFunds.aspx>

#### **9. Time Extensions.**

No time extensions will be allowed. SUBGRANTEE agrees to notify CCCD if it will be unable to fully expend funds within the performance period in sufficient time to allow funds to be redirected to other colleges.

#### **10. Sub-Contract Assignment**

Unless specifically noted in the Scope of Work (*Exhibit C*), none of the duties of, or work to be performed by, SUBGRANTEE under this Agreement shall be sub-contracted or assigned to any agency, consultant, or person without the prior written consent of CCCD. No sub-contract or assignment shall terminate or alter the legal obligation of SUBGRANTEE pursuant to this Agreement.

SUBGRANTEE shall ensure that all sub-contracts for services and contracted staff are procured in a manner consistent with SUBGRANTEE's policies. By entering into this Agreement SUBGRANTEE agrees that it is the direct provider of intended services. Upon request, SUBGRANTEE shall submit to CCCD copies of all sub-contracts for services and contracted staff, and other agreements, as well as documentation indicating the approving authority's approval, that relate to this Agreement.

### **11. Travel**

For travel necessary to the performance of this Agreement, SUBGRANTEE travel and other expense reimbursement claims shall be governed by the travel policy and procedures adopted by SUBGRANTEE's governing board. Travel and other expenses shall be limited to those necessary for the performance of this Agreement. Out-of-state travel requires approval of the Project Monitor assigned to the CTE Enhancement Fund and completion of an Out-of-State Travel Request form that may be found at

<http://extranet.cccco.edu/Divisions/WorkforceandEconDev/CareerEducationPractices/OutofStateTravel.aspx>

### **12. Inventory Records**

SUBGRANTEE is responsible for maintaining fixed asset records for any such items properly purchased under the provisions of this Fund. In addition, SUBGRANTEE is responsible for maintaining inventory records for any items, as required by the agreement.

If SUBGRANTEE does bulk buying for a group of colleges, it retains liability for maintenance and insurance on all equipment purchased only up to the point of distributing that equipment to the other colleges involved in the bulk purchase. Upon transfer of the asset to the resident college, the resident college also assumes the responsibility for maintenance, insurance and whatever costs are associated with ownership of that equipment. Thus, the entity that has physical custody of the fixed asset has the responsibility for providing insurance coverage if coverage is desired.

SUBGRANTEE shall provide CCCD an electronic record utilizing an on-line system to be provided by CCCD of all fixed assets acquired with SUBGRANTEE's CTE Enhancement Funds. The record should include a description of the equipment purchased, cost, location, programs that it is intended to serve, and expected lifespan.

District shall adhere to the financial reporting requirements for these assets as specified in the Governmental Accounting Standards Board statement number 34 (GASB # 34).

### **13. Record Keeping**

SUBGRANTEE agrees to maintain project records for possible audit for a minimum of three (3) years after final payment or until any audit findings have been resolved, unless a longer period of records retention is stipulated.

### **14. Audit**

SUBGRANTEE agrees that CCCD, the PRIME SPONSOR, the Bureau of State Audits, any other appropriate state or federal oversight agency, or their designated representative(s), shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. SUBGRANTEE agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. SUBGRANTEE agrees to include a similar right of CCCD, the PRIME SPONSOR, the Bureau of State Audits, any other appropriate state or federal oversight agency, or their designated representative(s) to audit records and interview staff in any sub-contract related to performance of this Agreement.

### **15. Mutual Indemnification**

Both Parties to this Agreement shall agree to defend, indemnify, and hold harmless the other Party, its officers, agents, employees, and volunteers, from and against all loss, cost, and expense arising out of any liability or claim of liability, sustained or claimed to have been sustained, arising out of activities, or the performance or nonperformance of obligations under this Agreement, of the indemnifying Party, or those of any of its officers, agents, employees, or volunteers. The provisions of this Article do not apply to any damage or losses caused solely by the negligence of the non-indemnifying Party or any of its agents or employees.

### **16. Insurance**

Acceptance of this agreement constitutes that SUBGRANTEE is not covered under CCCD's general liability insurance and that SUBGRANTEE agrees, during the term of this Agreement, to maintain, at the SUBGRANTEE's sole expense, all necessary insurance for its officers, agents, and employees, including but not limited to worker's compensation (if required by law), liability, disability, and unemployment insurance. Certificates of insurance shall be provided to CCCD. Specifically, during the term of this agreement, SUBGRANTEE shall maintain in full force and effect the kinds of insurance, containing the limits of liability set forth below:

- a. Workers' Compensation – SUBGRANTEE shall comply with the workers' compensation law of the state wherein the services are to be rendered. Such policy shall provide coverage for all persons engaged in the activities described in this agreement under the employ, supervision or control of SUBGRANTEE.
- b. General Liability - The policy shall contain a combined single limit of liability of not less than \$1,000,000 per occurrence.
- c. Automobile Liability - If automotive vehicles are operated by SUBGRANTEE in SUBGRANTEE's performance of SUBGRANTEE's obligations under this agreement, SUBGRANTEE shall maintain an automobile liability policy which shall include coverage on all owned, non-owned and hired vehicles and shall have a minimum limit of liability of not less than \$500,000 per occurrence.

Coverage shall be placed with an insurer having a Best's Key Rating of "A-" or better. SUBGRANTEE shall furnish CCCD with Certificates of Insurance evidencing such coverage. Such Certificate shall name CCCD as additional insureds, and provide that it can be cancelled only with thirty (30) days prior written notice to CCCD. If any of the foregoing coverages expire, change, or are canceled, SUBGRANTEE shall notify CCCD within thirty (30) days prior to the effective date of such expiration, change or cancellation.

The following sentence shall be included in the additional insured endorsements:

*“Cabrillo Community College District, its Governing Board, as individuals and as an entity, its officers, directors, employees, and volunteers, are hereby named as additional insured, with respect to all work performed by or on behalf of the named insured under its contract with the Certificate Holder.”*

### **17. Termination**

The obligations of CCCD under this Agreement are contingent upon the availability of State funds, as applicable, for the reimbursement of SUBGRANTEE expenditures. In the event that such funding is terminated or reduced, CCCD shall provide SUBGRANTEE with written notification of such determination and CCCD shall reimburse SUBGRANTEE for costs incurred up to the termination date to the extent that the availability of State funds allows. Notice shall be deemed served on the date of receipt by the SUBGRANTEE; with receipt determined by certified mail delivery confirmation. Upon termination, or notice thereof, the Parties agree to cooperate with one another in the orderly transfer of contract responsibilities, records, and pertinent documents.

### **18. Disputes**

In the event of a dispute between the Parties, the aggrieved Party shall notify the other Party and provide a detailed description of the alleged problem. The Parties agree to use reasonable efforts to resolve such dispute by good faith negotiations and mutual agreement. In the event such informal resolution is not successful within a reasonable period of time, the Parties hereby agree that such dispute will be resolved in the manner specified below.

