

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into and dated this 14th day of June, 2022 between MONTCLAIR STATE UNIVERSITY hereinafter referred to as "**MSU**") and the Township of West Orange Health Department c/o the TOWNSHIP OF WEST ORANGE (hereinafter referred to as "**Company**")

NOW, THEREFORE, in consideration of the foregoing premises, and of the mutual covenants and promises herein contained, the parties agree as follows:

ARTICLE 1: SCOPE OF SERVICES

MSU shall provide Services, as requested by Company, in accordance with the document attached as Schedule A ("Work").

ARTICLE 2: TERM

Work to be performed by MSU shall start on (July 1, 2022) and be completed by (June 30, 2023). This Agreement shall be subject to the Company's award of grant funds through the COVID-19 Vaccination Supplemental Funding Program from the New Jersey Department of Health, Office of Local Public Health.

ARTICLE 3: COST AND PAYMENT OF SERVICES

- 3.1 **Agreement Limit.** Company shall pay MSU for the work in the Scope of Services and Schedule A on a reimbursable basis, with a contract limit not to exceed (Twenty-six Thousand Dollars (\$ 26,000.00)).
- 3.2 **Reimbursement.** Company shall pay MSU based on the billing rates and other associated costs set forth in Schedule A. All invoices for the Work shall detail the individuals performing the Work, the Work performed and the time spent and materials used in connection with the Work. All invoices submitted to the Company shall be sent to the Company at the address set forth above.
- 3.3 MSU shall invoice the Company on a monthly basis. All invoices shall be submitted to the Company at the address specified.
- 3.4 The Company shall make payment in full to MSU within thirty (30) days of the date of each invoice.

- 3.5 In the event Company fails to make timely payment to MSU, interest shall accrue upon unpaid, undisputed amounts at a rate of 1.5% per month. In the event MSU is required to undertake collection efforts to obtain payment of undisputed amounts past due, Company shall reimburse MSU all collection costs and fees, including attorney's fees.

ARTICLE 4: TAXES

MSU shall be responsible for the payment of all applicable taxes with respect to the labor and materials used in connection with the Work, including, without limitation, all unemployment, payroll and social security taxes. MSU is exempt from all New Jersey sales, use and local taxes under N.J.S.A. 54:32B-9A.

ARTICLE 5: OWNERSHIP and USE of DOCUMENTS

- 5.1 Company agrees that any work, discoveries, inventions, or improvements developed by MSU solely or with others, resulting from the performance of this Agreement are the property of MSU, and Company agrees and does hereby assign all rights therein to MSU. Company further agrees to provide MSU with any assistance required to obtain patents or copyright registrations, including the execution of any documents submitted by MSU.
- 5.2 MSU MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE WORK PRODUCT OR SERVICES, WHETHER TANGIBLE OR INTANGIBLE, CONCEIVED, DISCOVERED OR DEVELOPED UNDER THIS AGREEMENT; OR THE NON-INFRINGEMENT, OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR ANY SUCH INVENTION OR PRODUCT.
- 5.3 MSU makes no warranty on the work product produced pursuant to this subcontract and is provided "as is" and makes no warranty that it does not infringe the intellectual property rights of any third party. Any intellectual property (including copyrightable work, trademarks and patents) generated by MSU in the course of this Agreement shall be the property of the MSU, but subject to a non-exclusive, revocable royalty-free perpetual license to Company to use the intellectual property for its own internal research purposes.
- 5.4 Consistent with its status as a non-profit academic institution of higher education, MSU shall be free to publish or otherwise publicly disseminate the results of the services provided pursuant to this Agreement.
- 5.5 This provision shall survive expiration and termination of this Agreement.

