

UNIVERSITY OF THE PACIFIC STANDARD PROFESSIONAL SERVICES AGREEMENT
[Modified Short Form Pacific SSA]

This Standard Services Agreement (“**Agreement**”) is entered into effective as of _____, 2015 (the “**Effective Date**”) by and between the University of the Pacific, a California nonprofit public benefit corporation (“**University**”), and _____ (“**Consultant**”). In consideration of the promises and the mutual covenants and agreements set forth below, the parties hereto agree as follows:

1. **Services.** Consultant agrees to perform those services (“**Services**”) required under this Agreement and as specifically set forth in the scope of work attached hereto and incorporated herein by reference as **Exhibit A** (“**Scope of Work**”). Use of the term “**Agreement**” shall include the Scope of Work. Consultant may not subcontract to any third party any portion of the Services nor may Consultant, voluntarily or by operation of law, assign or transfer any of its rights or obligations under this Agreement, without the prior written consent of the University.
2. **Ownership of Work Product.** Consultant acknowledges and agrees that all work product or deliverables prepared for, arising from, related to, or incorporated in the Services including, without limitation, all ideas, concepts, inventions, expressions, information, material, works of authorship, plans, programs, programming code, systems, work notes, drafts, specifications, design documents, flow charts, software programs, reports, analyses, data, surveys, print copy, artwork, plates, photo negatives and positives, boards, preliminary outlines, sketches, letters, invoices, proposals, databases, and reports (collectively, “**Work Product**”) shall be owned solely and exclusively by University, including without limitation, all corrections, modifications, and derivative works to such Work Product. The Work Product shall be considered University’s Confidential Information for purposes of Section 9. Notwithstanding anything to the contrary in this Agreement, the Consultant shall have the right to retain copies and use the instruments of service for any lawful purpose, including without limitation use of elements of the design on other projects, provided that the Consultant shall be responsible for the consequences of such use.
3. **Progress Reports.** Consultant shall prepare monthly progress reports in such form required by the University. Weekly progress reports may be required if Project progress is not consistent with the currently University-approved schedule. The Consultant shall cooperate with the University to prepare such additional reports as required by the University.
4. **Compensation and Expenses.** University shall pay to Consultant the fees set forth in the Scope of Work (“**Fees**”). Unless otherwise stated in the Scope of Work, the Fees shall include, and Consultant shall be responsible for, all expenses and taxes incurred by Consultant in connection with providing the Services.

Reimbursable Expenses (invoiced at cost plus 10% with submission of receipts and documentation of all expenditures):

Reimbursable Expenses are in addition to Consultant’s compensation for Services performed and include expenses incurred by the Consultant and the Consultant’s employees and subconsultants directly related to the Project for:

- (a) Owner authorized travel and subsistence cost (if travel time is not also billed as professional services time) payable in accordance with the travel reimbursement policies applicable to employees of the Owner;
- (b) Reasonable long-distance telephone services, dedicated data and communication services, teleconferences, Project websites and extranets;
- (c) Owner requested printing, reproductions, plots, standard form documents;
- (d) Reasonable postage, handling and delivery of documents for bidding purposes, Owner review(s), or other specially mandated or required review(s) or as otherwise requested by the Owner;

- (e) Renderings, models, mock-ups, and professional photography requested by the Owner;
- (f) Owner authorized special computer studies, videos or CDs, or Owner authorized special reports required by any unique characteristic of the Project; and
- (g) Reproduction of record drawings.

Reimbursable Expenses invoiced beyond ninety (90) calendar days from the date the expense was incurred shall not be reimbursed.

5. **Payment Terms.** Except as may otherwise be set forth in the Scope of Work, Consultant shall submit to University on a monthly basis an invoice listing in detail all Services provided to University and Fees incurred by Consultant in the prior month (“**Invoice**”). University shall remit payment to Consultant on undisputed Invoices within forty-five (45) calendar days (excluding University holidays) of the University’s receipt of the Invoice.

6. **Term and Termination.** The Agreement shall commence on the Effective Date and, unless otherwise provided in the Scope of Work, shall terminate upon Consultant’s completion of the Services to University’s satisfaction, provided that University may terminate this Agreement: (i) at any earlier time, without cause or penalty, by giving at least five (5) days’ written notice to Consultant; or (ii) immediately upon written notice to Consultant in the event of Consultant’s material breach of this Agreement. Any early termination of this Agreement shall be without prejudice to any claims or damages a party may have.

7. **Independent Consultant Relationship.** Consultant is and shall be an independent Consultant of the University. Neither Consultant nor Consultant’s employees or subconsultants shall be deemed to be employees or agents of University. Consultant and Consultant’s employees and subconsultants will not be entitled to any benefits made available to University employees. Nothing in this Agreement is intended to establish a partnership, joint venture, or agency relationship between the parties, and neither Consultant nor Consultant’s employees or subconsultants are authorized to bind University or make any representations on its behalf in any matter.

