

MT. SAN ANTONIO COMMUNITY COLLEGE DISTRICT

**PROFESSIONAL SERVICES AGREEMENT
[INSERT GENERAL DESCRIPTION OF AGREEMENT]**

[INSERT CONTRACTOR'S NAME]

This Professional Services Agreement ("Agreement") is between Mt. San Antonio Community College District ("District"), a California community college district and political subdivision of the State of California, and **[INSERT NAME OF CONTRACTOR]** ("Contractor"), a **[INSERT TYPE OF ENTITY/JURISDICTION OR IF AN INDIVIDUAL INSERT "an individual residing in the state of" AND INSERT STATE OF RESIDENCE]**. District and Contractor are also referred to collectively as the "Parties" and individually as "Party."

WHEREAS, District is authorized by Section 53060 (see Appendix 14) of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if such persons are specially trained and experienced and competent to perform the special services required; and

WHEREAS, District is in need of such special services and advice; and

WHEREAS, Contractor is specially trained and experienced and competent to perform the special services required by the District, and such services are needed on a limited basis;

NOW, THEREFORE, in consideration of these mutual promises, the Parties agree as follows:

1. Scope of Service. Contractor's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession. Services to be provided by Contractor ("Work"): **[INSERT DESCRIPTION OF WORK]**.
2. Term. This Agreement shall commence on **[INSERT START DATE]**, and shall continue in full force and effect thereafter until and including **[INSERT END DATE]** ("Term"), unless this Agreement is terminated during the Term pursuant to this Agreement.
3. Payment.
 - A. Amount of Compensation. District agrees to pay Contractor, as full consideration and compensation for Contractor's performance of the Work under this Agreement, a total amount not to exceed **[INSERT DOLLAR AMOUNT SPELLED OUT] Dollars (\$[INSERT NUMERICAL DOLLAR AMOUNT])** ("Contract Amount").
 - B. For Reimbursement of Expenses. Unless otherwise agreed upon by District in writing or specifically provided in this Agreement, Contractor shall assume and pay, at Contractor's sole expense, all costs and expenses incurred by Contractor in performing the Work under this Agreement ("Expenses").
 - C. Method and Schedule of Payment. District shall pay to Contractor the Contract Amount pursuant to invoice from Contractor in accordance with this Agreement.
 - i. Invoice. Contractor shall submit to District detailed billing information regarding the Work provided for the billing period, not more than once per month, and, **if applicable, District-authorized Expenses** incurred during the billing period. All **District-authorized Expenses** shall be documented **with original itemized receipts** and shall be **pre-approved in writing by District**, unless such expenses are specifically authorized by this Agreement. Invoices must be emailed to AccountsPayable@mtsac.edu and shall include the invoice date, date(s) of service(s), District's Purchase Order number (if available), and Contractor's Taxpayer Identification Number. Invoices shall be paid on a "net 30-day basis" for Work satisfactorily rendered (as determined by the District) pursuant to this Agreement. An invoice cannot be paid unless this Agreement has been signed by Contractor and has been properly executed by District, and Contractor has submitted a completed Vendor Form/Substitute Form W-9 to District's Contract and Procurement Services Department.
4. California State Tax Withholding for Nonresidents of California. It is mutually understood that if Contractor is a Nonresident of California, which may include California Nonresidents, corporations, limited liability companies, non-profits, and partnerships that do not have a permanent place of business in the State of California, the District is obligated to abide by California Franchise Tax Board (FTB) withholding requirements. The District is required to withhold from all payments or distributions of California source income made to a Nonresident when payments or distributions are greater than One Thousand Five Hundred Dollars (\$1,500) for the calendar year unless the District receives authorization for a waiver or a reduced withholding rate from the Franchise Tax Board. As of January 1, 2008, the standard withholding amount for all payments to Nonresident California Contractors is Seven Percent (7%). District will deduct the amount ordered by the State of California from the payment hereunder