ARTICLE 6: INDEMNITY

- 6.1 Any agreement or arrangement signed or entered into on behalf of Montclair State University and/or the State of New Jersey by a State Official or employee shall be subject to all of the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. and the availability of appropriations. The

State of New Jersey does not carry Public Liability Insurance, but the liability of the State and the obligation of the State to be responsible for Tort Claims against its employees is covered under the terms and provisions of the New Jersey Tort Claims Act. The State of New Jersey and Montclair State University assume no obligation to indemnify or save harmless the Company, its agents, servants, employees or subcontractors for any claim which may arise out of its performance of this Contract.

6.2 Company shall assume all risk of and responsibility for, and agrees to defend, indemnify and hold harmless MSU, the New Jersey Educational Facilities Authority and the State of New Jersey, including their trustees, officers, employees, volunteers and agent from and against any and all claims, demands, suits, actions, recoveries, judgments, costs and expenses (including reasonable attorney's fees) in connection therewith on account of the loss of life, property, or injury or damage to the person, body or property, of any person or persons whatsoever, which shall arise from or result directly or indirectly from facilities, materials or services provided by Company to MSU under this contract. This indemnification obligation is not limited by, but is in addition to the insurance obligations contained in this agreement.

6.3 Company shall secure and maintain in force for the Term, insurance coverage provided herein. All insurance coverage is subject to the approval of the University and shall be issued by an insurance company authorized to do business in the State of New Jersey and which maintains an A.M. Best rating of A- (VII) or better. Company shall provide MSU with current Certificates of Insurance for all coverage and renewals thereof which must contain the provision that the insurance provided in the certificate shall not be canceled for any reason except after thirty (30) days written notice to MSU. All insurance required herein shall contain a waiver of subrogation in favor of MSU. All insurance required herein, except Workers' Compensation, shall name MSU, the State of New Jersey, the New Jersey Educational Facilities Authority as additional insureds. Insurance requirements may be satisfied by Company through demonstration of adequate self-insurance.

Commercial General Liability insurance written on an occurrence form including independent contractor liability, products/completed operations liability, contractual liability, covering but not limited to the liability assumed under the indemnification provisions of this contract. The policy shall not include any endorsement that restricts or reduces coverage as provided by the ISO CG0001 form without the approval of the University. The minimum limits of liability shall not be less than a combined single limit of one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate, two million dollars (\$2,000,000) product/completed operations aggregate. A "per location or project endorsement" shall be included, so that the general aggregate limit applies separately to the location or project that is the subject of this contract.

Worker's Compensation Insurance applicable to the laws of the State of New Jersey and other State or Federal jurisdiction required to protect the employees of the contracting party and any subcontractor who will be engaged in the performance of this contract. The certificate must so indicate that no proprietor, partner, executive officer or member is excluded. This insurance shall include Employers' Liability Protection with a limit of liability not less than one million dollars (\$1,000,000) bodily injury, each occurrence, one million dollars (\$1,000,000) disease, each employee, and one million dollars (\$1,000,000) disease, aggregate limit. Lower primary

limits will be accepted if employer's liability insurance is included under the umbrella insurance and the umbrella limit exceeds the employer's liability limit requirements.

ARTICLE 7: TERMINATION

Either party may terminate the Agreement, with or without cause, upon thirty (30) days prior written notice to the other party. In the event of termination without cause, Company shall pay MSU for the time spent and materials used in connection with the Work through the effective date of the termination, plus reasonable time and expenses necessary to close out or deliver to the Company copies of the Work, or if the Work is billed on a time and material basis, or a pro rata portion of the fee based upon the percentage of the Work performed, if the Work is billed at a flat fee.

ARTICLE 8: INDEPENDENT CONTRACTOR

MSU shall remain an independent contractor in the performance of this Agreement, and all employees assigned by MSU to perform shall remain at all times the employees of MSU for all purposes and shall not be deemed to be employees of the Company.