Except as otherwise provided in this Agreement, any dispute concerning any question arising under this Agreement shall be decided by CCCD and/or the PRIME SPONSOR. In such a case, the decision shall be reduced to writing and a copy thereof shall be mailed or otherwise furnished to SUBGRANTEE. The decision shall be final and conclusive unless within thirty (30) calendar days from the mailing or delivery of such copy, CCCD receives from SUBGRANTEE a written request to appeal said decision. Pending final decision of the appeal, SUBGRANTEE shall act in accordance with the written decision of CCCD or the PRIME SPONSOR, whichever is the final arbiter of the dispute. The handling of non-criminal complaints, including discrimination complaints, and complaints and reports of criminal fraud, waste and abuse shall be as prescribed by the State of California, and/or the PRIME SPONSOR, whichever is applicable, in accordance with applicable provisions of the Code of Federal Regulations.

**19. Notices**

All notices, reports and correspondence between the Parties here to respecting this Agreement shall be in writing and may either be delivered via email to the addresses below or deposited in the United States Mail, postage prepaid, addressed as follows. Parties may request email confirmations that electronically submitted materials have been received.

**Cabrillo Community College District**

Attn: Rock Pfothenhauer, Chair, BACCC  
 Cabrillo College  
 6500 Soquel Drive  
 Aptos, CA 95003  
 831-479-6482, bay-ef@baccc.net

**SUBGRANTEE: Chabot-Las Positas CCD, Las Positas College**

<b>Primary Point of Contact</b>
Name:
Title:
Address:
Phone:
Email:
Sign-off required by SUBGRANTEE for changes to scope of work not affecting total amount of contract? No
Sign-off required by SUBGRANTEE for changes to total amount of contract? Yes

<b>Fiscal/Administrative Point of Contact</b>
Name: Lorenzo Legaspi
Title: Vice Chancellor, Business Services
Address: 7600 Dublin Blvd., 3 <sup>rd</sup> Floor, Dublin, CA 94568
Phone: 925-485-5203
Email: Legaspi@clpccd.org
Sign-off required by SUBGRANTEE for changes to scope of work not affecting total amount of contract? No
Sign-off required by SUBGRANTEE for changes to total amount of contract? Yes

**20. Total Agreement**

This Agreement, together with the attachments hereto, expresses the total understanding of both Parties. There are no oral understandings of the Parties or terms and conditions other than as are stated herein. SUBGRANTEE acknowledges that it has read and agrees to all terms and conditions included in this Agreement.

**21. Amendments**

This Agreement may be modified or revised at any time by the Parties as long as the amendment is made in writing and signed by an authorized official of both Parties.

**ARTICLE II**

**1. Legal Terms and Conditions**

This project will be implemented in accordance with SB 852, Chapter 25, Item 18 (*Exhibit A*), and the California Community Colleges Chancellor’s Office, Articles I and Article II Standard Terms and Conditions (Revision 11/19/2012) (*Exhibit B*), as set forth and incorporated into this Agreement by reference. As the Grant is subject to any additional restrictions, limitations, or conditions enacted in the State Budget and/or Executive Orders that may affect the provisions, terms, or funding of this Agreement in any manner, CCCD may modify this Agreement through an amendment, as needed.

This Agreement represents the entire understanding between CCCD and SUBGRANTEE with respect to the Grant. No change, modification, extension, termination or waiver of this Agreement, or any of the provisions herein contained, shall be valid unless made in writing and signed by duly authorized representatives of the Parties hereto.

**IN WITNESS WHEREOF**, the Parties hereto certify that they have read and understand all the terms and conditions contained herein and have executed this Agreement by their duly authorized representatives on the dates of their signatures.

**CABRILLO COMMUNITY  
COLLEGE DISTRICT**

**SUBGRANTEE: *Chabot-Las Positas CCD***

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

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

Name: Shelley West

Name: Lorenzo Legaspi

Title: Accountant, Business Services on  
behalf of Victoria Lewis, Vice  
President, Administrative Services

Title: Vice Chancellor, Business Services

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

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

EIN: 94-1670563

Employer/Taxpayer Identification Number (EIN)



**LIST OF EXHIBITS**

- Exhibit A SB 852 – relevant section
- Exhibit B Article I Career Technical Education (CTE) Enhancement Funds Program-Specific Legal Terms and Conditions, Article II Standard Legal Terms and Conditions
- Exhibit C Certified Application - Subgrantee's Scope of Work

Exhibit A SB 852 – relevant section

Purpose of CTE EF

\$50,000,000 of the funds appropriated in Schedule (17) shall be provided on a one-time basis to create greater incentive for California Community Colleges to develop, enhance, retool, and expand quality career technical education offerings that build upon existing community college regional capacity to respond to regional labor market needs. Funds may be used for equipment, curriculum development, professional development, and other related costs necessary to develop, enhance, retool, and expand quality career technical education offerings.

Basis of Allocation to Regions

The Chancellor of the California Community Colleges shall allocate these funds to the community college regions based on a formula that factors in the total number of full-time equivalent students, including full-time equivalent students in career technical education courses.

Regional Fiscal Agent

The Chancellor of the California Community Colleges shall, in consultation with community colleges within each region, designate either the district then serving as the fiscal agent for the regional consortia or an alternative district to serve as the fiscal agent for these funds.

Criteria

The funds shall be distributed by the fiscal agent to the California Community College districts within the region for career technical education programs that are developed with industry input, matched by industry resources, and adopted by faculty upon certification by the regional consortia. The courses or programs of study for which the funds are requested shall meet all of the following criteria:

- (A) Be for occupations and sectors that are demonstrated to be in demand in the regional labor market.
- (B) Be for occupations for which regional production of employees is insufficient to meet labor market demand.
- (C) Demonstrate regional alignment of program and curricula

Priority for funding shall go to programs that meet all of the criteria listed above and that meet one or more of the following criteria:

- (A) Are in priority sectors identified by the region.
- (B) Are in emerging sectors identified by the region.
- (C) Are articulated with K-12 or four year institutions.

Responsibilities

**Individual colleges and districts** shall be responsible for identifying eligible programs and their faculty, implementing courses and programs to meet regional capacity needs, participating in regional coordination efforts, articulating with K-12 and four year institutions, and submitting outcome data to the Chancellor of the California Community Colleges.

**The regional consortia** shall be responsible for certifying labor market demand with input from regional employers and essential workforce and economic development partners, prioritizing investment of funds according to industry sectors and occupations, and ensuring regional coordination.

**The district designated as the fiscal agent** in each region shall be responsible for distributing the funds to each district within its region following certification by the regional consortia that the courses and programs submitted by the districts and colleges for funding meet the criteria listed in this subdivision.

**The Chancellor of the California Community Colleges** shall be responsible for administering the distribution of funds to the fiscal agents for each region and monitoring progress toward meeting regional and statewide career technical education needs.

