



**YOSEMITE COMMUNITY COLLEGE DISTRICT**

2201 Blue Gum Avenue, Modesto, CA. 95358 - P.O. Box 4065, Modesto, CA. 95352

**MODESTO JUNIOR COLLEGE/COLUMBIA COLLEGE**

**PROFESSIONAL SERVICES AGREEMENT**

This Agreement ("Agreement") is made and entered into effective [ ] (the "Effective Date"), by and between the Yosemite Community College District ("District") and [ ] ("Contractor"), collectively referred to as the "Parties".

The Yosemite Community College District is a public educational institution. References to "District" include all of the campuses within the Yosemite Community College District ("YCCD"), its officers, officials, employees, volunteers, students, agents, and assigns.

District and Contractor agree as follows:

- 1. Term:** This Agreement shall begin on [ ] and shall terminate upon completion of the Services, but no later than [ ], except as otherwise stated in Section 3 below. There shall be no extension of the Term of this Agreement without the express written consent of the Parties. Written notice by the District Chancellor or designee shall be sufficient to stop further performance of the Services by Contractor or the Contractor Parties. In the event of early termination. Upon payment by District, District shall be under no further obligation to Contractor, monetarily or otherwise, and District may proceed with the work in any manner District deems proper.
- 2. Termination:** Either Party may terminate this Agreement at any time by giving thirty (30) days advance written notice to the other Party, however the Parties may agree in writing to a shorter notice period. Notwithstanding the foregoing, District may terminate this Agreement at any time by giving written notice to Contractor if: (1) Contractor materially breaches any of the terms of this Agreement; (2) any act or omission of Contractor or the Contractor Parties exposes District to potential liability or may cause an increase in District's insurance premiums; (3) Contractor is adjudged a bankrupt; (4) Contractor makes a general assignment for the benefit of creditors; (5) a receiver is appointed because of Contractor's insolvency; or (6) Contractor or Contractor Parties fail to comply with or make material representations as to the fingerprinting, criminal background check, and/or tuberculosis certification sections of this Agreement. Such termination shall be effective immediately upon Contractor's receipt of the notice.
- 3. Payment of Fees for Services:** District agrees to pay Contract fees at a rate of \$[ ] per hour, if applicable, for Services satisfactorily performed. Total fees ("the Fee") to be paid by District to Contractor shall not exceed \$[ ]. Any work performed by Contractor in excess of the Fee shall not be compensated. District agrees to pay the Fee, up to the maximum amount provided herein, within thirty (30) days of receipt of a detailed invoice from Contractor, including any supporting documentation District reasonably requests.
- 4. Contractor Services.** Contractor agrees to provide the following services to District (collectively, the "Services"):  
[ ]

- 5. Contractor Qualifications.** Contractor represents and warrants to District that Contractor, and all of Contractor's employees, agents or volunteers (the "Contractor Parties"), have in effect and shall maintain in full force throughout the Term of this Agreement all licenses, credentials, permits and any other qualifications required by law to perform the Services and to fully and faithfully satisfy all of the terms set forth in this Agreement. Contractor and any Contractor Parties performing Services shall be competent to perform those Services.
- 6. Indemnification:** Contractor shall defend, indemnify, and hold harmless District and its agents, representatives, officers, consultants, employees, Board of Trustees, members of the Board of Trustees (collectively, the "District Parties"), from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to attorney fees and costs including fees of consultants) of any kind, nature and description (collectively, the "Claims") directly or indirectly arising out of, connected with, or resulting from any act, error, omission, negligence, or willful misconduct of Contractor, the Contractor Parties or their respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees in the performance of or failure to perform Contractor's obligations under this Agreement, including, but not limited to Contractor's or the Contractor Parties' use of the site, Contractor's or the Contractor Parties' performance of the Services, Contractor's or the Contractor Parties' breach of any of the representations or warranties contained in this Agreement, or for injury to or death of persons or damage to property or delay or damage to the District or the District Parties. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. The indemnification provided for in this Section 6 includes, without limitation to the foregoing, claims that may be made against District by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against District alleging civil rights violations by Contractor or Contractor Parties under California or federal law.
- 7. Equipment and Materials.** Contractor at its sole cost and expense shall provide and furnish all tools, labor, materials, equipment, transportation services and any other items (collectively, "Equipment") which are required or necessary to perform the Services in a manner which is consistent with generally accepted standards of the profession for similar services. Notwithstanding the foregoing, District shall not be responsible for any damages to persons or property as a result of the use, misuse or failure of any Equipment used by Contractor or the Contractor Parties, even if such Equipment is furnished, rented or loaned to Contractor or the Contractor Parties by District. Furthermore, District may reject any Equipment or workmanship that does not conform to the requirements of this Agreement and Contractor must then promptly remedy or replace it at no additional cost to District and subject to District's reasonable satisfaction.
- 8. Insurance:** Without in any way limiting Contractor's liability, or indemnification obligations set forth in Section 6 above, Contractor shall secure and maintain throughout the Term of this Agreement the following insurance: (i) comprehensive general liability insurance with limits of not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate; (ii) commercial automobile liability insurance with limits not less than \$ 1,000,000 each accident, if applicable; and (iii) worker's compensation insurance as required by Labor Code section 3200, *et seq.*, if applicable. Neither Contractor nor any of the Contractor Parties shall commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverages have been delivered to and approved by District. **All insurance policies shall include an endorsement stating that District and District Parties are named additional insureds.** All of the policies shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to District. If such a notice is not given or even if District receives a notice, District may, at its sole option, terminate this Agreement. All insurance policies shall include an endorsement stating that it is primary to any insurance or self-insurance maintained by District and shall waive all rights of subrogation against District and/or the District Parties. **A copy of the Certificate of Insurance and Additional Insured pages shall be attached to this Agreement as proof of insurance.**

