



This Basic Services Agreement ("Agreement") is made and entered into by and between the **MiraCosta Community College District**, a community college district of the State of California ("District") and **MGI Advocacy Inc.** ("Contractor"). District and Contractor are referred to in this Agreement individually as "Party" and collectively as "Parties."

WHEREAS, Contractor warrants and represents to District that Contractor has the experience, qualifications, expertise, and resources to successfully and effectively perform the Services described in this Agreement, is properly licensed or certified to perform the Services, and will provide the Services to the District in compliance with all applicable laws and regulations; and

WHEREAS, the District desires to engage Contractor for the purpose of performing the Services described in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the Parties agree as follows:

- 1. Services to be provided by Contractor.** Contractor shall perform the services for the District as set forth in this Agreement and in the attached Exhibit A, which is fully incorporated into this Agreement by this reference (collectively "Services"), and in accordance with the terms and conditions in this Agreement. Contractor agrees to perform the Services consistent with the professional skill and care of Contractor's profession and in compliance with all applicable laws and regulations. All of Contractor's activities will be at its own risk and Contractor is hereby given notice of responsibility for arrangements to guard against physical, financial, and other risks as appropriate. Contractor assumes full responsibility for the acts or omissions of Contractor's employees, agents, consultants, and subcontractors as they relate to this Agreement or the Services. The Parties agree that the Contractor will immediately remove any of Contractor's employees, agents, consultants, or subcontractors from the District's facilities upon the District's instruction, as determined by the District in its sole discretion, for any or no reason. Contractor agrees to promptly provide a replacement employee, agent, consultant, or subcontractor acceptable to the District to perform the Services.
- 2. Time is of the Essence.** Contractor agrees that time is of the essence and Contractor shall perform the Services in an expeditious and timely manner so as not to unreasonably delay the purpose of this Agreement. Contractor shall promptly notify the District of any expected delay in the performance of Services.
- 3. Term.** This Agreement will begin and will be completed by the dates specified in Exhibit A. Completion of the Services, including all deliverables as described in Exhibit A, must be made to the satisfaction of the District.
- 4. Compensation.** The District shall pay the Contractor for Services satisfactorily performed in the manner and amount specified in Exhibit A.
- 5. Licenses and Permits.** Contractor and all of Contractor's employees, agents, consultants, and subcontractors, will secure and maintain in force throughout the term of this Agreement all licenses, permits, qualifications, and approvals as are required by law, in connection with the performance of the Services.



6. Taxes. Contractor will fully complete, and provide to the District as required, the Internal Revenue Service W-9 form or other required reporting forms. Contractor acknowledges and agrees that it is Contractor's sole responsibility to make the requisite tax filings and payment to the appropriate federal, state, or local tax authorities. The District will not withhold any part of the Contractor's compensation for the payment of social security, unemployment, or disability insurance or any other similar state or federal tax obligations. Contractor is solely responsible for all tax consequences and obligations related to the Services and the District's payment for the Services, and Contractor agrees to indemnify, defend, and hold the District harmless from any tax consequences.

7. Expenses and Equipment. Contractor is solely and fully responsible for all costs and expenses incident to the performance of the Services, including any and all licensing or permit fees, instrumentalities, supplies, tools, equipment, or materials needed to perform the Services. If the District furnishes any goods, materials, or other equipment to Contractor, Contractor assumes complete liability for those goods, materials, or other equipment. Contractor agrees to promptly pay the District the repair or replacement costs for such goods, materials, or other equipment not returned to the District in a satisfactory condition, as solely determined by the District.

8. Independent Contractor. In performing Services, Contractor shall be deemed and act as an independent contractor. Contractor understands and agrees that neither Contractor nor any of Contractor's employees, agents, consultants, or subcontractors shall be considered officers, employees, or agents of the District, and are therefore not entitled to benefits of any kind or nature that are normally provided employees of the District or to which the District's employees are normally entitled, including but not limited to workers' compensation or unemployment benefits. Contractor further understands that this Agreement is not intended to, and shall not be construed to, create a joint venture or association, or any other relationship whatsoever other than an independent contractor relationship. Contractor shall perform the Services and obligations under this Agreement according to the Contractor's own means and methods of work which shall be in the exclusive charge and under the control of Contractor, and which shall not be subject to control or supervision by the District, except as to the results of the Services. Contractor acknowledges that: (1) Contractor is free from the control and direction of the District in connection with the performance of Services; (2) Contractor performs the Services outside the usual course of the District's business; and (3) Contractor is customarily engaged in an independently established trade, occupation, or business of the same nature as the Services performed for the District. To the furthest extent provided by law, Contractor agrees to defend, indemnify, and hold the District harmless from any claims, demands, liabilities, damages, penalties, or taxes resulting from any misclassification of Contractor's employees (as independent contractors) who provide Services under this Agreement.