Exhibit B:

Chancellor's Office, California Community Colleges

**GRANT AGREEMENT**

**ARTICLE I**

**Career Technical Education (CTE) Enhancement Funds  
Program-Specific Legal Terms and Conditions**

**1. Cost and Payments**

In consideration of satisfactory performance of the services described in the Grantee's application, the California Community Colleges, Chancellor's Office (hereinafter Chancellor's Office) agrees to pay the Grantee a total amount not to exceed the "Grant Funds" amount stated on the fully executed Grant Agreement face sheet, which shall be used as set forth in the Application Budget. Payment shall be made as follows:

- An advance payment of 40% of the total amount of this Grant Agreement will be paid as soon as feasible after the Grant Agreement is fully executed.
- Grantee may submit request for progress payments at the time that progress reports are submitted. Progress reports may be submitted sooner than pursuant to section 3 of this Article. Payment will be made after review and approval of the progress reports by the Chancellor's Office.
- A final payment will be calculated based on the online Final Performance and Expenditure Reports due by March 31, 2016. If the total expenditure of funds by that date is less than the advance payment, the Chancellor's Office may invoice the Grantee for the excess amount.

**2. Budget Changes**

- Grantee may make changes to any budget category amounts without the approval of the Project Monitor so long as budget categories are not added or deleted, the total dollar amount of the Grant Agreement is not affected, and the outcomes of the Grant Agreement will not be materially affected.
- Grantee may add or delete budget categories subject to the prior approval of the Project Monitor.
- Grant amendments are required for budget changes when there are changes in the total dollar amount of the Grant Agreement and/or the outcome of the Grant Agreement is materially affected. The request for such changes should include a

letter of justification; three copies of a revised "Application Budget Summary," all of which have been signed by the Chief Business Officer or his/her designee, in an ink color other than black, and a revised "Application Budget Detail Sheet."

- The Budget Amendment request should be mailed to the Project Monitor for approval. Grantee will be notified if the request is approved or if additional information is required. In any event, the Grantee shall implement changes only upon written notification by the Project Monitor. Additionally, the next Progress Report must show the new budget changes.

Budget changes or amendments involving an extension of time are subject to applicable program limitations. No budget change or amendment may permit expenditures to be made after June 30th of the second year following the period for which the funds were appropriated. Any budget change or amendment permitting funds to be spent beyond the year of appropriation shall ensure that Grantee does not receive funding for the same expense from more than one fiscal year.

### 3. Reporting

The following online reports are to be submitted by the due dates indicated. Extensions of reporting deadlines may be made with the approval of the Project Monitor.

- Online Progress/Year-to-Date Expenditure Report December 31, 2014
- Online Progress/Year-to-Date Expenditure Report March 31, 2015
- Online Progress/Year-to-Date Expenditure Report June 30, 2015
- Online Progress/Year-to-Date Expenditure Report September 31, 2015
- Online Progress/Year-to-Date Expenditure Report December 31, 2015
- Final Narrative Report and Final Online Expenditure Report March 30, 2016

## **ARTICLE II**

### **Standard Legal Terms and Conditions**

(Effective May 2014)

#### **1. Work to be Performed**

The Grantee shall complete the tasks described in the Grantee's application and funds shall be expended in compliance with the requirements for the funding source and category referenced in the Grant Agreement face sheet.

Grantee may request modifications to the work to be performed. All such requests must be submitted in writing to the Project Monitor prior to the modification being made. The Project Monitor may require that a Grant Amendment be processed, if the monitor determines that the change would materially affect the project outcomes or the term of this Grant Agreement.

Modifications or amendments to the Work to be Performed provisions of this Agreement involving an extension of time are subject to applicable program limitations. For grants funded under the Carl D. Perkins Career and Technical Education Improvement Act of 2006, extensions of time are not allowed beyond June 30th of the year in which the funds were awarded. For other programs, no modification or amendment may permit expenditures to be made after June 30th of the second year following the period for which the funds were appropriated. Any modification or amendment permitting funds to be spent beyond the year of appropriation shall ensure that Grantee does not receive funding for the same expense from more than one fiscal year.

#### **2. Amendments**

An amendment of this Grant Agreement is required when the Grantee wishes to extend the completion date or materially change the work to be performed or the budget (see Article I section 2 and Article II section 1). The request must be made on the appropriate form provided by the Chancellor's Office and must be submitted to the Project Monitor prior to making the desired alteration in the performance or expenditures under the Grant Agreement. Requests for amendments should be received 60 days before the end of the performance period.

Amendments involving an extension of time are subject to applicable program limitations. For grants funded under the Carl D. Perkins Career and Technical Education Improvement Act of 2006, extensions of time are not allowed beyond June 30th of the year in which the funds were awarded. For other programs, no amendment may permit expenditures to be made after June 30th of the second year following the period for which the funds were appropriated. Any amendment permitting funds to be spent beyond

the year of appropriation shall ensure that Grantee does not receive funding for the same expense from more than one fiscal year.

**3. Unenforceable Provision**

In the event that any provision of this Grant Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Grant Agreement remain in full force and effect and shall not be affected thereby.

**4. Dispute**

In the event of a dispute, Grantee agrees to file a "Notice of Dispute" with the Chancellor's Office, within ten (10) days of discovery of the problem. Within ten (10) days, the Chancellor or his or her designee shall meet with the Grantee, the Vice Chancellor for the division awarding the Grant Agreement, and the Project Monitor for purposes of resolving the dispute. The decision of the Chancellor shall be final.

In the event of a dispute, the language contained within this Grant Agreement shall prevail over any other language including that of the grant proposal.

Grantee shall continue with the responsibilities under this Grant Agreement during any dispute.

**5. Notice**

Either party may give notice to the other party by sending certified mail properly addressed, postage fully prepaid to the other party's business address. Notices to be sent to the Chancellor's Office shall be addressed to the Project Monitor at California Community Colleges, Chancellor's Office, 1102 Q Street, Suite 4554, Sacramento, CA 95811-6539. Notices to be sent to the Grantee shall be addressed to the Project Director at the Grantee's address as specified on the face sheet of this Grant Agreement. Such notice shall be effective when received, as indicated by post office records, or if deemed undeliverable by the post office, such notice shall be postponed 24 hours for each such intervening day.

**6. Interpretation**

In the interpretation of this Grant Agreement, any inconsistencies between the terms hereof and the Exhibits shall be resolved in favor of the terms hereof.

**7. Project Director and Key Personnel**

The Project Director is designated by the Grantee on the face sheet of the Grant Agreement, and the key personnel are identified in the application or proposal. The Grantee may change the Project Director or other key personnel, but the Grantee shall immediately notify the Project Monitor in writing of any such changes.

**8. Project Monitor**

The Project Monitor is designated by the Chancellor's Office on the face sheet of the Grant Agreement. The Project Monitor is responsible for overseeing the project and any questions or problems relating to the project should be directed to the Project Monitor. If necessary, the Chancellor's Office may change the Project Monitor by written notice sent to the Grantee.