ARTICLE 9: NOTICES AND CORRESPONDENCE

The Company and MSU designate the following individuals as their representatives for all matters arising under this Agreement. All notices and correspondence related to this Agreement shall be in writing and sent to these representatives at the following addresses by confirmation of delivery, and shall be deemed sent on the date received:

COMPANY

Township of West Orange Health
Department

66 Main Street

West Orange, NJ 07052

MONTCLAIR STATE UNIVERSITY

Vice President for Finance
Montclair State University
1 Normal Avenue
Montclair, NJ 07043
With a copy to University Counsel

ARTICLE 10: CONFIDENTIALITY

The parties shall, in accordance with applicable laws, treat as confidential, and shall not disclose to any third party, any information developed in connection with this Agreement that requires confidentiality under applicable law.

ARTICLE 11: FEDERAL TERMS

MSU shall comply with the additional terms and conditions applicable to federal grant contracts that are set forth in Schedule B and incorporated herein by reference.

ARTICLE 12: MISCELLANEOUS

12.1 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New Jersey, without regard to choice of law principles, by the Superior Court of New Jersey.

12.2 The parties agree not to discriminate in employment and agrees to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A.10:5-1 et seq. and N.J.S.A.10:5-31 through 10:5-38, and all rules and regulations issued there under. The parties shall also comply with all provisions of the Americans With Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101 et seq. 1.4.

12.3 If any provision of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall continue in full force and effect.

12.4 Neither party's delay or failure in enforcing any right or remedy afforded hereunder or by law shall prejudice or operate to waive that right or remedy or any other right or remedy which it shall have available; nor shall any such failure or delay operate to waive either party's rights to any remedies due to a future breach of this Agreement, whether of a like or different character.

12.5 This Agreement constitutes the entire agreement between the parties hereto and supersedes any previous agreements or understandings, whether oral or written. Any printed terms and conditions contained in purchase orders, invoices or other documents issued by the Company or MSU shall be of no effect and shall be superseded by this Agreement.

12.6 No modification or waiver of the provisions of this Agreement shall be valid or binding on either party unless in writing and signed by both parties.

12.7 The headings assigned to the articles of this Agreement are for convenience only and shall not limit the scope and applicability of the articles.

12.8 This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns; however, no right or interest in this Agreement shall be assigned by either party without the prior written permission of the other party, and no delegation of any obligation owed, nor the performance of any obligation, by either party may be made without the prior written permission of the other party.

12.9 The terms, provisions, representations, warranties and covenants contained in this Agreement that by their sense and context are intended to survive the performance thereof by either party or both parties hereunder shall so survive the completion of performance, expiration or termination of this Agreement.

12.10 Each party agrees to execute such further papers, agreements, documents, instruments and the like as may be necessary or desirable to effect the purpose of this Agreement and to carry out its provisions.

12.11. Montclair State University will not be liable for performance delays or for non-performance due to unforeseen events such as acts of God, war, riot, national or state emergencies, epidemic, labor dispute, fire, casualty, natural disaster, power failure or other circumstances beyond the University's reasonable control ("Force Majeure"). In the event of Force Majeure, the University shall send notice to the other party indicating those obligations, in whole or part, that cannot be performed as a result of Force Majeure, and the expected duration of the inability to perform. If Force Majeure exists for a period of 30 days or longer, the University may elect to reschedule or terminate the Agreement or Purchase Order. If the University elects to reschedule, the sole remedy provided to the other party shall be satisfaction of the obligations on a mutually agreeable date in the future, and a credit of amounts previously paid. In the event the University elects to terminate, the parties shall have no further obligation to each other except for payment obligations pro-rated to the date of termination. The University's obligation to make or refund payments to the other party shall be subject to the availability of annual appropriations by the State of New Jersey sufficient to meet all of the University's annual payment obligations.

12.12. DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN. As a condition precedent to this contract, MSU shall certify that it has no investment activities in Iran.

12.13. This Agreement may be executed in two (2) or more counterparts, each of which shall for all purposes be deemed an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement is entered into by the parties as of the day and year first written above and is to be executed by the parties' duly authorized representatives.

