

INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the 17th day of December, 2014 by and between the Solano Community College District, ("District") and Dovetail ("Consultant"), (together, "Parties").

NOW, THEREFORE, the Parties agree as follows:

Services. The Consultant shall provide Program Level Furniture, Fixtures and Equipment, and (FF&E) Consulting Services as further described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services").

1. **Term.** Consultant shall commence providing services under this Agreement on December 18, 2014 and will diligently perform as required and complete performance by December 31, 2015, unless this Agreement is terminated and/or otherwise cancelled prior to that time.
2. **Submittal of Documents.** The Consultant shall not commence the Services under this Agreement until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<u> X </u>	Signed Agreement
<u> X </u>	Workers' Compensation Certification
<u> X </u>	Insurance Certificates and Endorsements
<u> X </u>	W-9 Form
<u> </u>	Other: _____

3. **Compensation.** District agrees to pay the Consultant for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed One-Hundred-Thirty-Seven-Thousand Dollars (\$137,000.00). District shall pay Consultant according to the following terms and conditions:
 - 3.1. Payment for the Work shall be made for all undisputed amounts based upon the delivery of the work product as determined by the District. Payment shall be made within thirty (30) days after the Consultant submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made. The schedule of deliverable Services to be produced is as follows:
4. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing services for District, except as follows:
 - 4.1. Not applicable.
5. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees. In the performance of the work herein contemplated, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.

6. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows:

6.1. Not applicable.

7. **Performance of Services.**

7.1. **Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California community college districts.

Consultant shall carefully study and compare all documents, findings, and other instructions and shall at once report to District, in writing, any error, inconsistency, or omission that Consultant or its employees may discover. Consultant shall have responsibility for discovery of errors, inconsistencies, or omissions.

7.2. **Meetings.** Consultant and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.

7.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.

7.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.

8. **Originality of Services.** Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.

9. **Copyright/Trademark/Patent.** Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

10. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data

related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.

11. Termination.

11.1. **For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three days after the day of mailing, whichever is sooner.

11.2. **For Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

11.2.1. material violation of this Agreement by the Consultant; or

11.2.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or

11.2.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another Consultant. If the expense, fees, and/or costs to the District exceed the cost of providing the service pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

12. **Indemnification.** To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Contractor. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the indemnified parties.

13. Insurance.

13.1. The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
Professional Liability	\$ 1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

13.1.1. **Commercial General Liability and Automobile Liability Insurance.**

Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Consultant, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

13.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

13.1.3. **Professional Liability (Errors and Omissions).** Professional Liability Insurance as appropriate to the Consultant's profession, coverage to continue through completion of construction plus two (2) years thereafter.

13.2. **Proof of Carriage of Insurance.** The Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

13.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

13.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

13.2.3. An endorsement stating that the District and its Governing Board, agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An

endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District. An endorsement shall also state that there shall be a waiver of any subrogation.

13.2.4. All policies except the Professional Liability, Workers' Compensation Insurance, and Employers' Liability Insurance Policies shall be written on an occurrence form.

13.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

14. **Assignment.** The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant.

15. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Consultant observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.

16. **Certificates/Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement.

17. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.

18. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, the Consultant agrees to require like compliance by all of its subcontractor(s).

19. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

20. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:

20.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.

20.2. Announced and unannounced observance of Consultant, Consultant's employee(s),

and/or subcontractor(s).

21. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
22. **Confidentiality.** The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
23. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

District:

Solano Community College District
C/O Kitchell
360 Campus Lane, Suite 203
Fairfield, California 94534
ATTN: Ines Zildzic

Consultant:

Dovetail
237 Crescent Road, Suite 4
San Anselmo, California 94960
FAX: (415) 485-1192
ATTN: Stephanie O'Brien

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

24. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
25. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.
26. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
27. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

- 28. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.

- 29. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

- 30. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

- 31. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

- 32. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

- 33. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.

- 34. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

- 35. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

Dated: _____, 20____ Dated: _____, 20____

Solano Community College District _____

By: _____ By: _____

Print Name: _____ Print Name: _____

Print Title: _____ Print Title: _____

Information regarding Consultant:

License No.: _____
Address: 237 Crescent Road, Suite 4
San Anselmo, CA 94960
Telephone: (415) 485-1196
Facsimile: (415) 485-1192
E-Mail: sobrien@thinkdovetail.com

Type of Business Entity:
 Individual
 Sole Proprietorship
 Partnership
 Limited Partnership
 Corporation, State: _____
 Limited Liability Company
 Other: C-Corporation

Federal Tax ID # 42-1572092:
Employer Identification and/or
Social Security Number

NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires the Contractor to furnish the information requested in this section.

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides:

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

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.

- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing satisfactory proof to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

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

Date: _____

Name of Consultant: _____

Signature: _____

Print Name and Title: _____

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Work under this Contract.)