**9. Budget Concerns**

- a. It is mutually understood between the parties that this Grant Agreement may have been written before ascertaining the availability of state or federal funds, for the mutual benefit of both parties in order to avoid program and fiscal delays which would occur if this Grant Agreement were executed after the determination was made.
- b. It is mutually agreed that if the state or federal budget for the current year and/or any subsequent years covered under this Grant Agreement does not appropriate sufficient funds for the program, this Grant Agreement shall have no force and effect. In this event, the Chancellor's Office shall have no liability to pay any funds whatsoever to Grantee or to furnish any consideration under this Grant Agreement and Grantee shall not be obligated to perform any provisions of this Grant Agreement.
- c. Grantee shall inform any subcontractors and subgrantees that any work performed prior to approval of the state or federal budget, as applicable, will be rendered on a voluntary basis, and shall not be compensated unless and until funding is authorized.
- d. In no event may Grantee use Grant funds to pay any individual or organization for the work associated with preparing the Grant application. For breach or violation of this prohibition, the Chancellor's Office shall, in addition to other remedies provided by law, have the right to annul this Grant Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
- e. In addition, this Grant Agreement is subject to any additional restrictions, funding reductions, limitations or conditions enacted in the state or federal budget, any amendments thereto, or in the laws and Executive Orders that may affect the provisions, term, or funding of this Grant Agreement in any manner. The parties hereby agree that the Chancellor's Office will notify Grantee of any such changes affecting the terms of this Grant Agreement, but need not execute an amendment to modify the Grant Agreement.

## **10. Assignment**

Grantee may not transfer by assignment or novation the performance of this Grant Agreement or any part thereof except with the prior written approval of the Project Monitor. Nor may Grantee, without the prior written consent of the Project Monitor, assign any other right that Grantee may have under this Grant Agreement. Each assignment that is approved by the Project Monitor shall contain a provision prohibiting further assignments to any third or subsequent tier assignee without additional written approval by the Project Monitor. The Project Monitor's consent to one or more such assignments or novations shall not constitute a waiver or diminution of the absolute power to approve each and every subsequent assignment or novation.

## **11. Subcontracts or Subgrants**

- a. Grantee agrees to obtain the written approval of the Project Monitor prior to the selection of subcontractors or subgrantees to perform services under this Grant Agreement, based upon a written request indicating compliance with the provisions set forth below. Except where prohibited by the Standards of Conduct provisions set forth in section 15 of this Article, subcontractors or subgrantees specifically identified in this Grant Agreement or the Exhibits attached hereto and which are secured in accordance with applicable legal requirements and the provisions set forth below are deemed approved upon execution of this Grant Agreement.
- b. In any event, if the Grantee wishes to enter into a subcontract or subgrant agreement for performance of any part of the activities under this Grant Agreement, Grantee shall disclose the intended purpose and amount of the subcontracting, identify the proposed subcontractor or subgrantee, and certify that the subcontractor or subgrantee was selected according to locally applicable competitive bidding processes which are reasonably calculated to ensure that cost shall be given substantial weight in the selection process, and that the selected subcontractor or subgrantee is the best qualified party available to provide the required services. Upon request, Grantee shall furnish evidence of compliance with this provision to the Project Monitor. Grantee shall immediately notify the Project Monitor in the event that any subcontract or subgrant is terminated.
- c. All subcontracts or subgrants shall contain a provision prohibiting any third or subsequent tier subcontracts or subgrants without additional written approval by the Project Monitor.
- d. The Project Monitor's consent to one or more subcontracts or subgrants shall not constitute a waiver or diminution of the absolute power to approve each and every subsequent subcontract or subgrant.



- e. Upon request, Grantee shall furnish any additional evidence the Project Monitor may deem appropriate concerning the competitive bidding procedures used or any other matter related to compliance with paragraphs (a) or (b).
- f. Grantee shall not enter into any subgrant or subcontract of the types described below and any such agreement which may be executed is null and void and of no force or effect.
  - 1. A former state employee (including a Chancellor's Office employee, or a district employee who worked for the Chancellor's Office on an Interjurisdictional Exchange (IJE)) cannot enter into a subcontract or subgrant under this Grant Agreement with the Grantee if that employee was engaged in the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to this Grant Agreement while employed by the state. (Gov. Code, §§ 1090, et seq., 87100, and 87400 et seq.; Cal.Code Regs. tit. 5, §§ 18741.1 and 18747.)
  - 2. A current state employee (including a current Chancellor's Office employee or district employee working for the Chancellor's Office on an Interjurisdictional Exchange (IJE)) cannot enter into a subcontract or subgrant with the Grantee, with the exception of rank-and-file employees of the California State University and the University of California. (Pub. Contr. Code, § 10410.)
  - 3. The spouse or a member of the immediate family of a current Chancellor's Office employee (including a current Chancellor's Office employee or district employee working for the Chancellor's Office on an Interjurisdictional Exchange (IJE)) may not enter into a subcontract or subgrant with the Grantee if the Chancellor's Office employee or person on an IJE was engaged in the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to this Grant Agreement, or the subcontract or subgrant, or had any influence whatsoever in the making of this Grant Agreement, or the subcontract or subgrant. (Gov. Code, §§ 1090, et seq.; and 87100.)
- g. Nothing contained in this Grant Agreement or otherwise, shall create any contractual relationship between the Chancellor's Office and any subcontractors or subgrantees, and no subcontract or subgrant shall relieve Grantee of its responsibilities and obligations hereunder. Grantee agrees to be as fully responsible to the Chancellor's Office for the acts and omissions of its subcontractors, subgrantees, and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by Grantee. Grantee's obligation to pay its subcontractors and subgrantees is independent from the obligation of the Chancellor's Office to make payments to Grantee. As a result, the Chancellor's Office shall have no obligation to pay or enforce the payment of any moneys to any subcontractor.

## 12. Audit

Grantee agrees that the Chancellor's Office, the Bureau of State Audits, any other appropriate state or federal oversight agency, or their designated representative(s), shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Grant Agreement. Grantee agrees to maintain such records for possible audit for a minimum of three (3) years after final payment or until any audit findings have been resolved, unless a longer period of records retention is stipulated. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Grantee agrees to include a similar right of the Chancellor's Office, the Bureau of State Audits, any other appropriate state or federal oversight agency, or their designated representative(s) to audit records and interview staff in any subcontract or subgrant related to performance of this Grant Agreement.

