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This Standard Services Agreement (hereinafter "Agreement") is by and between Cal Poly Pomona Foundation, Inc. (hereinafter "Enterprises"), a nonprofit 501(c)(3) supporting organization of California State Polytechnic University, Pomona, (hereinafter "University") and \_\_\_\_\_ (hereinafter "Contractor"). Contractor and Enterprises are each referred to herein as a "Party" and collectively as the "Parties".

**RECITALS**

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

WHEREAS Contractor 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 therefrom, the parties hereby mutually agree as follows:

- 1) **Scope of Service:** Contractor agrees to provide the Enterprises with ("**Services**"), as requested by the Enterprises. Such Services will be specifically identified in the attached **Schedule A: "Statement of Work"**.
- 2) **Commencement of Work:** The Contractor shall not initiate any work until a fully executed Agreement is obtained and prior approval to proceed has been granted. Any work undertaken by the Contractor prior to receiving such approval will be deemed as performed at the Contractor 's own risk and classified as unpaid volunteer efforts.
- 3) **Period of Performance:** The activities of Services 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:** In consideration of the Contractor 's performance hereunder, Enterprises agrees to pay the Contractor in the amount up to \$\_\_\_\_\_. This amount shall not be exceeded by the Contractor without the advance written authorization of Enterprises. If this is an hourly rate, the total budget must be quantified in dollars and explained below, including the estimated number of hours and applicable hourly rate.

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

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

Contractor Legal Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_

- 5) **Compensation for Services and Expenses:** In consideration of the Services provided by the Contractor, Enterprises agrees to reimburse Contractor in accordance with fees for services and expenses as set forth in the Schedule A: Statement of Work.
- (a) **Invoices:** Invoices shall be submitted, in arrears, and mailed to the address in section 14 "Notices". The Agreement and/or Purchase Order number must be included on the invoice. The final invoice shall be marked as such unless otherwise specified. Enterprises shall pay properly submitted invoices not more than 30 days after the performance completion date of services; or (ii) receipt of an undisputed invoice, whichever is later. Late payment penalties shall not apply to the Agreement.
- (b) **Costs:** Contractor shall be responsible for all costs and expenses incidental to the performance of services, including but not limited to, all costs of equipment provided by Contractor, all employee, agent, and subcontractor costs, all fees, fines, licenses, bonds, or taxes required or imposed against Contractor or Contractor's employees, agents or subcontractors and all other of Contractor's costs of doing business.
- (c) Unless otherwise specified herein, Enterprises shall not be responsible for any expenses incurred by the Contractor in the performance of services under this Agreement. If Enterprises agrees to reimburse any costs, the costs must be reasonable and will be reimbursed at actual costs, and only for expenses for which receipts are submitted. Any approved travel expense reimbursement is per Enterprises' policies and procedures, unless otherwise agreed. All expenses and purchases will be expended per Enterprises' policies and procedures.
- (d) **Tools:** Contractor will supply all tools and instruments required to perform the services under this Agreement. Contractor is not required to purchase or rent any tools, equipment or services from Enterprises.
- 6) **Change Orders for Services or Costs.** Any changes Enterprises request to the work in Schedule A: Statement of Work must be in writing. The contractor must then provide Enterprises with a cost estimate and the parties must agree in writing to the changes and to the cost of the change. Such change documents ("Change Order") will become part of this Agreement. Any changes in costs to be paid by Enterprises must be agreed upon in writing by the parties. Enterprises is not liable for charges for work beyond the scope of this Agreement that are not set forth in a Change Order per this provision.
- 7) **Independent Contractor Relationship.** Contractor's relationship to Enterprises shall be that of an independent contractor and Contractor shall not represent to any third party that its relationship is otherwise. No relationship of employer and employee, principal and agent, partnership or joint venture with Enterprises University is created hereby.
- (a) Contractor shall assume all of the rights, obligations and liabilities attributable to it as an independent contractor, including the control, direction, supervision and payment for any agents, subcontractors, or employees of Contractor in performance of the Services.
- (b) Contractor will determine the method, details and means of performing the Services, and Enterprises shall have no right to, and shall not, control the manner or determine the method of accomplishing Contractor's services. Enterprises does, however, retain complete and exclusive authority to control and dictate the outcome and deliverables of the Services.
- (c) As Enterprises is not the employer of Contractor, Enterprises will not pay or withhold payroll taxes of any kind on behalf of the Contractor or its employees or subcontractors.