- 9. Independent Contractor Status.** The Parties agree that Contractor is free from the control and direction of District in connection with Contractor's performance of the Services. Contractor is hereby retained to provide the specified Services for District, which are outside the usual course of District's business. Contractor certifies that it is customarily engaged in an independently established trade, occupation, or business to provide the Services required by this Agreement. Contractor understands and agrees that Contractor and the Contractor Parties shall not be considered officers, employees, agents, partners, or joint venturers of District, and are not entitled to benefits of any kind or nature normally provided to employees of District and/or to which District's employees are normally entitled.
- 10. Taxes.** All payments made by District to Contractor pursuant to this Agreement shall be reported to the applicable federal and state taxing authorities as required. District will not withhold any money from fees payable to Contractor, including FICA (social security), state or federal unemployment insurance contributions, or state or federal income tax or disability insurance. Contractor 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 Contractor and the Contractor Parties and otherwise in connection with this Agreement.
- 11. Confidential Information.** Contractor shall maintain the confidentiality of, and protect from unauthorized disclosure, any and all individual student information received from the District, including but not limited to student names and other identifying information. Contractor shall not use such student information for any purpose other than carrying out the obligations under this Agreement. Upon termination of this Agreement, Contractor shall turn over to District all educational records related to the Services provided to any District student pursuant to this Agreement.
- 12. Nondiscrimination:** The Contractor shall not unlawfully discriminate, either in the provision of services or in employment, against any person on the basis of race, color, sex, religion, age, national origin, disability, veteran's status, or other legal protected characteristics. The District shall comply with all applicable laws relating to non-discrimination, and equal employment opportunity.
- 13. Assignments:** This agreement is not assignable by the Contractor either in whole or in part, without written consent of the District. Subject to the foregoing, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns for the respective Parties.
- 14. Severability.** If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.
- 15. Amendments.** The Terms of this Agreement shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever except by written agreement signed by both Parties.
- 16. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Tuolumne, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.
- 17. Written Notice.** Written notice shall be deemed to have been duly served if delivered in person to Contractor at the address located next to the party signatures below, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who sends the notice.

**18. Compliance with Law.** Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. Contractor shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances, including but not limited to fingerprinting under Education Code sections 87013 and 88024, confidentiality of records, Education Code section 87408.6 and others. Contractor agrees that it shall comply with all legal requirements for the performance of duties under this Agreement and that failure to do so shall constitute material breach.

**19. Liability of District.** Notwithstanding anything state herein to the contrary, District shall not be liable for any special, consequential, indirect or incidental damages, including but not limited to profits in connection with this Agreement.

**20. Waiver.** No delay or omission by either Party in exercising any right under this Agreement shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude either Party from any or further exercise of any right or remedy.

**21. Reports.** Contractor shall maintain complete and accurate records with respect to the Services rendered and the costs incurred under this Agreement, including records with respect to any payments to employees and subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures. Upon request, Contractor shall make such records available to District for the purpose of auditing and copying such records for a period of five years from the date of final payment under this Agreement.

**22. Authorized Signature:** Each party to this Agreement represents that the person signing this Agreement on its behalf is authorized by each respective party to do so.

**23. Entire Agreement:** This Agreement constitutes the entire Agreement between the parties concerning the matters contained herein and supersedes all other Agreements between the parties concerning such matters. No provision of this Agreement may be waived or modified except in writing signed by the party against whom such waiver or modification is sought.

**CONTRACTOR**

**YOSEMITE COMMUNITY COLLEGE DISTRICT**

Authorized Signatory: \_\_\_\_\_ Authorized Signatory: \_\_\_\_\_

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

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_