## 13. Products and Deliverables

- a. Each deliverable to be provided under this Grant Agreement shall be submitted to and approved by the Project Monitor. All products, documents and published materials, including multimedia presentations, shall be approved by the Project Monitor prior to distribution.
- b. Any document or written report prepared, in whole or in part by Grantee, or its subcontractors or subgrantees, shall contain the Grant number and dollar amount of the Grant and subcontracts or subgrants relating to the preparation of such document or written report. The Grant and subcontract or subgrant numbers and dollar amounts shall be contained in a separate section of such document or written report. (Gov. Code, § 7550(a).)
- c. When multiple documents or written reports are the subject or product of the Grant Agreement, the disclosure section must also contain a statement indicating that the total Grant amount represents compensation for multiple documents or written reports. (Gov. Code, § 7550(b).)
- d. All products resulting from this Grant Agreement or its subcontracts in whole or in part shall reference the California Community Colleges, Chancellor's Office and the specific funding source.
- e. All references to the project shall include the phrase, "funded in part by the California Community Colleges, Chancellor's Office."

#### **14. Travel**

For travel necessary to the performance of this Grant Agreement, Grantee travel and other expense reimbursement claims shall be governed by the travel policy and procedures adopted by the Grantee's governing board. Travel and other expenses shall be limited to those necessary for the performance of this Grant Agreement. For grants involving federal funds, any out-of-state travel must be approved in advance by the Project Monitor.

Grant funds may be used to pay for travel for Chancellor's Office staff provided that the travel is related to the purposes of the Grant Agreement, the travel is necessary to allow Chancellor's Office staff to provide services or technical assistance beyond the scope of normal Grant monitoring, the request is made by the Grantee without duress from Chancellor's Office staff, Grantee does not seek or receive any favorable treatment in exchange for paying for travel, travel is arranged and paid for through ordinary Chancellor's Office processes, and the Grant funds are used to reimburse those costs using Accounting Form RT-01 Request for Services/Agreement to Pay Travel Expenses.

#### **15. Standards of Conduct**

Grantee hereby assures that, in administering this Grant Agreement, it will comply with the standards of conduct hereinafter set out, as well as the applicable state laws concerning conflicts of interests, in order to maintain the integrity of this Grant Agreement and to avoid any potential conflict of interests in its administration.

- a. Every reasonable course of action will be taken by the Grantee in order to maintain the integrity of this expenditure of public funds and to avoid any favoritism or questionable or improper conduct. The Grant Agreement will be administered in an impartial manner, free from personal, financial, or political gain. The Grantee, and its officers and employees, in administering the Grant Agreement, will avoid situations which give rise to a suggestion that any decision was influenced by prejudice, bias, special interest, or personal gain.
- b. **Conducting Business with Relatives.** No relative by blood, adoption, or marriage of any officer or employee of the Grantee, or of any member of its governing board, will receive favorable treatment in the award of subcontracts or subgrants or in educational or employment opportunities funded by this Grant Agreement.
- c. **Conducting Business Involving Close Personal Friends and Associates.** In administering the Grant Agreement, officers and employees of the Grantee will exercise due diligence to avoid situations which may give rise to an assertion that favorable treatment is being granted to friends and associates.

- d. Avoidance of Conflicts of Economic Interests.
1. Grantee shall take all reasonable steps to ensure that its officers and employees, and members of its governing board, will avoid any actual or potential conflicts of interests, and that no officer, employee, or board member who exercises any functions or responsibilities in connection with this Grant Agreement shall have any personal financial interest or benefit which either directly or indirectly arises from this Grant Agreement. The term "financial interest" shall include the financial interest of the officer, employee, or board member's spouse or dependent child.
  2. Grantee shall establish safeguards to prohibit officers, employees or board members from using their positions for a purpose which could result in private gain, or give the appearance of being motivated for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
  3. An officer or employee of Grantee, an elected official in the area, or a member of the governing board, may not solicit or accept money or any other consideration from a third person for the performance of any act reimbursed, in whole or in part, by Grantee or the Chancellor's Office. Supplies, materials, equipment, or services purchased with Grant funds will be used solely for purposes allowed under this Grant Agreement.
  4. The governing board may not authorize the award of any subcontract or subgrant funded by this Grant Agreement, if that contract, subcontract or subgrant is for the provision of services or goods by any board member, or by any person or entity which is a source of income to a board member.
- e. In the interest of avoiding conflicts of interests involving friends or associates of Chancellor's Office employees, in administering this Grant Agreement, officers and employees of the Grantee will exercise due diligence to avoid situations which may give rise to an assertion that favorable treatment is being granted to friends and associates of Chancellor's Office employees.

## 16. Statewide or Regional Projects

If this Grant involves provision of coordination, technical assistance, or other services for the California Community College system or for a particular region or group of colleges, the following requirements shall apply:

- a. Grantee agrees to consult regularly with the Project Monitor and representatives of the colleges to be served and to give every reasonable consideration to their views in the conduct of the project.

- b. Grantee shall require all employees, consultants, subcontractors and subgrantees to disclose any employment or contractual relationships they may have with other colleges being served under a statewide or regional grant. Such relationships are prohibited and shall be promptly terminated unless, after being fully informed of the circumstances, the Project Monitor determines that the services being provided to the other college by the employee, consultant, or contractor are above and beyond or unrelated to those provided under this Grant.
- c. If the primary role of the Grantee under this agreement is to serve as a fiscal agent for distribution of funds, the Grantee agrees that it will not make any payment to subcontractors engaged to provide consulting services under this grant without the written approval of the Project Monitor and the Executive Vice Chancellor or the person he/she has designated to approve grants pursuant to subdivision (c) of section 3600 of the Chancellor's Office Contracts and Grants Manual. Grantee may, however, disburse funds as provided in the grant budget for other activities (including paying for expenses related to meetings of advisory bodies or travel expenses for site reviews) without prior approval.
- d. If this Grant exceeds \$750,000 and funds a full-time position to perform grant activities, Grantee hereby agrees to engage in full and open recruitment for that position in accord with subsection (a) of section 53021 of title 5 of the California Code of Regulations, with the understanding that such position may be filled on a temporary basis to the extent authorized by law. Grantee shall, in a timely manner, submit to the Personnel Office of the Chancellor's Office a copy of all such job announcements. In the event that an employee of the Chancellor's Office applies for and is selected to fill the position, the Chancellor's Office may consider executing an Interjurisdictional Exchange Agreement to permit the employee in question to work for the Grantee.
- e. Consistent with the requirements of section 19 of this Article ("Real Property and Equipment"), the disposition of real property or equipment with an initial purchase price in excess of \$5,000 shall be subject to the approval of the Chancellor's Office.

**17. Time Is of the Essence**

Time is of the essence in this Grant Agreement.

**18. Intellectual Property**

- a. Grantee agrees that any and all services rendered and documents or other materials, inventions, processes, machines, manufactures, or compositions of matter, and/or trademarks or servicemarks first created, developed or produced pursuant to the Grant Agreement, whether by Grantee or its subcontractors or subgrantees, shall be and are Work for Hire. All subcontracts or subgrants shall include a Work for Hire provision by which all materials, procedures, processes, machines, and trademarks or servicemarks produced as a result of the Grant Agreement shall be

Work for Hire. All rights, title, and interest in and to the Work first developed under the Grant Agreement or under any subcontract or subgrant shall be assigned and transferred to the Chancellor's Office. This Work for Hire agreement shall survive the expiration or early termination of this Grant Agreement.