- (d) Contractor shall have only the authority expressly granted by this Agreement. Except as expressly provided in this Agreement, Contractor is not authorized to enter into any contract, lease or other arrangement in Enterprises' or University's name, or for Enterprises' or University's account or by which Enterprises or University would be legally bound or held liable.
- 8) **Ownership of Work Product.** Originals of all drawings, specifications, reports, records, documents and other materials whether in hard copy or electronic form, which are prepared by Contractor, its employees, subcontractors or agents in the performance of this Agreement, shall be the property of Enterprises and shall be delivered to Enterprises upon the termination of this Agreement, or upon the earlier request of Enterprises. Contractor shall have no claim for further engagement or additional compensation as a result of the exercise by Enterprises of its full rights of ownership of the documents and materials hereunder. Contractor may retain copies of such documents for their own use. The drawings, specifications, reports, records, documents and other materials prepared by Contractor in the performance of services under this Agreement shall not be released publicly without the prior written approval of Enterprises or as required by law.
- 9) **Confidentiality.** All data and information submitted or made available to Contractor by Enterprises, University or any other person while working on services, unless otherwise publicly available, and all data and information and other work developed by Contractor under this Agreement ("Confidential Information") shall be utilized by Contractor in connection with this Agreement only. Except as required otherwise by law, such Confidential Information shall not be made available by Contractor to any other person without the prior written consent of Enterprises, which consent shall not be unreasonably withheld. Contractor shall not disclose to any other entity or person any information regarding the activities of Enterprises, except as required by law or as authorized by Enterprises. Further, neither Contractor nor its employees, agents or subcontractors thereof shall utilize the aforementioned information for pecuniary gain not contemplated by the terms of this Agreement, regardless of whether or not the Agreement is in effect at the time such gain is realized. Enterprises shall not disclose to any other entity or person any information regarding the activities of Contractor that Contractor has designated in a written notice to Enterprises to be confidential, except as required by law or as authorized by Contractor. Contractor acknowledges that Enterprises is subject to The Richard McKee Transparency Act of 2011.
- 10) **Insurance Coverage:** The Contractor shall obtain & furnish the following policies and coverages prior to commencement of work:
- (a) **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 Contractor and providing insurance for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the work. Minimum Limits of Liability.
- \$ 4,000,000 General Aggregate  
\$ 2,000,000 Each occurrence – combined single limit for bodily injury and property damage.
- (b) **Business Automobile Liability Insurance:** On an occurrence basis, covering owned, scheduled, hired, and non-owned automobile used by or on behalf of the Contractor and providing insurance for bodily injury and property damage. Minimum Limits of Liability:
- \$ 1,000,000 Each Accident- combined single limit for bodily injury and property damage.
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- (c) **Worker's Compensation:** including Employers Liability limits of at least \$1,000,000 and other limits as required under California law.
- (d) **Professional Liability (Errors and Omissions) Insurance:** On a claims-made basis for no less than \$ 2,000,000 each claim and \$4,000,000 annual aggregate. Errors and Omission Insurance is required only for professional licensed services consultants such as architects/engineers/attorneys/contractors, etc. If the total contract amount exceeds \$ 2,000,000, Contractor shall renew and keep such insurance in effect for at least five (5) years after the recordation of the notice of completion.
- (e) **Certificates of Insurance:** The Certificate holder on the Certificate of Insurance should be: **Cal Poly Pomona Foundation, Inc., 3801 W. Temple Ave., Building # 55 Pomona, CA 91768.** Contractor shall submit to Enterprises certificates of insurance and original endorsements to the policies of insurance required by the agreement as evidence of the insurance coverage (meets or exceeds ISO Form # CG 20 10 11 85).
- (f) **Additional Insured Endorsement:** (except for Workers Compensation): **The State of California, Trustees of the California State University, California State Polytechnic University Pomona, Cal Poly Pomona Foundation Inc., Cal Poly Pomona Philanthropic Foundation, Associated Students, Inc., and all of its other departments, boards, volunteers, commissions, and its officers, employees and agents** are hereby declared to be additional insureds as respective to the activities of named insured and should be so listed on any and all of the insurance obtained. In pursuant to this agreement. Proof of such shall be provided to the Enterprises prior to the commencement of any services; however, the Contractor's failure to present such proof does not constitute a waiver by Enterprise of this contract provision.
- (g) **Original Endorsement:** Each insurance policy required by this Agreement shall be endorsed to Enterprises and state that coverage shall not be cancelled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Enterprises. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise agreed to by Enterprises.
- (h) **Waiver of Subrogation:** Contractor hereby grants to Enterprises a waiver of any right to subrogation which any insurer of said Contractor may acquire against Enterprises by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, and this provision applies regardless of whether or not the Enterprises has received a waiver of subrogation endorsement from the insurer. For any claims related to this Agreement, the Contractor's insurance coverage shall be primary
- 11) **Arbitration:** It is expected that both parties will make every effort to resolve any issue, conflict or dispute informally and equitably which may arise as a result of this Agreement, 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 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 or 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 its 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.