and will pay such amount directly to the Contractor's California State Income Tax Account, settlement of which must be made by Contractor directly with the State of California through Withholding Coordinator, Franchise Tax Board, PO Box 651, Sacramento, California, 95812-0651; telephone (916) 845-6262. Completion and submission of the appropriate form shall be the obligation of the Nonresident Contractor and Contractor shall defend, indemnify and hold harmless the District against any loss, expense, or liability arising out of Contractor's acts or omissions with respect to this nonresident requirement. Contractor shall provide all necessary documentation and information to help District comply with all tax requirements related to California nonresidents.

5. Trademark/Logo Use. Contractor must obtain written approval from District's Public Information Office ("PIO") to use the District's name and/or logos in any advertisements, promotions, press releases or other media. In the event such permission is extended, PIO will furnish Contractor with camera-ready artwork for such use. District, at its sole discretion, may limit or otherwise place conditions on Contractor's use of District's name, and/or logos in which case such limitations shall be incorporated into this Agreement. Contractor shall not revise, change, or otherwise alter any material related to District's name and/or logo without written consent from District.

6. Independent Contractor. In the performance of the Work herein contemplated, Contractor 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. Contractor, in the performance of this Agreement, shall be and act as an independent Contractor and not an employee of District. Contractor, understands and agrees that he/she and all of his/her employees shall not be considered officers, employees or agents 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. Contractor assumes the full responsibility his/her acts and/or liabilities including those of his/her employees or agents as they relate to the services to be provided under this Agreement. Contractor shall assume full responsibility for withholding and payment of all: federal, state, local and applicable income taxes; workers' compensation; contributions, including but not limited to, unemployment insurance and social security with respect to Contractor and Contractor's employees. Contractor should be aware the IRS regulations require District to report total income exceeding six hundred dollars (\$600) under this and any additional Agreements in any given year. The District will not withhold taxes, unemployment insurance or social security for Contractor or Contractor's employees or independent subContractors. Contractor agrees to indemnify and hold District harmless from and against any and all liability arising from any failure or alleged failure of Contractor to withhold or pay any applicable tax, unemployment insurance or social security when due or any failure or alleged failure to comply with any applicable regulation applicable to Contractor's employees.

7. Use of SubContractors. Contractor must obtain District's prior written approval to use any subContractors while performing any portion of this Agreement and such approval may be conditioned on approval of the subcontract between Contractor and subContractor. Such approval must include approval of the proposed subContractor and the terms of compensation. District retains the right to obtain copies of subContractor insurance coverage at any time. Nothing in this Section shall be interpreted as creating a contractual relationship between District and any approved subContractor. Notwithstanding District's approval of any subContractor's contract, Contractor shall remain solely responsible for any harm, damage, or claim arising from any subContractor's acts or omissions as set forth in Section 13.

8. Public Retirement System Retirees. Contractor must disclose to District if Contractor has retired from the California State Teachers' Retirement System ("CalSTRS") or the California Public Employees' Retirement System ("CalPERS"). Pursuant to California Education Code Section 24214 and 24214.5, there are postretirement limitations on earnings if Contractor has retired from CalSTRS and hours worked limitations if Contractor has retired from CalPERS. If Contractor has retired from either CalSTRS or CalPERS, Contractor should be aware that the District is required to report all payments under this and any additional Agreements in any given year (July 1 – June 30).

CalSTRS or CalPERS: _____ Agency Retired From: _____ Date Retired: _____ D.O.B.: _____

9. Materials and Expenses. Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the Work to be provided pursuant to this Agreement. District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing Work for District.