EXHIBIT "A"
DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT

- 1.1. The consultant's scope of work for Program Level Furniture, Fixtures and Equipment (FF&E) Consulting Services includes:
 - 1.1.1. Review SCCD Furniture Functional Inventory part of District's Facilities Master Plan.
 - 1.1.2. Develop program level FF&E Performance Specifications for Standard and non-Standard FF&E products that the District will purchase for all future capital improvement projects. Develop program level FF&E Performance Specifications, which shall define the District's expectations for the product providers and take into account the needs and perspective of the Campus FF&E user group committee, and reflect the goals of the District in its acquisition of FF&E.
 - 1.1.2.1. Meetings preparation, attendance, preparation of meeting agendas and meeting notes pertinent to all user group meetings as part of the FF&E Program Level consulting service.
 - 1.1.2.2. Assist the District in defining criteria and expected performance of FF&E to address and overcome the major concerns for FF&E, without specifying FF&E name brand or manufactures.
 - 1.1.2.3. Prioritize FF&E criteria to achieve specific objectives in the selection and acquisition of FF&E.
 - 1.1.2.4. Prepare FF&E product performance specification applications that can be used by the District to evaluate for selection of a wide range of standard and non-standard FF&E products.
 - 1.1.3. Develop Strategic Sourcing Protocol for all FF&E items.
 - 1.1.3.1. Assist the District in defining a strategy to procure, maintain, and replace investments in FF&E.
 - 1.1.3.2. Define Operational issues and challenges that may be created by developing sourcing protocol and devise an effective plan to mitigate such challenges.
 - 1.1.3.3. Analysis and development of Strategic Sourcing Protocol to account for District policy, State Procurement Code, Community and User Group committee expectations, regarding expenditures of bond resources, and the operational limitations of the Purchasing and Facilities departments.
 - 1.1.3.4. Develop clear decision making protocols, principles, and processes for product selection, vendor expectations, procurement vehicles, strategies by product type, and the District's goals for return on investment in FF&E.

- 1.1.3.5. Work with FF&E User Group committee to interview key District Support personnel and identify costly challenges in the sourcing and implementation process for FF&E.
- 1.1.3.6. Review Board policies, state and local codes to confirm procurement parameters.
- 1.1.3.7. Review and evaluate product options against FF&E criteria and finalize documentation of sourcing protocol.
- 1.1.3.8. Track compliance and results of sourcing protocol.
- 1.1.4. Construct an effective FF&E Project Implementation Process.
 - 1.1.4.1. Assist the District with developing an approach to integrating FF&E into the design and planning of capital improvement projects for the District. Develop framework and structure for project Architects, Designers, and User Groups to integrate FF&E in the design process to achieve cost savings.
 - 1.1.4.2. Assist District with identifying critical requirements of FF&E in the design process to address code compliance, interface of utilities, DSA reviews, and developing budgets to achieve long-range goals for the bond program.
 - 1.1.4.3. Prepare budgeting tools which incorporate desired level of quality and performance, and apply FF&E budgets to projects as part of overall project budgets. Assist and review FF&E project budgeting for overall spending plan.
 - 1.1.4.4. Assist District with developing internal protocols for managing the process with building user groups and key District support teams to assure milestones are achieved. Monitor decision making process to ensure appropriate information is made available as needed to make quality decisions consistent with the implementation plan.
- 1.1.5. Develop District wide FF&E Standards and assist District with evaluation and selection of FF&E consistent with standards.
 - 1.1.5.1. Assist District with standardizing major FF&E product types to achieve economies of scale, efficiencies in purchasing, quality of experienced manufacturers and their service providers, streamline selections and purchases, and provide consistency across all campuses.
 - 1.1.5.2. Create complete list of product types needed within the District.
 - 1.1.5.3. Utilize performance specifications and engage manufacturers to address FF&E criteria.
 - 1.1.5.4. Assist and support District staff in purchasing approaches as defined in Strategic Sourcing program.
 - 1.1.5.5. Assist District with evaluation of product recommendations and selection of product types.

- 1.1.5.6. Create finish standards that apply to the wide range of product applications and campus locations.
- 1.1.5.7. Assist District in making sure each product type is functional upon installation.
- 1.1.5.8. Develop methods for addressing vendor or product changes over time.
- 1.1.6. Assist District with developing campus Space Standards.
 - 1.1.6.1. Work with other design professionals hired by the District to develop space standards where FF&E may impact space requirements and/or utility needs.
 - 1.1.6.2. Assist district with developing standards for administrative offices, cubicles, support areas, faculty offices, dean's offices, meeting rooms, classrooms, technology rooms, laboratories, workrooms and other typical rooms.
 - 1.1.6.3. Review FF&E floor plan layouts provided by Architects/Engineers (A/E) teams to verify conformance with District-wide specific FF&E Standards and interface of data/electrical points to best facilitate FF&E installations.
- 1.1.7. Provide Strategies for Non-Standard Requirements
 - 1.1.7.1. Identify Provide guidance and recommendations for specialty application fixtures and/or equipment for unique projects or FF&E items that do not apply across the entire campus, but need to fit within the standards for performance and finishes.
- 1.1.8. Manage FF&E on a program level providing guidance and creating a structure that can be replicated for each project in the measure Q bond program, resulting in savings to the District.
- 1.1.9. Assist District in developing Plan for replacement cycles for FF&E.