

**AMENDED AND RESTATED MASTER AGREEMENT
BY AND BETWEEN
MT. SAN ANTONIO COLLEGE
AND MT. SAC AUXILIARY SERVICES**

THIS AMENDED AND RESTATED MASTER AGREEMENT (the “Agreement”) is entered into as of this 1st day of July, 2022, by and between the Mt. San Antonio College (the “District”), and Mt. SAC Auxiliary Services (the “Auxiliary”), a California nonprofit public benefit corporation.

RECITALS

- A. The District and the Auxiliary desire to enter into this Agreement to set forth the terms of the relationship between the District and the Auxiliary, which has been established as an auxiliary organization of the District pursuant to Title 3, Division 7, and Section 72670 et seq., and Title 5, Division 6, Section 59250 et seq., of the California Code of Regulations.
- B. As required by Education Code Sections 59250 et seq., and 72670 et seq., the Board of Trustees of the District has adopted implementing regulations for auxiliary organizations which require that all auxiliary organizations enter into a written agreement with the District.
- C. The District and the Auxiliary desire to enter into this Agreement in accordance with the District’s implementing regulations regarding auxiliary organizations.

AGREEMENT

NOW, THEREFORE, the parties covenant and agree as follows:

ARTICLE I

AUXILIARY PURPOSES AND FUNCTIONS

Section 1.1. Statement Regarding Use of Auxiliary. The administration by the Auxiliary of the functions and activities described in this Agreement, instead of administration by and through the District, is deemed to be more effective in accomplishing such functions and activities than would be possible under usual governmental budgetary, purchasing and other fiscal procedures.

Section 1.2. Auxiliary Functions. Consistent with the policies and implementing regulations of the District’s governing board, the Auxiliary will maintain authority and be responsible for the following:

- (a) providing supportive services and specialized programs for the general benefit of the District;
- (b) receiving gifts, property, and funds to be used for the benefit of the District;
- (c) operating and managing the Mt. San Antonio College Bookstore;
- (d) contracting with food services to include meals, fast-food, concessions, and catering for the District;
- (e) operating athletic events at the District and to benefit the College;
- (f) contracting vendor services for the District; and
- (g) exercising any other rights and powers conferred on nonprofit public benefit corporations under the laws of the state of California which are authorized functions or activities for an auxiliary organization under the Title 5 Regulations and which are permissible functions or activities under District policies and procedures and this Agreement, as may be amended, entered into between the District and the Auxiliary.

The Auxiliary shall be operated in connection with the District as specified in Internal Revenue Code section 509(a)(3).

Section 1.3. Covenant to Maintain Existence. During the term of this Agreement, the Auxiliary agrees to maintain its existence and to operate in accordance with this Agreement and with Education Code section 72670 et. seq. and section 59250 et. seq. of Title 5 of the California Code of Regulations, as well as with District policy and the implementing regulations for auxiliary organizations adopted by the District.

ARTICLE II

ANNUAL AUDITS AND PROFESSIONAL SERVICES

Section 2.1. Attorney and Accountant Services. The board of directors of the Auxiliary shall engage at least one attorney admitted to practice law in California and at least one licensed certified public accountant to provide advice and counsel, as needed, on legal and financial matters. Neither the attorney nor the certified public accountant need be members of the board of directors of the Auxiliary.

Section 2.2. Annual Audit. The board of directors of the Auxiliary shall cause an annual fiscal audit of the Auxiliary to be conducted by a certified public accountant. This annual audit may, but need not, be conducted as part of a fiscal audit of the District. The annual audit will include a review of the internal control structure and a report of recommendations. Copies of the annual audit report and management letter comments shall be submitted to the District within thirty (30) days after it is received by the Auxiliary. The Auxiliary shall annually publish the audited statement of its financial condition. The statement shall be disseminated as widely as feasible and be available to any person on request. A reasonable fee may be charged to cover the costs of providing such copies.

Section 2.3. Annual Budget. The Auxiliary shall also prepare for the District an annual budget of its revenues and expenses. This report shall be provided to the District for the District's approval prior to the beginning of each Auxiliary fiscal year.