10. Policies & Procedures and Rules & Regulations. Contractor will review and comply with District's policies, procedures, rules and regulations and applicable laws posted on District's website at:
<https://www.mtsac.edu/governance/trustees/apbp/index.html>

11. Originality of Services.

A. Matters Produced Under this Agreement. Contractor 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. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

- B. Contractor Use of Other Copyright/Trademark/Patent Materials. Contractor is responsible for arranging and paying for all rights and copyrights necessary and for all costs arising from the use of any material covered by copyright, patent, trademark or franchise. Contractor agrees to indemnify, defend and hold harmless the District from any claims or costs, including legal fees, which might arise from questionable use of any such material. The District reserves the right to require verification.

12. Termination. This Agreement shall terminate upon expiration of the Term. Any termination of this Agreement during the Term shall be in accordance with the following:

- A. Termination for Convenience. During the Term of this Agreement, District may terminate this Agreement at any time at its convenience and without cause, upon providing Contractor at least ten (10) days written notice before the effective date of termination. Upon such termination by District, Contractor shall only be entitled to payment for all Work provided, rendered, and received by District prior to the date of termination and in no event shall Contractor be entitled to any payment or reimbursement as the result of District's termination.
- B. Other Grounds. Notwithstanding any provisions in this Agreement, District, at District's sole discretion and upon written notice to Contractor, shall have the right to terminate this Agreement effective on the date stated in District's written notice in the event District determines, at its sole discretion, that Contractor (i) is unable or unwilling to perform the Work or meet any obligation or duty as described or made necessary by the Agreement, (ii) changes the nature of its business so that it is not compatible with the mission or needs of the District or is involved in any incident or activity which embarrasses, creates unwelcome scrutiny or attention, or otherwise causes or threatens harm to the reputation of the District, or (iii) fails to comply with federal, state, and/or local laws applicable to Contractor's performance of the Work under this Agreement.

13. Indemnification. Contractor agrees to defend, hold harmless and indemnify District, its parent, affiliates, subsidiaries, authorized representatives, directors, officers, agents and employees against any and all liability for any judgments, awards, expenses, fines, penalties, attorneys' fees, costs, or other claims for damages in connection with any suit, complaint, charge, proceeding or action of any kind alleging a violation of any statutory or regulatory provision or otherwise arising out of the negligent act or willful misconduct by Contractor, of its duties and responsibilities under this Agreement, unless such performance or nonperformance occurred at the direction of or was caused by District. This hold harmless and indemnification includes but is not limited to compensatory damages, punitive damages, regulatory fines and penalties, and extra-contractual liability and shall survive the termination of this Agreement.

14. Insurance. Contractor agrees to maintain, in full force and effect, at Contractor's expense, the following insurance coverages from an admitted carrier in the State of California with a Best Rating of A-VII or higher: (i) Commercial General Liability insurance, with limits of not less than One Million Dollars (\$1,000,000) per occurrence including bodily injury, broad form property damage and blanket contractual liability, written on an "occurrence" form; (ii) Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000); (iii) Employer's Liability with limits of not less than One Million Dollars (\$1,000,000) per occurrence; (iv) Workers' Compensation insurance as required by statutory insurance requirement of the State of California; and (v) Automobile Liability covering all owned, non-owned and hired vehicles with combined single limit for bodily injury and/or property damage of not less than One Million Dollars (\$1,000,000).

Contractor agrees to name District, District's Board of Trustees, its officers, agents, and employees as Additional Insured under its policy(ies). Contractor shall deliver Certificate(s) of Insurance and Additional Insured Endorsement(s) evidencing the required coverages to the District, which shall be subject to the District's approval for adequacy of protection. The Certificate(s) of Insurance shall provide thirty (30) days prior written notice of cancellation. All certificates and endorsements must be furnished before Work is to commence.

District's receipt of documents that do not comply with the requirements stated herein, or Contractor's failure to provide documents that comply with the requirements stated herein, shall not limit or relieve Contractor of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section and shall not constitute a waiver of any of the requirements in this Section.

