

CONSULTANT SERVICES AGREEMENT

This Agreement is made on _____, by and between Pepperdine University, 24255 Pacific Coast Highway, Malibu, California 90263 ("UNIVERSITY"), and _____ ("CONSULTANT").

WITNESSETH

WHEREAS, UNIVERSITY has established a need for certain professional services; and

WHEREAS, CONSULTANT has proposed to provide professional services for UNIVERSITY;

NOW THEREFORE, in consideration of the mutual covenants and agreements stated herein and of the payments for services hereinafter described, the parties hereto do mutually agree as follows:

1. Employment of CONSULTANT. UNIVERSITY hereby agrees to engage CONSULTANT and CONSULTANT agrees to perform the services hereinafter set forth.
2. Time of Performance. This Agreement and all rights and duties created hereunder will commence _____ and terminate _____, unless terminated earlier as provided in this Agreement.
3. Scope of Service. CONSULTANT agrees to provide consulting services as specified in detail in Schedule A which is attached and made a part of this Agreement.
4. Contacts for Responsibility. The designated representative of UNIVERSITY for purposes of administering this Agreement shall be:
_____, (POSITION/TITLE).

The designated representative of CONSULTANT for purposes of Administering this Agreement shall be: _____,
(POSITION/TITLE).
5. Compensation. Compensation shall be paid as provided in Schedule B which is attached and made a part of this Agreement.
6. Schedule of Payment. Payment shall be made as outlined in Schedule B which is attached and made a part of this Agreement.
7. Independent Contractor. CONSULTANT, in performing services under this Agreement, is an independent contractor and shall not act as nor be an agent or employee of UNIVERSITY. CONSULTANT will receive from UNIVERSITY a 1099 and CONSULTANT, not UNIVERSITY, will be responsible for all applicable withholdings and taxes.

(a) CONSULTANT shall be responsible for the acts of its employees while on UNIVERSITY's premises. Accordingly, CONSULTANT agrees to take all necessary measures to prevent injury and loss to persons or property located on UNIVERSITY's premises. CONSULTANT shall be responsible for all damages to person or property caused by CONSULTANT or any of its agents or employees.

(b) CONSULTANT agrees that, in the event of an accident of any kind while on UNIVERSITY's premises, CONSULTANT will immediately notify UNIVERSITY's Public Safety Department and thereafter furnish a written report of such accident.

8. Nonassignability. This Agreement shall not be assigned by CONSULTANT and any attempt to do so shall be void and have no effect.
9. Compliance. CONSULTANT shall comply with all applicable laws, statutes, ordinances, rules and regulations of all governmental entities, if applicable under the scope of work and CONSULTANT bears full responsibility to ensure that all services provided under this Agreement conform to said laws, rules, regulations and guidelines. CONSULTANT shall also comply with all applicable policies of UNIVERSITY. Alcohol, drugs, profane and abusive language and sexual harassment of any kind on campus are specifically prohibited. Any failure by CONSULTANT to abide by this Section (9) shall provide the basis, at UNIVERSITY'S discretion, to terminate this Agreement for cause under the terms of Section (10) below.
10. Termination of Agreement for Cause. If either party shall fail to fulfill in a timely and proper manner any material obligation under this Agreement, the non-breaching party shall thereupon have the right to terminate this Agreement by giving written notice of such termination and specifying the effective date thereof, said notice being given at least five (5) calendar days before the effective date of this termination. In that event, and at the option of the non-breaching party, all finished and unfinished documents, data, surveys, drawings, maps, models, photographs, reports and/or other materials prepared by CONSULTANT shall become the property of UNIVERSITY and CONSULTANT shall be entitled to receive payment for all professional services rendered satisfactory to UNIVERSITY based on a pro rata share of the total compensation provided for in this Agreement.
11. Termination for Convenience. Either party may terminate this Agreement without cause at any time by giving written notice, and specifying the effective date thereof, at least fourteen (14) calendar days before the effective date of such termination. In that event, all finished documents and other materials prepared by CONSULTANT and/or provided by UNIVERSITY shall become the property of UNIVERSITY. CONSULTANT shall be entitled to receive payment for all professional services satisfactorily rendered based on a pro rata share of the total compensation provided for in this Agreement.
12. Publication, Reproduction and Use of Material. Except as specifically authorized by UNIVERSITY in writing, information and other data developed or acquired by or furnished to CONSULTANT in the performance of this Agreement shall be used only in connection with services provided to UNIVERSITY.
13. Confidentiality. Except to the extent disclosure is consented to by UNIVERSITY CONSULTANT shall communicate information derived from UNIVERSITY, its counsel, and from CONSULTANT'S service, as well as CONSULTANT'S views and conclusions, to UNIVERSITY in a confidential fashion.