9. Compliance with the Law. Contractor shall, at all times during this Agreement, comply with all applicable laws, regulations, rules, and policies governing or related to the Services. Contractor further agrees to comply with all applicable state and local laws, orders, and guidelines related to preventing occupational exposure to COVID-19, or other viral or bacterial agents as may be identified by local, state, or federal authorities as requiring specific mitigation and remediation procedures, that are now or may in the future become applicable to the Contractor or the Services. Contractor shall also comply with all District policies, rules, and requirements, including those related to preventing exposure to COVID-19, at all times. Contractor is further responsible for ensuring that its employees, agents, consultants, and subcontractors providing Services under this Agreement are trained in safe work practices, the use of personal protective equipment ("PPE"), and other workplace standards that apply to preventing



occupational exposure to COVID-19 or other viral or bacterial agents. Contractor agrees to promptly respond to safety requests made by District. To the furthest extent provided by law, Contractor further agrees to defend, indemnify and hold District harmless from any claims, demands, or liabilities (including attorneys' fees and costs), brought by Contractor's employees, agents, consultants, or subcontractors, for claims of injury or illness while present at the District's facilities or performing Services for the District, including exposure to COVID-19 or other viral or bacterial agents, or in any way arising out of or related to being present or performing services at District's property.

10. Termination. District may terminate this Agreement for its convenience at any time by written notification to Contractor. Termination will be effective on the date specified by the District in its notice. District will pay Contractor all earned and undisputed amounts for Services provided through the date of termination, or, as applicable, Contractor will refund to the District a pro rata share of any prepaid amounts or fees within 30 days of the effective date of termination. Upon or prior to the effective date of termination, Contractor shall provide the District with all documents, including final or draft documents, produced or collected by Contractor related to the Services.

11. Ownership of Work Product. The Services performed hereunder are work made for hire and District shall exclusively own, in perpetuity and worldwide, all rights to and flowing from the Services, including any intellectual property, systems, materials, documents, or other work product performed, produced, or created under this Agreement or related to the Services (collectively "Work Product"). Contractor assigns to District any and all rights Contractor could have, may have, or does have, in the Work Product, and District shall have all right, title, and interest in the Work Product, including the right to secure and maintain the copyright, trademark, and patent of the Work Product. The District shall be permitted, in its sole discretion, to reproduce, distribute, modify, and use the Work Product in any manner desired. Contractor consents to the use of Contractor's name in conjunction with the sale, use, performance, and distribution of Work Product, for any purpose and in any medium.

12. Limitation of Liability. The District's financial obligations under this Agreement are limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, the Parties agree that in no event shall the 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 or for the Services performed in connection with this Agreement.

13. Indemnification. To the furthest extent provided by law, Contractor shall indemnify, defend, and hold the District, its Board of Trustees, officers, agents, employees, and volunteers harmless against any and all liability, claims, suits, demands, causes of action, damages, losses, injuries, and expenses of any kind, including reasonable attorneys' fees and costs, whether actual or alleged, in law or equity, to property or persons, including personal injury or death, contractual liability, infringement of a third party's intellectual property rights, or damage to property ("Claim"), arising from or related to any act or omission of Contractor or its employees, officers, consultants, agents, subcontractors, or volunteers, except the extent that a Claim is caused by the District's gross negligence or willful misconduct. The provisions of this section shall survive the termination or expiration of this Agreement.

14. Insurance. Contractor must procure and maintain during the term of the Agreement, and must ensure that each subcontractor performing any part or portion of the Services will procure and maintain



during the term of the Agreement, the following insurance with minimum limits equal to the amount indicated below.