15. Transportation. Contractor hereby acknowledges and understands that it is his/her responsibility to arrange for transportation to provide all Work necessary and/or required by this Agreement and is solely responsible for all associated costs. The District is in no way responsible for, nor does District assume any liability for, any injury or loss which may result from Contractor's transportation for which the Contractor shall indemnify the District in accordance with Section 13 above.

16. Assignment. The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor without the express, written approval of the District.

17. Compliance with Applicable Laws. The Work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection to secure the satisfactory completion thereof. Contractor agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to Contractor, Contractor's business, equipment and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations ("Rules"). If District disapproves of any service provided by Contractor, or if Contractor fails to

comply with any applicable Rule, Contractor shall address the issue immediately at no additional cost to District.

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

19. Professional Practices. All Work provided pursuant to this Agreement shall be provide in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professionals in similar fields and circumstances in accordance with sound professional practices.

20. Confidentiality. Subject to any state or federal laws requiring disclosure (e.g., the California Public Records Act), the Parties agree, during the term of this Agreement and for five (5) years after termination or expiration of Agreement, to hold each other's proprietary or confidential information in strict confidence, except for any information protected under confidentiality laws which shall be held in such confidence in perpetuity. Parties agree not to provide each other's proprietary or confidential information in any form to any third party or to use each other's proprietary or confidential information for any purpose other than the implementation of, and as specified in, this Agreement. Each Party agrees to take all reasonable steps to ensure that proprietary or confidential information of either Party is not disclosed or distributed by its employees, agents or Contractors in violation of the provisions of this Agreement.

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

22. Entire Agreement/Amendment. The Agreement documents consist of this Agreement, any exhibits attached to or referenced herein, and all amendments and/or modifications issued in writing, duly approved by District's Board of Trustees, and executed by the Parties after the release of this Agreement. Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (a) provisions set forth in this Agreement, (b) provisions set forth in any referenced attachments or exhibits to this Agreement attached or incorporated herein by reference.

23. Non-Discrimination. Contractor agrees not to engage in unlawful discrimination in the provision of Work, allocation of benefits, accommodation in facilities, employment of persons, or in the acceptance, assignment, treatment, evaluation or compensation of students who participate in programs sponsored or arranged by District, on the basis of race, color, religion, genetic information, nationality, national origin, ancestry, pregnancy, sex, gender, gender identity, gender expression, ethnicity, age, medical condition, mental or physical disability, marital status, sexual orientation, military or Vietnam-era veteran status, or any other characteristic protected by law.

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

25. Force Majeure. Neither Party shall be deemed in default or in violation of this Agreement if prevented from performing any obligation hereunder for any circumstance or reason beyond its control, including, without limitation, acts of God or of the public enemy, governmental restrictions or regulations, epidemics or pandemics, flood, storm, strikes, regulatory or legal delay or restraint. In this event, all or a portion of either Party's performance is rendered impossible, the Parties shall cooperate with each other and use their best efforts to remove the impediment or develop a substitute manner of performance.

26. 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.

27. Exhibits. All exhibits referenced herein and attached hereto shall be deemed incorporated into and made a part of this Agreement by each reference as though fully set forth in each instance in the text hereof.

28. Interpretation. In interpreting this Agreement, it shall be deemed to have been prepared by the Parties jointly, and no ambiguity shall be resolved against District on the premise that it or its attorneys were responsible for drafting this Agreement or any provision hereof. The captions or heading set forth in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any Sections or other provisions of this Agreement. Any reference in this Agreement to a Section, unless specified otherwise, shall be a reference to a Section of this Agreement.

29. Conflict of Interest. Contractor hereby represents, warrants and covenants that (i) at the time of execution of this Agreement, Contractor has no interest and shall not acquire any interest in the future, whether direct or indirect, which would conflict in any manner or degree with the performance of Work under this Agreement; (ii) Contractor has no business or financial interests which are in conflict with Contractor's obligations to District under this Agreement; and (iii) Contractor shall not employ in the performance of Work under this Agreement any person or entity having any such interests.