- b. The copyright for all materials first produced as a result of this Work for Hire agreement shall belong to the Chancellor's Office. Grantee, and all subcontractors, subgrantees, and others that produce copyright materials pursuant to the Grant Agreement, assigns all rights, title and interest, including the copyright to any and all works created pursuant to this Work for Hire agreement, to the Chancellor's Office. The Chancellor's Office shall acknowledge Grantee or its subcontractors and subgrantees, if any, as the author of works produced pursuant to this Work for Hire agreement on all publications of such work. The Chancellor's Office will license such copyrighted work with a Creative Commons CC BY license. The license will allow Grantee or its subcontractors and subgrantees, if any, to reproduce and disseminate copies of such work, provided the licensee agrees not to permit infringement of the copyright by any person, to compensate Chancellor's Office for any infringement which may occur, and to indemnify and hold harmless the Chancellor's Office for any and all claims arising out of or in connection with the licensing agreement. Said license shall include the right to create and use works derived from those created under this Grant Agreement, even if such derivative works compete with those created under this Grant Agreement.

All materials first developed in draft and in final form pursuant to this Grant Agreement shall, in a prominent place, bear the © (the letter "c" in a circle) or the word "Copyright," or the abbreviation "Copr.," followed by the year created; and the words "California Community Colleges, Chancellor's Office." In addition, all such materials shall bear the Creative Commons CC BY symbol below. Acknowledgment may be given to Grantee or the actual author(s) of the work in an appropriate manner elsewhere in the copyright material. If it is deemed necessary by either the Chancellor's Office or the Grantee that the copyright be registered with the U.S. Copyright Office, Grantee will be responsible for applying for, paying the filing fees for, and securing said copyright.



- c. All technical communications and records originated or first prepared by the Grantee or its subcontractors and subgrantees, if any, pursuant to this Work for Hire agreement, including papers, reports, charts, computer programs, and technical schematics and diagrams, and other documentation, but not including Grantee's administrative communications and records relating to this Grant Agreement, shall be delivered to and shall become the exclusive property of the Chancellor's Office and may be copyrighted by the Chancellor's Office.

- d. If it is deemed necessary by either the Chancellor's Office or the Grantee that a patent be obtained from the U.S. Patent and Trademark Office for any invention, process, machine, manufacture, or composition of matter, Grantee will be responsible for applying for, paying the filing fees for, and securing said patent. All patents for inventions, processes, machines, manufactures, or compositions of matter developed pursuant to this Grant Agreement shall be issued to the "California Community Colleges, Chancellor's Office." All products and references to patents shall be marked and designated as such as required by law. Acknowledgment may be given to Grantee or the actual inventor(s) in an appropriate manner. The Chancellor's Office agrees to grant a nonexclusive license for such intellectual property to the Grantee. Said license shall include the right to use the patent for inventions, processes, machines, manufactures, or compositions of matter derived from those created under this Grant Agreement.
- e. All trademarks and servicemarks first created, developed or acquired pursuant to this Grant Agreement shall be the property of the Chancellor's Office. If it is deemed necessary by either the Chancellor's Office or the Grantee that a trademark or servicemark be registered with state or federal agencies, Grantee will be responsible for applying for, paying the filing fees for, and securing said protection. All trademarks and servicemarks obtained pursuant to this Grant Agreement shall be issued to the "Chancellor's Office California Community Colleges" and carry the designations permitted or required by law. The Chancellor's Office agrees to grant a nonexclusive license for the use of trademarks or servicemarks created, developed or obtained under this Grant Agreement to the Grantee.
- f. In connection with any license granted pursuant to the preceding paragraphs, Grantee agrees not to permit infringement by any person, to compensate Chancellor's Office for any infringement which may occur, and to indemnify and hold harmless the Chancellor's Office for any and all claims arising out of or in connection with such license. Grantee may, with the permission of the Chancellor's Office, enter into a written sublicensing agreement subject to these same conditions.
- g. Any and all services rendered, materials, inventions, processes, machines, manufactures, or compositions of matter, and trademarks or servicemarks created, developed or produced pursuant to this Grant Agreement by subcontractors or subgrantees that create works for this Grant for Grantee are for and are the property of the Chancellor's Office. Grantee shall obtain an acknowledgement of the work for hire performed by these subcontractors or subgrantees that produce intellectual property pursuant to this Grant Agreement, and all rights, title, and interests in such property shall be assigned to the Chancellor's Office from all subcontractors or subgrantees. Grantee shall incorporate the above applicable paragraphs, modified appropriately, into its agreements with subcontractors or subgrantees that create works for this Grant. No unpaid volunteer or other person shall produce copyright materials under this Grant Agreement without entering

into a subcontract or subgrant between such person(s) and Grantee giving the Chancellor's Office the foregoing rights in exchange for the payment of the sum of at least one dollar (\$1).

## **19. Real Property and Equipment**

Where allowed by the funding source, real property and equipment (as defined in the California Community Colleges Budget and Accounting Manual, page 4.64) procured with Grant funds will be used for the purpose of the Grant in accordance with the following:

- a. Equipment with an initial purchase price in excess of \$5,000 must be appropriately tagged as purchased with funds from the particular funding source and the Grantee shall maintain an inventory of equipment purchased, including a description of the equipment, a serial or other identification number, the acquisition date, the cost of the equipment, the location of the equipment, and any ultimate disposition data. The Grantee will also adhere to all other property management procedures and property accountability requirements as published by the Chancellor's Office.
- b. If the real property or equipment is not needed full time for the purposes of the Grant, it may also be used for other purposes so long as this does not interfere with its use in carrying out the purposes of the Grant throughout the term of this Grant Agreement.
- c. Upon completion or termination of the Grant, or when real property or equipment is no longer useful or necessary for purposes of the Grant, it may be disposed of as follows:
  1. Equipment with an initial purchase price less than \$5,000 may be disposed of as the Grantee deems appropriate.
  2. If the Grant-funded project involves systemwide or regional coordination or technical assistance activities, the disposition of real property or equipment with an initial purchase price in excess of \$5,000 shall be subject to the approval of the Chancellor's Office.
  3. In all other cases, real property or equipment with an initial purchase price in excess of \$5,000 may be sold or used in another program funded by the Chancellor's Office. If the real property or equipment is sold, the proceeds of the sale shall be returned to the program funded by this Grant Agreement, or if that program has been discontinued, to another program funded by the Chancellor's Office; provided however, that the Grantee may retain \$100 or ten percent of the sale price (whichever is greater) to cover the costs of sale.



- d. Equipment purchased with federal funds shall also comply with any additional or more stringent equipment management requirements applicable to the particular federal funding source.

## **20. Surveys**

If this Grant Agreement involves a survey of community college faculty, staff, students, or administrators, Grantee shall ensure that the survey is developed, administered, tabulated, and summarized by a survey evaluator/specialist. Surveys shall conform to project goals, shall minimize the burden on the group being surveyed, and shall not collect data already available to the Grantee from the Chancellor's Office or another source.