- a. **Commercial General Liability Insurance.** Commercial General Liability insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for personal injury, bodily injury, death, and property and other damage, including coverages for contractual liability, personal injury, broad form property damage, independent contractors, products and completed operations (required from all contractors);
- b. **Commercial Automobile Liability Insurance.** Commercial Automobile Liability insurance with limits not less than \$1,000,000 each occurrence for bodily injury and property damage, including coverages for owned, non-owned and hired vehicles for all activities of Contractor or its employees, agents, consultants, or subcontractors arising out of or in connection with the Agreement or Services.
- c. **Workers' Compensation and Employers' Liability Insurance.** In accordance with Section 3700 of the California Labor Code, Contractor shall be required to secure workers' compensation coverage for its employees in the amount required by law. Contractor shall maintain required Employers' Liability Insurance with limits of not less than \$1,000,000 per occurrence (accident) and \$1,000,000 per employee (disease).
- d. **Professional Liability Insurance (If applicable to type of service).** Professional Liability insurance with limits not less than \$1,000,000 each claim and \$2,000,000 aggregate, with respect to coverage for errors and omissions arising from professional services rendered under this Agreement by Contractor or any of Contractor's employees, agents, consultants, or subcontractors.
- e. **Cyber Liability (If applicable to type of service).** Minimum limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
- f. **Proof of Insurance and Insurance Terms.** Contractor shall not commence the Services or any work under this Agreement until it provides the District Certificates of Insurance with original endorsements evidencing the insurance coverage required herein. Each policy required herein, except workers' compensation and professional liability, shall be endorsed with specific language naming the MiraCosta Community College District and its trustees, officers, agents, employees, and volunteers ("Additional Insureds") as additional insured parties and waiving subrogation rights against the Additional Insureds, and each Certificate of Insurance shall so specify. Such certificates shall evidence all coverages and limits required by the District in this Agreement and shall specify that insurers will give the District thirty (30) days prior written notice of non-renewal or cancellation. Each policy required herein shall be primary to any other insurance or self-insurance available to the District, its officers, trustees, agents, employees, and volunteers, and shall apply separately to each. Contractor is solely responsible for the payment of any and all premiums, deductibles, or self-insurance retentions. Contractor will ensure insurance is placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District. Contractor's provision



of the required insurance hereunder shall not act as a potential limitation on Contractor's liability.

15. Confidential Information. Contractor understands and acknowledges that during its performance of the Services it or its employees, agents, consultants, or subcontractors may have access to private and confidential information in the District's possession, custody, or control, including but not limited to private information regarding students, families, faculty, employees, staff, donors, alumni, or other personnel data or information, including a student's education records as defined by 20 USC section 1232g, and other District related trade secrets, business plans, and other proprietary information ("Confidential Information"). Contractor will not disclose, copy, or modify any Confidential Information without the District's prior written consent unless otherwise required by law. Contractor will immediately notify the District if it becomes aware of any possible unauthorized disclosure or use of the Confidential Information. Contractor agrees to promptly return all copies of Confidential Information to the District upon expiration or termination of this Agreement. If the Contractor has access to Confidential Information, Contractor shall limit its employees', agents', consultants', and subcontractors' access to the records to those persons for whom access is essential to the performance of the Services. At all times during and after the term of this Agreement, Contractor shall comply with the applicable terms of the Family Educational Rights and Privacy act of 1974 (FERPA). Contractor may be required to execute supplemental confidentiality and non-disclosure agreements as solely determined by the District. This section shall survive the termination or expiration of this Agreement.

16. Disabled Accessibility and Electronic and Information Technologies. Contractor hereby warrants that any goods or services, including any hardware or software products or services, to be provided under the Agreement comply 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 or services which is brought to its attention and will designate a contact person for expediting any complaints applicable to California Government Code §11135. Contractor further agrees to indemnify, defend, and hold harmless the District, the Chancellor's Office of the California Community Colleges, and any California community college using the Contractor's products or services from any claim arising out of its failure to comply with these requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of the Agreement. Contractor and any of its agents, consultants, and subcontractors shall provide credible, third-party verification demonstrating compliance of product accessibility per current requirements of the revised US Section 508 Standards or Web Content Accessibility Guidelines 2.0, Level AA (WCAG 2.0, AA) upon initial deployment and with each major subsequent release prior to production use by faculty, staff, or students. Appropriate documentation detailing the testing, including evaluation results, will be current and maintained.