Section 2.4. Auxiliary Records. The Auxiliary shall keep and maintain records and accounts of its operations, financial status and program expenditures for a period of not less than five (5) years following each budget period. Such records and reports may be maintained in the District office, subject to the terms of Article III of this Agreement. Such records and reports shall cover all activities of the Auxiliary whether pursuant to this Agreement or otherwise. The District shall have the right to inspect and audit such records and accounts during and/or following the close of any Auxiliary fiscal year following reasonable notification to the Auxiliary. The District shall also have the right to take custody of all records generated by the Auxiliary in any way relating to its administration of the services, programs, functions or activities described in Section 1.2 of Article I of this Agreement. The rights and obligations provided in this Section shall survive the termination of this Agreement.

Section 2.5. Annual Statement of Benefits. The Auxiliary shall provide the District with an annual statement describing the benefits and services of the Auxiliary to the District. This report shall be presented to the Board of Trustees of the District no later than 120 days following the close of the Auxiliary's fiscal year.

ARTICLE III

USE OF DISTRICT FACILITIES

Section 3.1. Use of District Facilities. The Auxiliary, separately or jointly with the District, may occupy, operate and use District facilities and property as identified in Appendix A to this Agreement, which may be amended from time to time, to accomplish the purposes of this Agreement. However, the Auxiliary's operations under any such amendment shall be integrated with District operations and shall be under the general supervision of District officials. Furthermore, it is understood and agreed that District officers, employees and agents shall have the right to enter any such facilities or any part thereof at any time for the purpose of examination or supervision. A description of facilities to be used by the Auxiliary is set forth in Appendix A to this Agreement. The Auxiliary's use of District facilities does not establish a landlord/tenant relationship between the District and the Auxiliary, unless such a relationship is otherwise established by a separate written agreement entered into between the District and the Auxiliary.

Section 3.2. Charge or Rental. Appendix A sets forth the charge or rental to be paid to the District by the Auxiliary for the use of such facilities or property. Such charge or rental may be for less than fair rental value to the extent permitted by Section 81440(b) of the Education Code.

Section 3.3. Use of Facilities. The Auxiliary shall use the facilities and property of the District pursuant to Appendix A only for those services and functions that are

consistent with this Agreement and consistent with the policies, rules and regulations which have been or may be adopted by the Board of Trustees of the District.

Section 3.4. District Right to Terminate. The right to use any of the District facilities or property granted in Appendix A shall cease upon written notice by the District that the facilities or property are needed for the exclusive use of the District.

Section 3.5. Maintenance and Operating Expenses. The Auxiliary agrees that it shall keep and maintain all such facilities and property in a clean and orderly condition and shall, at its own expense, at reasonably frequent intervals, and in a lawful manner, dispose of all waste generated from its use of College facilities. The Auxiliary further agrees that it shall keep all such facilities and property in good repair. The Auxiliary shall provide reimbursement to the District for utility costs, maintenance and custodial costs relating to the facilities, as provided in Section 4.2 of this Agreement.

Section 3.6. Third Party Agreements By Auxiliary. The Auxiliary shall not enter into any contract that would obligate the District, its facilities, equipment or personnel, without the prior written approval of the District. The Auxiliary has no authority to bind the District, by contract or otherwise, in any amount.

Section 3.7. Indemnification. The Auxiliary agrees to indemnify, defend and hold harmless the District, its officers, agents, and employees from any and all loss, damage or liability that may be suffered or incurred by the District, its officers, agents and employees, caused by, arising out of, or in any way connected with the use of any of such facilities by the Auxiliary in connection with this Agreement; provided that the loss, damage or liability does not arise from the intentional or negligent acts or omissions of the District, its officers, agents or employees.

Section 3.8. Signs, Fixtures and Equipment. During the term of this Agreement, the Auxiliary shall have the right to erect, place and attach fixtures, signs and equipment in or upon facilities as authorized by the President of the District in writing as to number, size and location. Fixtures, signs or equipment so erected, placed or attached by the Auxiliary shall be and shall remain the property of the Auxiliary and shall be removed therefrom by the Auxiliary upon the termination of this Agreement or written direction of the President of the District.

Section 3.9. Restoration. Upon termination of this Agreement, the District shall have the option to require the Auxiliary, at the Auxiliary's expense and risk, to restore all such facilities as nearly as possible to the condition existing prior to the execution of this Agreement; provided, however, that if the Auxiliary shall fail to do so within ninety (90) days after the District exercises such option, the District may restore the property at the expense of the Auxiliary; and all costs and expenses of such restoration shall be paid by the Auxiliary upon demand of the District. The District shall have the right to exercise this option within thirty (30) days after the expiration of this Agreement, but not thereafter.