12) **General Terms and Conditions.**

- (a) **Non-Discrimination/Affirmative Action.** Contractor agrees to maintain a work environment free of discriminatory practices and to comply with all applicable Federal, State and local non-discrimination/affirmative action laws.
- (b) **Drug-Free Workplace.** Contractor agrees to maintain a drug-free workplace and remain in compliance with the Drug-Free Workplace Act of 1988 and any subsequent amendments thereto.
- (c) **Americans with Disabilities.** Contractor agrees to remain in compliance with the Americans with Disabilities Act of 1990, and any subsequent amendments thereto.
- (d) **Taxes:** The Contractor shall be responsible for sales, consumer, use, payroll and other taxes that are legally required in performing services under the Agreement. If the Contractor is not a resident of the State of California and comes to California to perform any part of their scope of work, California State Taxes of 7% will be withheld from any payment issued (N.A. for Corporations). Additionally, payments made to non-us residents are required to submit an IRS form W8BEN. Payments may be subject to Federal withholding of up to 30% unless there is an applicable tax treaty (N.A. for Corporations).
- (e) **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.
- (f) **Termination:** Performance under this Agreement may be terminated by either party upon sixty (60) days written notice. Upon termination by either party, Contractor 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 Contractor, all costs and non-cancelable commitments incurred thereafter will be the responsibility of Contractor. In the event that Contractor terminates this Agreement, Contractor will return any unused funds to Enterprises within one (1) month of the written notice of termination.
- (g) **Indemnification:** Contractor 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. DBA Cal Poly Pomona Enterprises, Cal Poly Pomona Philanthropic Foundation, Associated Students 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 Contractor'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 Enterprises.

- (h) **Use of Names:** Contractor shall not employ or use the name of Enterprises or University In any promotional materials, advertising, or in any other manner without the prior express written permission of Enterprises and University, except that Contractor and Enterprises may, during the term of this Agreement or thereafter state that Contractor is sponsoring, or has sponsored, the Services at Enterprises or University.
  - (i) **Subcontracting:** The rights or duties of this Agreement may not be assigned or delegated by Contractor, nor may Contractor retain subcontractors, without the prior written consent of Enterprises. The subcontractors and their employees shall function as subcontractors to Contractor, not as parties to any contract with Enterprises for the work described herein.
  - (k) **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.
  - (l) **Force Majeure:** Contractor 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.
  - (m) **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.
  - (n) **Policies and Procedures:** The Services conducted hereunder shall be performed in accordance with the policies and procedures of the California State Polytechnic University, Pomona (University) and Enterprises.
  - (o) **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.
- 13) **Federal, State, And Local Regulations and Laws:** The Contractor 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 Contractor 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.
- 14) **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:

**Financial Services Department  
Cal Poly Pomona Foundation, Inc.  
3801 W. Temple Ave., Bldg. 55  
Pomona, CA 91768  
FAX: (909) 869-4549**

- 15) **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.
- 16) **Entire Agreement:** Unless otherwise specified herein, this Agreement embodies the entire understanding of the parties for this Services 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 Services, 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 Services proposal are in conflict, the order of precedence, from first to last shall be: (a) this Agreement with attachments, (b) the Services proposal, and (c) the purchase order, it being understood and agreed that any purchase order or similar document issued by Enterprises 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.

**Contractor**

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

\_\_\_\_\_  
Contractor's Authorized Signature / Date

**Cal Poly Pomona Foundation, Inc.**

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

\_\_\_\_\_  
CEO/Executive Director (designees) / Date

**Enterprise Project Authorized Signer**

\_\_\_\_\_  
Project Authorized Signature / Date

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

Project #: \_\_\_\_\_

**Attachment "A"**

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

**Statement of Work**

\*\*If additional room is needed, please continue a separate sheet of paper and attach at the end.

**Contact Information for Contractor Lead**

**Enterprise Project Authorized Signer**

\_\_\_\_\_  
Signature / Date

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

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

\_\_\_\_\_  
Signature / Date

Enterprises Contracts and Procurement			
Accounts Payable Manager review		Contracts review	
Service Agreement <input type="checkbox"/>	Purchase Request <input type="checkbox"/>	BOD Approved CapX <input type="checkbox"/>	Unanticipated CapX <input type="checkbox"/>
SSA# _____	PO# _____	CX# _____	CX# _____