17. Non-Discrimination. Contractor and District mutually agree that they will comply with all applicable federal and state anti-discrimination laws and regulations and agree not to unlawfully discriminate against any prospective or active employee engaged in the Services, or against any other person, on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status or any other category protected by law. Contractor agrees to require like compliance by all hired agents, consultants, and subcontractors.



18. Complaints and Investigations. Contractor will fully cooperate with District and will comply with all applicable laws and District and other community college district policies and requirements related to investigations of allegations of discrimination, harassment, and retaliation, including Contractor producing its directors, trustees, officers, agents, employees, consultants, and subcontractors for investigative interviews as deemed necessary by District.

19. Provisions Required by Law Deemed Inserted. Each and every provision of law and clause applicable to this Agreement or required by law to be inserted in this Agreement, is deemed inserted herein and the Agreement shall be read and enforced as though the provisions are included herein.

20. Audit. Contractor agrees that the District has the right to review, audit, and to copy any of Contractor's or Contractor's employees', agents', consultants', or subcontractors' records and supporting documentation relating to the Services or the performance of this Agreement and any expenses or compensation incurred, charged, or requested by Contractor. Contractor agrees to maintain such records for possible audit for a minimum of four (4) years after final payment, unless a longer period of records retention is required or stipulated. Contractor agrees to allow the District access to these records during normal business hours and to allow interviews of any employees, agents, consultants, or subcontractors who might reasonably have information related to such records. Contractor agrees to include a similar right of the District to audit records and interview staff in any subcontract related to performance of this Agreement. This section shall survive the termination or expiration of this Agreement.

21. Registration for Public Works. If Contractor is performing a public work, as defined by California Labor Code Section 1720, Contractor must comply with all applicable rules and regulations, including adhering to the requirements of California Labor Code Section 1725.5 (Department of Industrial Relations Contractor Registration), as a prerequisite to performing any Services under this Agreement.

22. Advertising. Contractor shall not use the name of the District, its officers, trustees, directors, employees, or agents, in advertising, social marketing campaigns, publicity releases, or otherwise without securing the prior written consent of the District in each instance.

23. Notice. All notices required or permitted to be given under this Agreement by either Party to the other, 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 requested, or sent by overnight delivery services, or facsimile transmission, addressed as follows:

For District:

Mina Hernandez
Director, Purchasing & Material Management
MiraCosta Community College District
1 Barnard Drive
Oceanside, CA 92056

For Contractor:

Contact information as referenced in Exhibit A



Any notice personally given or sent by facsimile transmission is effective upon receipt. Any notice sent by overnight delivery service is effective the business day next following delivery by overnight services. Any notice given by mail is effective three days after deposit in the United States mail.

24. Non-Waiver. The failure of the 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 the Party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

25. 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.

26. Conflict of Interest and Prohibited Interests. The District reserves the right, to require an affidavit from the Contractor to disclaim in writing any conflict of interest. Furthermore, the District reserves the right to reject or terminate any Contractor or Contractor employee, if any such conflict is discovered.

27. Governing Law. This Agreement is governed and interpreted in accordance with the laws of the State of California. The Parties agree that any action brought to enforce this Agreement, or any other dispute or claim arising under this Agreement between the Parties, shall be brought in San Diego Superior Court.

28. Force Majeure. Contractor and District are excused from performance during the time and to the extent that they are prevented from obtaining, delivering, or performing the Services or any other obligations set forth in this Agreement due to an act of God, fire, strike, loss, shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by the government, epidemics or pandemic, such as COVID-19, or other events that are outside of a Party's reasonable control, when satisfactory evidence thereof is presented to the other Party, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the Party not performing. For avoidance of doubt, the District's obligation to pay Contractor's invoices or other fees is excused to the extent Contractor is not performing the Services during a force majeure event.

29. Disputes. Except in the event of the District's failure to make earned and undisputed payments to Contractor, if the District and Contractor have a dispute, each will continue to perform its respective obligations, including Contractor's duty to provide and perform the Services, during all attempts to resolve the dispute. For avoidance of doubt, the Contractor agrees to continue providing Services in the event that the District disputes any portion of Contractor's invoices or other requests for payment.