Section 3.10. Survival of Rights. The rights and obligations provided in this Article shall survive the termination of this Agreement.

ARTICLE IV

REIMBURSEMENT OF DISTRICT COSTS

Section 4.1. Reimbursement for Services of District Employees. The Auxiliary shall monetarily reimburse the District for the District's direct compensation and employee benefit expenditures for services performed by District employees. The District shall provide the Auxiliary with a monthly invoice for the amount of such expenditures. The Auxiliary shall pay such invoice within thirty days of the Auxiliary's receipt of the invoice by the delivery to the District of a check for the amount of the invoice.

Section 4.2. Reimbursement for District Expenditures. In addition to the reimbursement provided under section 4.1, the Auxiliary shall reimburse the District for other expenditures incurred by the District as a result of the Auxiliary's activities. This reimbursement shall include, but not be limited to, custodial and District employee services other than those reimbursement amounts provided in Section, 4.1, and shall include utility costs, maintenance costs and supplies. The Auxiliary's reimbursement of the costs under this Section 4.2 may be in the form of non-monetary benefits provided by the Auxiliary to the District, as authorized by California Attorney General Opinion 97 Ops. Atty. Gen. 1105 (1998). The District shall annually invoice the Auxiliary for such expenditures, indicating items charged and the method of determining costs. The reimbursement shall be computed on a simple but equitable basis and shall be made by the Auxiliary within thirty (30) days of receipt of the invoice. The Auxiliary may provide reimbursement under this section either by making monetary reimbursement or by providing a statement of the in-kind contribution or benefits provided to the District by the Auxiliary, as may be agreed upon between the District and the Auxiliary.

Section 4.3. Indirect Costs Relating to Federal Programs. If the Auxiliary administers a federally-sponsored program, it shall reimburse the District for indirect costs associated with the performance of services by District for the Auxiliary relating to the federally-sponsored project. Such reimbursement shall take into consideration the District's federal indirect cost rate and the approved indirect cost allocation, if any, of the federal program award. In the event that the District's federal indirect cost rate has not been determined, the District's President shall determine and specify such costs and the amount thereof. All such reimbursements shall be made by the Auxiliary within thirty (30) days of receipt of an invoice with a determination of such costs.

ARTICLE V

DISPOSITION OF AUXILIARY ASSETS

Section 5.1. Approval of Expenditures. The board of directors of the Auxiliary shall approve all expenditures and fund appropriations of the Auxiliary. Appropriations of funds for use outside the normal business operations of the Auxiliary shall be approved in accordance with policy and further consistent regulations adopted by the Board of Trustees. In addition, the Auxiliary will conform its expenditures for public relations to the policies adopted by the District.

Section 5.2. Disposition of Net Earnings. Net earnings derived from the operations of the Auxiliary shall be used solely to benefit the District and its students or used for reserves as established by the board of directors of the Auxiliary.

Section 5.3. Disposition of Assets Upon Dissolution. Upon dissolution of the Auxiliary or the cessation of its operations under this Agreement, its assets remaining after payment, or provisions for payment, of all debts and liabilities shall be distributed to either (i) such organization organized and operated exclusively for educational purposes in support of the District, which has established its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or (ii) a state or political subdivision of a state of the United States to be used exclusively for public purposes. That organization shall be the District if it qualifies as such at the time of disposition, for its exclusive benefit.

ARTICLE VI

MISCELLANEOUS

Section 6.1. Term of Agreement. The term of this Agreement shall be necessary for use of the facilities and assets by the Auxiliary to operate for five fiscal years commencing effective as of July 1, 2022, through June 30, 2027, unless sooner terminated as provided herein, or unless a successor amendment to this Agreement is executed between the District and the Auxiliary. Should the term hereunder terminate, all assets and facilities will automatically revert to the District. In any event of termination, the provisions of Section 5.3 of Article V of this Agreement (concerning the distribution of assets upon dissolution) shall survive such termination.