Township of West Orange Health Montclair State University
Department

Signature

Signature

Print Name

Print Name

Title

Vice President for Finance and Treasurer

Date

Date

SCHEDULE A

Montclair State University, through its School of Nursing faculty and students, will provide vaccine administration and other support services at locations to be identified by the Township of West Orange Health Department on dates and times to be mutually agreed to by the parties.

The West Orange Health Department will pay MSU the sum of \$26,000 per annum to be prorated on a quarterly basis of \$6,500 per quarter and paid within thirty (30) days of receipt of invoice for the term of the contract July 1, 2022 – June 30, 2023.

SCHEDULE B

Consultant will be paid for its professional services by Township of West Orange pursuant to subaward by the State of New Jersey and its federal contract number TBD.

(A) If the payments made to Consultant exceed the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, and Consultant violates or breaches the terms of this Agreement, Consultant shall be subject to sanctions and penalties as appropriate under applicable law.

(B) If the value of this Agreement exceeds \$10,000, this Agreement may be terminated for cause and for convenience, by sending Consultant notice of termination fixing the date of termination. Consultant shall be aid for any undisputed amount that is due and related to Consultant's time spent and materials used in connection with the Work through the effective date of the termination, if the Work is billed on a time and material basis, or a pro rata portion of the fee based upon the percentage of the Work performed, if the Work is billed at a flat fee. There shall be no further obligation to Consultant after the date of termination.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, the contract that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). If applicable, all prime construction contracts in excess of \$2,000 awarded by University entities must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Consultant must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Consultant must pay wages not less than once a week. A copy of the current prevailing wage determination issued by the Department of Labor will be provided by the University to the Consultant. This Agreement and any subcontract is conditioned upon the acceptance of the wage determination provided by the University. All suspected or reported violations by Consultant shall be reported to the Federal awarding agency. Consultant shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). In accordance with the Act, the parties are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. All suspected or reported violations by the Consultant shall be reported to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable and if the Agreement is in excess of \$100,000 and involves the employment of mechanics or laborers, Consultant shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Consultant shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40

U.S.C. 3704 are applicable to construction work performed by Consultant and Consultant shall not require any laborer or mechanic to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. Consultant shall comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended— If this Agreement exceeds \$150,000, Consultant shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)— Consultant warrants and represents that it is not listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—If this Agreement exceeds \$100,000, Consultant shall file the certification required by 31 U.S.C. 1352. Consultant certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Consultant shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) 2 CFR §200.322 is applicable to procurement of recovered materials.

Pursuant to 2 CFR 200.322, Consultant must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$ 10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- A. Designated items are those set forth in 40 CFR 247 subpart B, as may be amended from time to time, including: 1) Paper and paper products listed in 40 C.F.R. 247.10; 2) Certain vehicular products as listed in 40 CFR 247.11; 3) Certain construction products listed in 40 C.F.R. 247.12; 4) Certain transportation products listed in 40 C.F.R. 247.13; 5) Certain park and recreation products, 40 C.F.R. 247.14; 6) Certain landscaping products listed in 40 C.F.R. 247.15; 7) Certain non-paper office products listed in 40 C.F.R. 247.16; and 8) Other miscellaneous products listed

in 40 C.F.R. 247.17.

- B. As defined in 40 CFR 247.3, “recovered material” means: 1) waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process; and 2) for purposes of purchasing paper and paper products, means waste material and byproducts that have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. In the case of paper and paper products, the term recovered materials includes: a) Postconsumer materials such as: i) Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and ii. All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and b) Manufacturing, forest residues, and other wastes such as: i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel in smaller rolls of rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; ii) Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others; iii) Fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues; iv) Wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and.v) Fibers recovered from waste water which otherwise would enter the waste stream.
- C. For contracts in an amount greater than \$ 100,000, at the beginning of each contract year, Consultant shall provide estimates of the total percentage of recovered material utilized in the performance of its contract for each of the categories listed in subsection (A). At the conclusion of each contract year, Consultant shall certify the minimum recovered material content actually utilized in the prior contract year.