30. Mediation; Arbitration. The Parties agree that if any dispute or controversy arises between them in any way arising out of, related to, or connected with this Agreement, they will participate in good faith in mediation and agree to equally share all mediator fees. Mediation shall be conducted under the Commercial Mediation Rules of the American Arbitration Association in effect at the time of the filing of a demand for mediation. If the Parties are unable to resolve the dispute or controversy through mediation, the Parties agree to submit the pending dispute or controversy to final and binding arbitration conducted under the Commercial Arbitration Rules of the American Arbitration Association in effect at the time of the filing of a demand for arbitration. Arbitration proceedings shall be conducted at a location in the County of San Diego, California. By agreeing to this binding arbitration provision, the Parties



understand that they are waiving certain rights and protections which may otherwise be available if a claim were determined by litigation in court, including, without limitation, the right to seek or obtain certain types of damages precluded by this arbitration provision, the right to a jury trial, certain rights of appeal, the right bring a claim as a class member in any purported class or representative proceeding; and a right to invoke formal rules of procedure and evidence. The prevailing party shall be awarded all reasonable attorneys' fees, expert witness fees, and other litigation expenses, expended or incurred in such arbitration or litigation, unless the laws related to the claim that the party prevailed on preclude a court from awarding attorneys' fees and costs to the prevailing party. The provisions of this section will apply during the term of this Agreement and survives after the termination or expiration of this Agreement.

31. Successors; No Assignment. This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors or assigns of Contractor and the District. Contractor may not assign its rights or obligations of this Agreement without the prior written consent of the District.

32. Entire Agreement. This Agreement and its Exhibits constitute the sole entire Agreement and understanding between the District and Contractor concerning their subject matter. It replaces and supersedes all prior agreements or negotiations, whether written or verbal. This Agreement may only be amended or modified in a writing signed by the District and Contractor. In the event that any term, condition, provision, requirement or specification set forth herein conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit or other attachment to this Agreement or other documents related to the Services, the provisions of the body of this Agreement shall prevail.

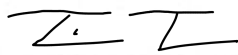
33. Recitals. The Parties agree the Recitals are true and are incorporated in this Agreement by this reference as though fully set forth.

34. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

35. Authority. Contractor warrants that the person signing this Agreement on its behalf is fully authorized to enter into this Agreement.

IN WITNESS WHEREOF, the District and Contractor have executed this Agreement as of the dates set forth below.

**MIRACOSTA COMMUNITY COLLEGE
DISTRICT**

Signature: 

Name: Tim Flood

Title: Vice President, Administrative Services

Date: 06/14/2021

**CONTRACTOR
MGI Advocacy Inc.**

Signature: 

Name: Mark MacDonald

Title: President

Date: 06/14/2021



EXHIBIT A - SCOPE OF WORK, SERVICES, AND COMPENSATION

Contractor:

MGI Advocacy, Inc.
Annie Matthews
925 L Street, STE 600
Sacramento, CA 95814
707-484-3529
annie@mgiadvocacy.com

District Point of Contact:

Tim Flood
1 Barnard Drive
Oceanside, CA 92056
760-795-6653
tflood@miracosta.edu

Agreement Period:

Start Date: July 1, 2021
End Date: June 30, 2022

Scope of Work - Description of Services and Deliverables:

- Provide generally weekly e-mailed Sacramento Report. Provide up to 12 hours of consultation annually.
- Consultation services in the form of a strategic planning session for the district, a power point presentation for the board, or consultation on the budget, facilities issues, legislators, CalSTRS issues, faculty advice, etc.
- Provide up to 12 hours of consultation annually.

Rate and Method of Payment:

Amount \$12,000 per: Annual

Total Not to Exceed Cost for Agreement: \$12,000

Payment and Compensation Terms:

Invoices. Contractor will submit monthly invoices to District's Point of Contact with supportive documentation that evidences the services and work that Contractor performed and all costs or expenses set forth in the invoice. District will pay Contractor all undisputed amounts owed within 30 days of the District's receipt of the invoice from the Contractor.

Additional Services. The Parties agree the District will not pay Contractor for any additional services performed without the District's prior written approval for those additional services.