

Standard Service Agreement



This AGREEMENT is by and between Cal Poly Pomona Foundation, Inc. (FOUNDATION), a nonprofit 501(c)(3) and an auxiliary organization of California State Polytechnic University, Pomona, and _____ (COMPANY).

RECITALS

WHEREAS, subject to the terms of this Agreement, the FOUNDATION desires to engage the services of COMPANY to perform specified activities and the FOUNDATION is willing to retain the services of the COMPANY upon the terms and conditions set forth below; and

WHEREAS, COMPANY is willing to provide services, in consideration of the terms and conditions of this Agreement as set forth below;

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the covenants, conditions, and stipulations hereinafter expressed, and in consideration of the mutual benefits to be derived there from, the parties hereby mutually agree as follows:

1. **SCOPE OF PROJECT:** (either indicate the scope here within this Agreement or include the scope to the Agreement in ATTACHMENT A), and is hereafter referred to as "PROJECT."
2. **COMMENCEMENT OF WORK:** Works shall not commence under the Contract until a fully executed Contract has been received by the Company and the Company has been given approval to proceed. Any work performed by the Company prior to the date of approval shall be considered as having been performed at the Company's own risk and as a volunteer.
3. **PERIOD OF PERFORMANCE:** The activities of PROJECT shall be conducted during the period of _____ beginning date through _____ ending date. This period will be subject to modification or renewal only by mutual written agreement of the parties hereto.
4. **PAYMENT OF COSTS:** In consideration of the COMPANY's performance hereunder, FOUNDATION agrees to pay the COMPANY in the amount of \$_____ total agreed upon amount. This amount shall not be exceeded by COMPANY without the written authorization of FOUNDATION.

(if there are any terms of payment please indicate here)

The payment(s) due under the AGREEMENT shall be made payable to COMPANY, and shall be mailed to:

Company: _____ Company Official
_____ Company Name
_____ Address
_____ City, State, Zip
_____ Phone Number
_____ Fax Number

Invoices: Invoices shall be submitted, in arrears, and mail to the address shown below. The Contract and or Purchase Order number must be included on the invoice. Final invoice shall be marked as such. Unless otherwise specified, The Foundation shall pay properly submitted invoices not more than 30 days after (i) the performance completion date of services; or (ii) receipt of an undisputed invoice, whichever is later. Late payment penalties shall not apply to the Contract:

Foundation: Cal Poly Pomona Foundation, Inc.
_____ Department Name
Attention: _____
3801 W. Temple Ave., Bldg. #
Pomona, CA 91768
_____ Phone number
_____ Fax number

5. **POLICIES AND PROCEDURES:** The PROJECT conducted hereunder shall be performed in accordance with the policies and procedures of the California State Polytechnic University, Pomona (UNIVERSITY) and FOUNDATION.
6. **INSURANCE COVERAGE:** The COMPANY shall obtain & furnish the following policies and coverage prior to commencement of work:

1). Comprehensive General Liability Insurance (including Product and Completed Operation coverage): On an occurrence basis, covering work done or to be done by or on behalf of the COMPANY and providing insurance for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the work. Limits of Liability:

\$2,000,000 General Aggregate
\$1,000,000 Each occurrence – combined single limit for bodily injury and property damage.

2) Business Automobile Liability Insurance: On an occurrence basis, covering owned, scheduled, hired, and non-owned automobile used by or on behalf of the COMPANY and providing insurance for bodily injury and property damage. Limits of Liability:
\$1,000,000 Each Accident- combined single limit for bodily injury and property damage.

3) Worker's Compensation: including Employers Liability limits of \$1,000,000 and other limits as required under California law.

4). Errors and Omissions Insurance: On an occurrence basis for a minimum of \$1,000,000 per occurrence and annual aggregate of \$2,000,000. **Errors and Omission Insurance is required only for professional licensed service consultants such as architects/engineers/attorneys/contractors, etc. If the total contract amount exceeds \$1,000,000 COMPANY shall renew and keep such insurance in effect for at least five (5) years after the recordation of the notice of completion.**

COMPANY shall submit to Foundation certificates of insurance and original endorsements to the policies of insurance required by the agreement as evidence of the insurance coverage. The Certificate holder on the Certificate of Insurance should read as: **Cal Poly Pomona Foundation, Inc.**, 3801 W. Temple Ave., Building # 55 Pomona, Ca 91768 AND name as additional insured shall be Cal Poly Pomona Foundation, State of California, the trustees of the California State University, the California State Polytechnic University Pomona, their officers, employees, representatives, agents, and volunteers (except for professional liability and worker's compensation insurance). The scope of coverage and deductible shall be shown of the certificate of insurance. Each insurance policy required by this Agreement shall be endorsed to FOUNDATION and state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the FOUNDATION. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise acceptable to the FOUNDATION.