8. **Consultant’s Insurance.**

(a) **Required Insurance Coverage.** Consultant shall, at Consultant’s sole cost and expense, procure and maintain for the duration of this Agreement the insurance coverage set forth below for claims arising from Consultant’s performance under this Agreement and for which Consultant may be legally liable, whether such liability results from any actions or omissions of Consultant, Consultant’s subconsultants, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable:

(i) Commercial General Liability insurance coverage to include premises and operations, personal/advertising injury, products/completed operations, and liability assumed under an insured contract (including defense costs assumed under contract), with limits of not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) general aggregate, and Two Million Dollars (\$2,000,000) products/completed operations aggregate. Such insurance shall provide, or be endorsed to provide, that University and its officers, directors, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of Consultant’s performance under this Agreement.

(ii) Workers’ Compensation insurance covering Consultant’s own employees as required by law, to include Employer’s Liability coverage with a limit of not less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

(iii) Errors and Omissions Liability insurance appropriate to Consultant’s profession with limits of not less than One Million Dollars (\$1,000,000) per occurrence/claim and Two Million Dollars (\$2,000,000) aggregate.

(iv) If an automobile is to be used by Consultant in performing the Services, a policy of comprehensive automobile liability insurance covering the operation of all automobiles used in connection with the performance of this Agreement (whether owned, non-owned, or hired) with such policy to afford protection to the limit of One Million Dollars (\$1,000,000) with respect to bodily injury or death of any one person, One Million Dollars (\$1,000,000) with respect to bodily injury or death of any number of persons in any one occurrence, and One Million Dollars (\$1,000,000) with respect to damage to property of any one owner from one occurrence. Such insurance shall provide, or be endorsed to provide, that University and its officers, directors, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of Consultant's performance under this Agreement.

(v) Valuable Papers and records coverage for plans, specifications, drawings, reports, maps, books, blueprints, and other printed and electronic documents on an all-risk basis in an amount sufficient to cover the cost of research, re-creation or reconstruction of valuable papers or records related to the Services.

(vi) The Consultant shall require all subconsultants to maintain the same insurance coverage as is required in this Agreement of Consultant. Such insurance shall provide, or be endorsed to provide, that University and its officers, directors, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of sub-consultant's or subconsultants performance under this Agreement.

(b) Continuous Coverage. Should any of the insurance required of Consultant under this Agreement be provided under a claims-made form, Consultant shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration or earlier termination of this Agreement, such that, should occurrences during the term of this Agreement give rise to claims made after the expiration or termination of this Agreement, such claims shall be covered by such claims-made policy (or an equivalent policy affording prior acts coverage).

(c) Insurance Carriers. All insurance required of Consultant hereunder shall be through insurance carriers licensed to do business in the State of California and otherwise reasonably acceptable to University.

(d) Certificates and Endorsements. Consultant shall furnish University with original certificates and amendatory endorsements affecting the insurance coverage required of Consultant under this Agreement. All certificates and endorsements are to be received and approved by University before performance under the Agreement commences, and on an annual basis thereafter for the duration of the term of this Agreement. University reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications, at any time.

(e) Waiver of Subrogation; Cancellation or Modification. Each insurance policy required of Consultant under this Agreement shall include a waiver of subrogation clause and shall be endorsed to state that Consultant's coverage shall not be canceled, modified, or materially changed except after thirty (30) days' prior written notice by certified mail, return receipt requested, to the person executing this Agreement on behalf of the University.

(f) Consultant's Insurance Primary. For any claims arising out of this Agreement, Consultant's insurance coverage, whether or not required under this Agreement, shall be primary insurance as respects University, its regents, officers, directors, employees, and volunteers. Any insurance or self-insurance maintained by University, its regents, officers, directors, employees, or volunteers shall be excess of Consultant's insurance and shall not contribute with it. Consultant agrees that it shall obtain any necessary endorsements to its insurance policies to effect the requirements of this paragraph.

9. **Confidentiality.** At all times hereafter, Consultant will keep in confidence and trust all confidential and proprietary information that Consultant learns of or receives during the term of this Agreement, and will not use, reproduce, or disclose to others any confidential information without University's advance written consent,

except as may be directly necessary in the ordinary course of performance of the Services under this Agreement, or as otherwise may be required by law.

10. **Consultant's Representations.** Consultant represents that: (a) Consultant will comply with all federal, state and University laws, rules and regulations in performing the Services, (b) the Services will be performed in compliance with generally accepted professional procedures and industry standards prevailing at the time the Services are performed, (c) all Services will meet the specifications set forth in the Scope of Work, and (d) Consultant has, and shall maintain in effect for the duration of this Agreement, all licenses, permits, qualifications, and approvals which are legally required for Consultant to render the Services.