30. Governing Law. The terms and conditions of this Agreement shall be governed by the laws of the State of California with venue in Los Angeles, California.

31. Authority to Execute. The individual(s) executing this Agreement on behalf of the Contractor is/are duly and fully authorized to execute this Agreement on behalf of Contractor and to bind the Contractor to each and every term, condition and covenant of this Agreement.

32. Approval by District's Board of Trustees. Pursuant to Education Code Section 81655, this Agreement is not valid and does not constitute an enforceable obligation against District unless and until District's Board of Trustees has approved or ratified this Agreement as evidenced by a motion duly passed and adopted by the Board of Trustees.

33. Time is of the Essence. Time is of the essence with respect to all provisions of this Agreement.

34. Accessibility of Information Technology. Contractor hereby warrants that the Work to be provided under this Agreement complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C §794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products brought to its attention. Contractor further agrees to indemnify and hold harmless the Mt. San Antonio Community College District, the Chancellor's Office of the California Community Colleges and any California community college using the Contractor's products from any claim arising out of its failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of this Agreement.

35. Certification Regarding Debarment, Suspension or Other Ineligibility. (applicable to all agreements funded in part or whole with federal funds).

- A. By executing this contractual instrument, Contractor agrees to comply with applicable federal suspension and debarment regulations, including, but not limited to, regulations implementing Executive Order 12549 (29 C.F.R. Part 98) (see Appendix 15).
- B. By executing this contractual instrument, Contractor certifies to the best of its knowledge and belief that it 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 the execution of this contractual instrument, been convicted of, or had a civil judgment rendered against them, for: (a) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) or private transaction or contract; (b) Violation of Federal or State antitrust statutes; (c) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or (d) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects Contractor's present responsibility;
 - 3) Are not presently indicted for, or otherwise criminally or civilly charged by any government entity (Federal, State or Local), with commission of any of the offenses enumerated in B.2) above, of this certification;
 - 4) Have not, within a three-year period preceding the execution of this contractual instrument, had one or more public transaction (Federal, State or Local) terminated for cause or default;
 - 5) Shall not, except as otherwise provided under applicable federal regulations, knowingly enter into any lower tier covered transaction with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded by any federal department or agency from participation in such transaction; and
 - 6) Include in all lower tier covered transactions, and all solicitations for covered transactions, provisions substantially similar to those set forth herein.

36. Notice. All notices or other communications required or permitted under this Agreement shall be deemed duly given if in writing and delivered personally, sent via electronic mail or by a reputable overnight courier services (with package tracking capability), or sent by certified mail, return receipt requested, first class postage prepaid, addressed as follows:

District: Mt. San Antonio Community College District
Attn: Director, Purchasing
1100 N. Grand Ave.
Walnut, CA 91789
Phone: (909) 274-4245
Email: purchasing@mtsac.edu

Contractor: **[INSERT CONTRACTOR'S NAME]**
Attn: [IF BUSINESS INSERT CONTRACT PERSON'S NAME]
[INSERT ADDRESS]
[INSERT CITY, STATE, ZIP]
Phone: [INSERT PHONE NUMBER]
Email: [INSERT EMAIL ADDRESS]

A Party may change its/his/her designated representative and/or address for the purpose of receiving notices and communications

under this Agreement by notifying the other Party of the change in writing and in the manner described in this Section.

IN WITNESS WHEREOF, Parties hereby agree.

CONTRACTOR

MT. SAN ANTONIO COMMUNITY COLLEGE DISTRICT

BY: _____
 Signature of Authorized Representative

Print Name _____
 Print Title _____
 Date _____

BY: _____
 Signature of Authorized Representative

Print Name _____
MORRIS RODRIGUE

Print Title _____
VICE PRESIDENT, ADMINISTRATIVE SERVICES

Date _____
 District's Board of Trustee's
 Approval/Ratification Date _____

District Contract # _____ **[INSERT CONTRACT #]** _____