7. **ARBITRATION:** It is expected that both parties will make every effort to resolve any issue, conflict or dispute which may arise between them informally and equitably, and without the need for intervention by third parties, unless the parties agree that such intervention (e.g., a mutually acceptable mediator of fact finder) would assist in resolution of the issue, conflict or dispute. Both parties agree to participate in good faith in attempting any such resolutions. If, nonetheless, such informal resolution is unsuccessful, except for claims falling within the jurisdiction of small claims court, any and all disputes arising under or relating to the performance of the services contracted for under this Agreement and any other claim arising under or relating to this Agreement, shall be settled by arbitration in accordance with the applicable rules of the American Arbitration Association of any successor thereto. In the event the parties are unable to agree to a single arbitrator, the dispute shall be submitted to a panel of three (3) arbitrators, Each party shall appoint an arbitrator and the two arbitrators so appointed shall then select a third arbitrator. Such arbitration shall be final and binding upon the parties and shall be the sole and exclusive remedy of the parties with respect to any dispute arising out of, relating to or resulting from the interpretation of the terms of this Agreement or it breach. The costs of such arbitration shall be allocated by the arbitrator under applicable law. Each party shall be responsible for its own attorneys' fees, unless the arbitrator makes an award of costs and attorney's fees under applicable law.
8. **LIQUIDATED DAMAGES:** The COMPANY agrees it will pay the FOUNDATION the sum of \$_____ for each day completion is delayed beyond the Period of Performance as indicated in this Agreement unless mutually agreed upon in writing by COMPANY and FOUNDATION prior to the delay.
9. **TAXES:** The COMPANY shall be responsible for sales, consumer, use and similar taxes that are legally required under the Agreement as executed.
10. **AMBIGUITIES:** This Agreement is the result of negotiations in which each party has had the opportunity to be represented by legal counsel and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

11. **TERMINATION:** Performance under this AGREEMENT may be terminated by either party upon **sixty (60) days** written notice. Upon termination by FOUNDATION or COMPANY, COMPANY will be reimbursed for all costs and non-cancelable commitments incurred in the performance of the AGREEMENT prior to the date of termination in an amount not to exceed the total commitment within one (1) month of the written notice of termination. Upon termination by COMPANY, all costs and non-cancelable commitments incurred thereafter will be the responsibility of COMPANY. In the event that COMPANY terminates this AGREEMENT, COMPANY will return any unused funds to FOUNDATION within one (1) month of the written notice of termination.

12. **INDEMNIFICATION:**

(a) COMPANY shall indemnify, defend and hold harmless the State of California, the Trustees of the California State University, California State Polytechnic University, Pomona (UNIVERSITY), Cal Poly Pomona Foundation, Inc., their officers, employees, representatives, and agents from and against any and all claims, liability, loss, damage, demands, suits, judgments, expenses and costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with the COMPANY'S performance hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the UNIVERSITY or FOUNDATION.

(b) FOUNDATION shall indemnify, defend, and hold harmless COMPANY, its officers, agents and employees against all claims, demands, suits, judgments, expenses and costs, if any, arising from or relating to FOUNDATION'S, and UNIVERSITY'S negligent acts, willful misconduct, or omissions arising from, or alleged to arise from, or related to, performance under this AGREEMENT.

13. **PROPRIETARY INFORMATION:** Any proprietary information disclosed by one party to the other shall be disclosed in writing and designated as proprietary, or if disclosed orally, shall be confirmed in writing and designated proprietary within thirty (30) days of such disclosure. A party receiving proprietary information, hereunder referred to as "RECIPIENT," agrees to use the proprietary information only for the purpose of this AGREEMENT and further agrees that it will not disclose or publish such information except that foregoing restrictions shall not apply to:

- (a) information which is or becomes publicly known through no fault of RECIPIENT;
- (b) information learned from a third party entitled to disclose such information;
- (c) information already known to or developed by RECIPIENT prior to receipt hereunder, as shown by Recipient's prior written records; or
- (d) Information required to be disclosed by operation of law or court order.

The obligation of confidentiality imposed by this provision shall expire **two (2) years** following the expiration or termination of this Agreement. Each party will use a reasonable degree of care to prevent the inadvertent, accidental, unauthorized or mistaken disclosure or use by its employees of proprietary information disclosed hereunder.

Foundation specific information contained in the report, survey, or other product developed by the Company pursuant to this Contract is the property of the Foundation, and shall not be used in any manner by the Company unless authorized by the Foundation.