11. **Indemnification.** Consultant agrees to hold harmless and indemnify University and its regents, officers, directors, employees and agents from and against all claims, damages, losses, and expenses (including without limitation attorneys' fees and costs) ("**Loss**") arising out of (i) the performance of the Services, except to the extent that such Loss is caused by the sole negligence or willful misconduct of University, or (ii) any breach or default in the performance of any of Consultant's obligations hereunder including, without limitation, any breach of any warranty or representation. This indemnity shall not be limited by reason of any insurance coverage required under this Agreement.

12. **Survival.** The provisions of Sections 6 (Term and Termination), 7 (Independent Consultant Relationship), 9 (Confidentiality), 10 (Consultant's Representations), 11 (Indemnification), 13 (Limitation on Damages), 14 (Governing Law; Dispute Resolution), 15 (University Names and Logos), 18 (General Provisions) and 8 (b) (Consultant's Insurance Continuous Coverage) shall survive termination of this Agreement.

13. **Limitation on Damages.** In no event shall either party be liable to the other party for any special, consequential, indirect, exemplary, punitive, incidental, or similar damages (including, without limitation, loss of profits), even if such party has been apprised of the possibility thereof; provided, however, that the foregoing limitation shall not apply in the event that Consultant breaches the provisions of Section 7 (Confidentiality) of this Agreement.

14. **Governing Law; Dispute Resolution.** This Agreement, and any dispute between the parties arising out of or related to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of laws rules. Any and all legal action that is initiated to enforce any provision of this Agreement or arising out of or related to this Agreement must be brought or filed in either the state or federal court located in California. Each party shall be entitled to recover the cost of enforcing the understanding and agreements as reflected herein, including, without limitation, any attorney's fees and costs incurred.

15. **University Names and Logos.** Consultant agrees that it shall not use the University's name, logo or insignia, or the name, logo or insignia of any school or division thereof, or otherwise identify the University or any of its schools or divisions in any form of publicity or disclosure without the prior written permission of the University, which permission may be given or withheld in the University's sole discretion.

16. **Hazardous Materials.** Unless otherwise required in this Agreement, the Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the site.

17. **Audit Rights.** The University and/or its accountants, auditors, and agents shall, upon reasonable prior notice and during customary business hours, be entitled to audit, inspect, examine, and reproduce all of the Consultant's information, materials, records, or data relating to the Services, including, but not limited to, accounting records, written policies and procedures, subcontract files (including subcontracts, proposals of successful and unsuccessful bidders, bid recaps, etc.), original estimates, estimating work sheets, correspondence, Change Order files (including documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance

rebates and dividends, drawings, receipts, purchase orders, vouchers, memoranda, subscriptions, recordings, computerized information, drawing, agreements, and other information, materials, records or data relating to the Services ("Records"). Such Records shall also include information, materials, records or data necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where Consultant's Records have been generated from computerized data, the Consultant agrees to provide the University with extracts of data files in computer readable format on disks or suitable alternative computer exchange formats.

(a) The Consultant shall preserve the Records for a period of twelve (12) years after final payment or for such longer period as required by law, provided, however, that if a claim is asserted during said twelve (12) years period, the Consultant shall retain all such Records until the claim has been resolved. Prior to destruction of Records, the Consultant shall notify the University of its intent to destroy the Records and shall allow adequate time for the University to request these Records be sent to the University in lieu of destruction.

(b) The Consultant shall require all subconsultants and subcontractors to comply with the provisions of this Section by insertion of the requirements hereof in a written agreement between the Consultant and the sub-consultant or subcontractor.

(c) If an audit discloses overpricing or overcharges (of any nature) by the Consultant to the University, in addition to repayment or credit for overcharges, the reasonable, actual costs of the audit shall be reimbursed to the University by the Consultant. Any adjustments and/or payments that must be made as a result of any audit shall be made within a reasonable time not to exceed ninety (90) days from presentation of the University's findings to the Consultant.

18. **General Provisions.** No provision of this Agreement is intended to confer any benefit upon any third party and no third party shall have the right to enforce any provision of this Agreement. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. This Agreement shall be interpreted in an even-handed manner and without regard to any presumption against the party that was responsible for its drafting. Time is of the essence. If any provision of this Agreement is held invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired thereby. This Agreement including its Exhibits, may not be modified except in writing executed by duly authorized representatives of the parties. This Agreement together with the exhibits hereto constitutes the entire agreement between the parties pertaining to its subject matter, superseding all prior and contemporaneous agreements, proposals, letters of intent and memorandums of understanding.

IN WITNESS WHEREOF, this Agreement has been duly executed on behalf of the parties hereto as of the Effective Date.

UNIVERSITY OF THE PACIFIC

By: _____
Kenneth M. Mullen
Vice President for Business and Finance

CONSULTANT

By: _____
Name
Title