Section 6.2. Termination. Either party may terminate this Agreement on sixty (60) days written notice to the other party if the party to whom such notice is given is in material breach of this Agreement. The party claiming the right to terminate hereunder shall set forth in such notice the facts underlying its claim that the other party is in breach of this Agreement. Remedy of such breach within thirty (30) days of the receipt of such notice shall prevent the termination of the Agreement.

Section 6.3. Termination in Event of Auxiliary's Loss of Auxiliary Organization Good Standing. If and when the President or other designee of the District has reason to believe that the Auxiliary should be removed from the District's list of auxiliary organizations which are in good standing (the "Good Standing List"), that person shall give the Auxiliary's board of directors reasonable notice that a conference will be held to determine whether grounds for removal of the Auxiliary from the Good Standing List do in fact exist. Representatives of the Auxiliary's board of directors shall be entitled to be present at such conference and to be heard. Based upon such conference, the Chancellor or such other District designee shall recommend to the District Board of Trustees whether the Auxiliary should be removed from the Good Standing List, after which the District Board of Trustees, in its sole discretion, may remove the Auxiliary from said Good Standing List. Notwithstanding the terms of section 6.2, above, this Agreement shall immediately terminate on the Auxiliary's removal from the Good Standing List. In

the event that the Auxiliary is removed from the Good Standing List, the Auxiliary shall promptly wind up its affairs and dissolve.

Section 6.4. Effects of Termination. Upon termination of this Agreement, neither party shall have any further obligation hereunder except for (1) obligations occurring prior to the date of such termination; and (2) obligations, promises, or covenants contained herein which expressly extend beyond the term of this Agreement, including but not limited to those set forth in this Section. Upon termination or expiration of this Agreement, the Auxiliary shall within thirty (30) days of such termination or expiration (1) vacate any District facilities and/or real property the Auxiliary is occupying; (2) return all District equipment and supplies to the District; (3) transfer all documents and records in its possession relating to its administration of the services, programs, functions or activities described in Section 1.2 of Article I of this Agreement to the District; and (4) perform all other obligations required of the Auxiliary under the terms of this Agreement.

Section 6.5. Non-Assignability; Amendment. This Agreement, either in whole or in part, is not assignable by the Auxiliary. This Agreement may not be altered or modified except by a writing signed by the parties.

Section 6.6. Notices. Any notice, request, information or other document to be given hereunder to any party by any other party shall be in writing and shall be deemed given and served upon delivery, if delivered personally, or three (3) days after mailing if sent by certified mail, postage prepaid, as follows:

If to District:

MT. SAN ANTONIO COLLEGE

Attn: PRESIDENT

With a copy to:

Atkinson, Andelson,
Loya, Ruud & Romo
12800 Center Court Drive
Cerritos, California, 90703

Attn: Cindy S. Arellano, Esq.

If to Auxiliary:

MT. SAC AUXILIARY SERVICES

Attn: CHAIRPERSON OF THE BOARD

With a copy to:

_____, California _____

Attn: _____

Any party may change the address or persons to which notices are to be sent to it by giving the written notice that such change of address or persons to the other parties in the manner provided for giving notice.

Section 6.7. Headings. The titles and headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify or place any construction on any of the provisions of this Agreement.

Section 6.8. No Waiver. A party's failure to insist on the strict performance of any covenant or duty required by this Agreement, or to pursue any remedy under this Agreement, shall not constitute a waiver of the breach or the remedy.

Section 6.9. Governing Law. The agreement shall be governed by and construed according to the laws of the State of California.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date set forth above.

MT. SAN ANTONIO COLLEGE

By: William T. Scroggins
William T. Scroggins, President/CEO

MT. SAC AUXILIARY SERVICES

By: Morris Rodrigue
Morris Rodrigue, Chairperson of the Board

APPENDIX A

The Auxiliary may occupy, operate and use District facilities designated as the Sac Book Rac (Bookstore), the Campus Cafe, Common Grounds, the Prime Stop, the Mountie Stop, Wow Food Truck, the concession stand at the Hilmer Lodge Stadium, and other one-time locations on campus as needed.

The Auxiliary will administer the functions and services related to these locations utilizing the trade fixtures, supplies and assets currently available for those operations.

In consideration for the use of these facilities and assets, the Auxiliary agrees to pay the District a total rental amount of \$10,000 representing a fair market value for the rental of such facilities, payable in one lump sum, by December 31, annually.