## **21. Work by Chancellor's Office Personnel**

- a. Chancellor's Office staff will be permitted to work side by side with Grantee's staff to the extent and under conditions that may be directed by the Project Monitor. In this connection, Chancellor's Office staff will be given access to all data, working papers, subcontracts, etc., which Grantee may seek to utilize.
- b. Grantee will not be permitted to utilize Chancellor's Office personnel for the performance of services which are the responsibility of Grantee unless such utilization is previously agreed to in writing by the Project Monitor, and any appropriate adjustment in price is made. No charge will be made to Grantee for the services of Chancellor's Office employees while performing, coordinating or monitoring functions, except where an Interjurisdictional Exchange agreement has been properly executed.

## **22. Termination**

- a. Termination Option. Either party may at its option terminate this Grant Agreement at any time upon giving thirty (30) days' advance notice in writing to the other party in the manner herein specified. In such event, both parties agree to use all reasonable efforts to mitigate their expenses and obligations hereunder. In such event, the Chancellor's Office shall pay Grantee for all satisfactory services rendered and expenses incurred prior to such termination which could not by reasonable efforts of Grantee have been avoided, but not in excess of the maximum payable under the Grant Agreement as specified on the Grant Agreement Face Sheet. In such event, Grantee agrees to relinquish possession of equipment purchased for this project to the Chancellor's Office or Grantee may, with approval of the Chancellor's Office, purchase or dispose of said equipment as provided in section 19 of this Article ("Real Property and Equipment").
- b. Event of Breach. In the event of any breach of this Grant Agreement, the Chancellor's Office may, without any prejudice to any of its other legal remedies,

terminate this Grant Agreement upon five (5) days' written notice to the Grantee. In the event of such termination the Chancellor's Office may select a new grantee to proceed with the work in any manner deemed proper by the Chancellor's Office. The cost to the Chancellor's Office of having the project completed by another grantee shall be deducted from any sum due Grantee under this Grant Agreement, and the balance, if any, shall be paid to Grantee upon demand. Whether or not the Chancellor's Office elects to proceed with the project, the Chancellor's Office shall pay Grantee only the reasonable value of the services theretofore rendered by Grantee as may be agreed upon by the parties or determined by a court of law.

- c. **Gratuities.** The Chancellor's Office may, by written notice to Grantee, terminate the right of Grantee to proceed under this Grant Agreement if it is found, after notice and hearing by the Chancellor or his or her duly authorized representative, that gratuities were offered or given by Grantee or any agent or representative of Grantee to any officer or employee of the Chancellor's Office with a view toward securing a grant or securing favorable treatment with respect to awarding or amending or making a determination with respect to the performance of such grant.

In the event this Grant Agreement is terminated as provided herein, the Chancellor's Office shall be entitled to (1) pursue the same remedies against Grantee as it could pursue in the event of the breach of the Grant Agreement by the Grantee, and (2) exemplary damages in an amount which shall be not less than three nor more than ten times the cost incurred by Grantee in providing any such gratuities to any such officer or employee, as a penalty in addition to any other damages to which it may be entitled by law.

The rights and remedies provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Grant Agreement.uu

### **23. Waiver**

No waiver of any breach of this Grant Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Grant Agreement shall be taken and construed as cumulative; that is, in addition to every other remedy provided therein or by law. The failure of the Chancellor's Office to enforce at any time any of the provisions of this Grant Agreement, or to require at any time performance by Grantee 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 Grant Agreement or any part thereof or the right of Chancellor's Office to thereafter enforce each and every such provision.

**24. Workers' Compensation Insurance**

Grantee hereby warrants that it carries Workers' Compensation Insurance for all of its employees who will be engaged in the performance of this Grant Agreement, or is self-insured in accordance with the provisions of Labor Code section 3700, and agrees to furnish to the Chancellor's Office satisfactory evidence thereof at any time the Project Monitor may request.

**25. Law Governing**

It is understood and agreed that this Grant Agreement shall be governed by the laws of the State of California both as to interpretation and performance; venue of any action brought with regard to this Grant Agreement shall be in Sacramento County, Sacramento, California.

**26. Participation in Grant-Funded Activities**

- a. During the performance of this Grant Agreement, Grantee and its subcontractors or subgrantees shall ensure that no person is excluded from, denied the benefits of, or otherwise subjected to discrimination with respect to participation in, any program or activity funded under this Grant Agreement on the basis of ethnic group identification, national origin, religion, age, sex, race, color, ancestry, sexual orientation, or physical or mental disability, or on the basis of these perceived characteristics or based on association with a person or group with one or more of these actual or perceived characteristics.
- b. Programs funded by this Grant Agreement should not be designed, administered, or advertised in a manner that discourages participation on any of the bases set forth above. Any informational, advertising, or promotional materials regarding such programs may not include any statements to the effect that a program is for, or designed for students of a particular race, color, national origin, ethnicity or gender. In the event that mentoring or counseling services are provided with funding provided by this Grant Agreement, students may not be paired with mentors or counselors based solely upon the race, color, national origin, ethnicity or gender of the students, mentors, or counselors. The Chancellor's Office may, by written approval of the Chancellor, grant an exception to the requirements of this paragraph where Grantee provides documentation clearly demonstrating that designing a program for a particular group of students is justified under applicable legal standards as a remedy for past discrimination.

**27. Curriculum Development**

If this Grant Agreement involves the development of new college curriculum, the following shall apply:

- a. All courses initiated or substantially modified as a result of activities supported by this Grant Agreement must comply with all applicable provisions of subchapter 1 of chapter 6 of division 6 of title 5 of the California Code of Regulations (commencing with section 55000), including but not limited to, section 55002, which defines standards for degree-applicable credit, non-degree-applicable credit, and noncredit courses. All such courses must be reviewed through the appropriate processes as described in the Program and Course Approval Handbook published by the Chancellor's Office.
- b. All programs (certificates or degrees) initiated or substantially modified as a result of activities supported by this Grant Agreement must be approved at the appropriate level and through the appropriate process as described in subchapter 1 (commencing with section 55000) and subchapter 2 (commencing with section 55100) of chapter 6 of division 6 of title 5 of the California Code of Regulations and the Program and Course Approval Handbook published by the Chancellor's Office.
- c. The fact that the Chancellor's Office has awarded funding through this Grant Agreement to support the development of new curriculum shall not be construed to constitute endorsement or approval of the resulting curriculum or to guarantee or affect the outcome of the curriculum review and approval process.

## **28. Eligibility for Noncitizens**

Funds provided under this Grant Agreement shall only be used to employ, contract with, or provide services to citizens of the United States or noncitizens who are eligible to receive public benefits pursuant to section 401 (with respect to federally funded activities) or section 411 (with respect to state funded activities) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193, codified at 42 U.S.C. §§ 601 and 611, respectively). Grantee certifies that all of its employees and/or subcontractors or subgrantees are qualified pursuant to these provisions.