14. **USE OF NAMES:** COMPANY shall not employ or use the name of FOUNDATION or UNIVERSITY in any promotional materials, advertising, or in any other manner without the prior express written permission of FOUNDATION and UNIVERSITY, except that COMPANY and FOUNDATION may, during the term of this Agreement or thereafter state that COMPANY is sponsoring, or has sponsored, the PROJECT at FOUNDATION or UNIVERSITY.
15. **NOTICES:** Any notice given under this Agreement shall be in writing and shall be deemed delivered three (3) days after deposit in the United States mail, certified or registered, postage _____ prepaid, and addressed to the parties as follows:
- Foundation: G. Paul Storey, Executive Director
 Cal Poly Pomona Foundation, Inc.
 3801 W. Temple Ave., Bldg. 55
 Pomona, CA 91768
 FAX: (909) 869-4549
- Company: _____ Company Official
 _____ Company Name
 _____ Address
 _____ City, State, Zip
 _____ Phone Number
 _____ Fax Number
16. **INDEPENDENT PARTIES:** For purpose of this Agreement, the parties hereto shall be independent contractors and shall at all times be considered neither an agent nor employee of the other. No joint venture, partnership, or like relationship is created between the parties by this Agreement. The COMPANY and FOUNDATION are independent business entities and neither has any authority to act for, or on behalf of, or bind the other to, any contract, without the other's written approval or except as otherwise expressly set forth in this Agreement.
17. **ASSIGNMENTS:** This Agreement shall be binding upon and inure to the benefit of the parties hereto, and may be assigned only to the successors of these parties. Any other assignment by either party without prior written consent of the other party shall be void.
18. **FORCE MAJEURE:** COMPANY shall not be liable for any failure to perform as required by this AGREEMENT, to the extent such failure to perform is caused by any of the following: labor disturbances or disputes of any kind, accidents, failures of any required governmental approval, civil disorders, acts of aggression, acts of God, energy or other conservation measures, failure of utilities, mechanical breakdowns, material shortages, disease, or similar occurrences.
19. **SEVERABILITY:** In the event that a court of competent jurisdiction holds any provision of this Agreement to be invalid, such holding shall have no effect on the remaining provisions of this Agreement, and they shall continue in full force and effect.
20. **GOVERNING LAW:** This Agreement will be governed by, and construed in accordance with, the laws of the State of California, without giving effect to the principles of conflict of laws thereof. Any action brought in connection with this Agreement, whether through arbitration or otherwise, shall be brought through arbitration and/or a Court of competent jurisdiction located in Pomona, California.

FEDERAL, STATE, AND LOCAL REGULATIONS AND LAWS: The company at all times shall be in full compliance with all Federal, State and Local laws and regulations with respect to the production, handling, labeling, distribution, menu, signage, product information and use of any and all food products for human consumption. The company will provide as requested copies of all federal permits and certificates, as well as any and all requested State and Local permits and certificates. Including but not limited to Health Permits, Health department inspections, USDA certificates, Operational permits and certificates showing, resale licenses and tax identification certificates etc as required.

21. **AUTHORITY:** Each party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into and bind such party to the commitments and obligations set forth herein.
22. **ENTIRE AGREEMENT:** Unless otherwise specified herein, this Agreement embodies the entire understanding of the parties for this PROJECT and any prior contemporaneous representations, either oral or written, are hereby superseded. No amendments or changes to this Agreement including, without limitation, changes in the activities of the PROJECT, total estimated cost, and period of performance, shall be effective unless made in writing and signed by authorized representatives of both parties. If any provisions stated in the Agreement, resulting purchase orders, and the project proposal are in conflict, the order of precedence, from first to last shall be: (a) this Agreement with attachments, (b) the project proposal, and (c) the purchase order, it being understood and agreed that any purchase order or similar document issued by FOUNDATION will be for the sole purpose of establishing a mechanism for payment of any sums due and owing hereunder. Notwithstanding any terms and conditions contained in said purchase order, the purchase order will in no way modify or add to the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers or representatives.

COMPANY:

Name of Company

Date: _____

By: _____
Company Official

FOUNDATION:

Cal Poly Pomona Foundation, Inc.

Date: _____

By: _____
G. Paul Storey
Executive Director

Attachment "A"

Proposal Title

Proposal Text

The Scope of Project given in Attachment A is consistent with the mission of the FOUNDATION. The budget and period of performance are consistent with FOUNDATION practices.

Project Director

Date

Department Chair

Date

Associate Dean, College

Date

Dean, College

Date