## **29. Nondiscrimination Clause**

- a. During the performance of this Grant Agreement, Grantee and its subcontractors or subgrantees shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of ethnic group identification, national origin, religion, creed, age (over 40), sex, race, color, ancestry, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer and genetic characteristics), or on the basis of these perceived characteristics or based on association with a person or group with one or more of these actual or perceived characteristics, marital status, denial of family care leave, political affiliation, or position in a labor dispute. Grantee and subcontractors or subgrantees shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

- b. Grantee and its subcontractors or subgrantees shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, §§ 12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, §§ 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in chapter 5 of division 4 of title 2 of the California Code of Regulations are incorporated into this Grant Agreement by reference and made a part hereof as if set forth in full.
- c. Grantee and its subcontractors or subgrantees shall also comply with the provisions of Government Code sections 11135-11139.8, and the regulations promulgated thereunder by the Board of Governors of the California Community Colleges (Cal. Code Regs., tit. 5, §§ 59300 et seq.); provided, however, that if Grantee or any subgrantee or subcontractor is not a community college district the references in the regulations of the Board of Governors to "the district" shall be deemed to refer to the Grantee, subgrantee or subcontractor and references to the "district governing board" shall be deemed to refer to the management or governing body of the Grantee, subgrantee or subcontractor.
- d. Grantee and its subcontractors or subgrantees shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- e. Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontract or subgrant agreements to perform work under this Grant Agreement.

**30. Accessibility for Persons with Disabilities**

- a. By signing this Grant Agreement, Grantee assures the Chancellor's Office that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
- b. Grantee shall, upon request by any person, make any materials produced with Grant funds available in braille, large print, electronic text, or other appropriate alternate format. Grantee shall establish policies and procedures to respond to such requests in a timely manner.
- c. All data processing, telecommunications, and/or electronic and information technology (including software, equipment, or other resources) developed, procured, or maintained by Grantee, whether purchased, leased or provided under some other arrangement for use in connection with this Grant Agreement, shall comply with the regulations implementing Section 508 of the Rehabilitation Act of 1973, as amended, set forth at 36 Code of Federal Regulations, part 1194.

- d. Design of computer or web-based materials, including instructional materials, shall conform to guidelines of the Web Access Initiative (see <http://www.w3.org/TR/WAI-WEBCONTENT/>) or similar guidelines developed by the Chancellor's Office.
- e. Grantee shall respond, and shall require its subcontractors and subgrantees to respond to and resolve any complaints regarding accessibility of its products and services as required by this section. If such complaints are not informally resolved, they shall be treated and processed as complaints of discrimination based on disability pursuant to California Code of Regulations, title 5, sections 59300 et seq.; provided, however, that if Grantee or any subgrantee or subcontractor is not a community college district the references in the regulations of the Board of Governors to "the district" shall be deemed to refer to the Grantee, subgrantee or subcontractor and references to the "district governing board" shall be deemed to refer to the management or governing body of the Grantee, subgrantee or subcontractor.
- f. Grantee and its subcontractors and subgrantees shall indemnify, defend, and hold harmless the Chancellor's Office, its officers, agents, and employees, from any and all claims by any person resulting from the failure to comply with the requirements of this section.
- g. Grantee shall incorporate the requirements of this section into all subcontract or subgrant agreements to perform work under this Grant Agreement.

### **31. Drug-Free Workplace Certification**

By signing this Grant Agreement, the Grantee hereby certifies under penalty of perjury under the laws of the State of California that the Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Gov. Code. §§ 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
  - 1. The dangers of drug abuse in the workplace;
  - 2. The organization's policy of maintaining a drug-free workplace;
  - 3. Any available counseling, rehabilitation, and employee assistance programs; and,

4. Penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works under the Grant will:
1. Receive a copy of the Grantee's drug-free policy statement; and,
  2. Agree to abide by the terms of the Grantee's policy statement as a condition of employment under the Grant.

Failure to comply with these requirements may result in suspension of payments under the Grant Agreement or termination of the Grant Agreement or both and Grantee may be ineligible for award of any future state grants if the Chancellor's Office determines that any of the following has occurred: (1) Grantee has made false certification, or (2) violated the certification by failing to carry out the requirements as noted above.

### **32. Captions**

The clause headings appearing in this Grant Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the clauses to which they appertain.

### **33. Indemnification**

Grantee agrees to indemnify, defend and save harmless the State, the Board of Governors of the California Community Colleges, the Chancellor's Office, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all employees, subcontractors, subgrantees, suppliers, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with performance of this Grant Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Grantee in the performance of this Grant Agreement. Such defense and payment will be conditional upon the following:

- a. The Chancellor's Office will notify Grantee of any such claim in writing and tender the defense thereof within a reasonable time; and
- b. Grantee will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that:
  1. When substantial principles of government or public law are involved, when litigation might create precedent affecting future Chancellor's Office operations or liability, or when involvement of the Chancellor's Office is otherwise mandated by law, the Chancellor's Office may participate in

such action at its own expense with respect to attorneys' fees and costs (but not liability);

2. The Chancellor's Office will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and
3. The Chancellor's Office will reasonably cooperate in the defense and in any related settlement negotiations.

**34. Independent Status of Grantee**

The Grantee, and the agents and employees of Grantee, in the performance of this Grant Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California or the Chancellor's Office.

**35. Grant Agreement is Complete**

No amendment, alteration or variation of the terms of this Grant Agreement shall be valid unless made in writing, signed by the parties, and approved as required. No oral understanding or agreement not incorporated in this Grant Agreement is binding on any of the parties.

**36. Union Organizing**

Grantee, by signing this Grant Agreement, hereby acknowledges the applicability of Government Code section 16645.2 to this Grant Agreement, and hereby certifies that none of the Grant funds will be used to assist, promote or deter union organizing.

If Grantee incurs costs, or makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and Grantee shall provide those records to the Attorney General upon request.

**37. Debarment, Suspension, and Other Responsibility Matters**

If this Grant Agreement is funded in whole or in part with federal funds, Executive Order 12549, Debarment and Suspension, and the implementing regulations set forth at 34 Code of Federal Regulations part 85, require that prospective participants in covered transactions, as defined at 34 Code of Federal Regulations part 85, sections 85.105 and 85.110, provide the certification set forth in paragraph a. or the explanation required by paragraph b. below.

- a. By signing this Grant Agreement, Grantee hereby certifies under penalty of perjury under the laws of the State of California that Grantee and its principals:



1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  2. Have not within a three-year period preceding this Grant Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph 8(a)(2) of this certification; and
  4. Have not within a three-year period preceding this Grant Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.
- b. Where Grantee is unable to certify to any of the above statements, Grantee shall attach an explanation to the face sheet for this Agreement.

Exhibit C: Statement of Work – Spreadsheets Attached