14. Prohibited Use of UNIVERSITY'S Name. CONSULTANT shall not use UNIVERSITY'S name or logo in connection with this work or in any other manner without the prior written consent of UNIVERSITY.
15. Attorneys' Fees. Both parties agree that should either party reasonably retain an attorney to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, including fees and costs of corporate staff counsel.
16. Indemnification. To the fullest extent permitted by law, CONSULTANT shall defend, indemnify, protect, save and hold harmless the UNIVERSITY, its officers, directors, employees, and agents from and against any and all claims, liability, loss, cost, damage or expense arising before or after the effective date of this Agreement from CONSULTANT'S use of UNIVERSITY 'S facilities or from the conduct of its program or from any activity, work, unauthorized disclosure of sensitive personal information, or thing done permitted or suffered by CONSULTANT, its partners, agents, servants, contractors, representatives, guests, employees, invitees or customers in or about UNIVERSITY premises or elsewhere, or for any default in the performance of any obligation on CONSULTANT'S part to be performed under this Agreement or from any act or negligence of CONSULTANT or its guests, employees, invitees or customers. The indemnity obligations of CONSULTANT include, without limitation, CONSULTANT 'S obligation to indemnify UNIVERSITY for all attorney's fees and costs incurred by the UNIVERSITY in connection with the enforcement of the provisions contained in this Paragraph. UNIVERSITY may, at its option, require CONSULTANT to assume UNIVERSITY 'S defense in any action covered by this Paragraph.

The required insurance policy or policies shall include coverage for this indemnification obligation and the required Certificate of Insurance and original additional insured endorsement will disclose that the policy(ies) includes protection for this indemnification and save harmless obligation.

17. Liability Insurance. In addition to CONSULTANT'S obligations under section (16) ("INDEMNIFICATION") hereof, and without limiting or superseding such obligations, CONSULTANT covenants and agrees to obtain and to maintain during the term of this Agreement, at CONSULTANT'S sole expense, all of the following insurance, which shall be primary to and not contributory with any insurance or self-insurance maintained by UNIVERSITY, and shall be endorsed to include UNIVERSITY as an additional insured:
 - A. Commercial General Liability Insurance which includes usual and customary coverages for bodily injury (including mental injury/emotional distress), property damage, personal injury, independent contractors, and contractual liability, with a minimum combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. Such insurance shall provide for the waiver of subrogation against UNIVERSITY and any of its affiliated persons or entities. (For the purposes of all parts of this Agreement, "person" refers to natural persons and legal entities of whatever form.) Such Insurance shall include coverage for participants in Operator's programs, and shall not contain any limitations/exclusions specifically with respect to coverage for participants or for sexual abuse, harassment or molestation (except for sublimits of liability that do not reduce the amount of coverage for *sexual abuse, harassment or molestation only* below \$1,000,000.)The Certificate of Insurance and

original additional insured endorsement must specifically refer to this Agreement.

- B. Business Auto Liability Insurance with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage, including all owned, non-owned and hired autos.
- C. Worker's Compensation (California Statutory limit) and Employer's Liability Insurance for not less than \$1,000,000 each accident/occurrence.
- D. *Employer's Liability Insurance* of not less than \$1,000,000.

Said insurance shall be issued by a company currently admitted to do business in such class of insurance in the State of California and having a BEST'S rating of A- or better. Certificates of Insurance for all policies, in a form satisfactory to UNIVERSITY, shall be furnished to UNIVERSITY prior to the effective date of this contract. All Certificates of Insurance and original additional insured endorsements shall provide that they may not be canceled nor the coverage thereunder otherwise reduced without 30 days' advance written notice to UNIVERSITY. All Certificates of Insurance shall be signed by an authorized agent or representative of the insurance carrier. No defect in any certificate of Insurance shall be deemed a waiver by the UNIVERSITY for any of the requirements of this agreement. CONSULTANT shall provide information to the UNIVERSITY regarding any sexual abuse, harassment or molestation claim made against CONSULTANT in the last ten years.

FAILURE TO OBTAIN SUCH POLICIES OR TO SUBMIT THE REQUIRED CERTIFICATES OF INSURANCE AT LEAST 15 DAYS BEFORE ENTERING PEPPERDINE'S PREMISES SHALL AT PEPPERDINE'S ELECTION, CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT AND ENTITLE PEPPERDINE TO CANCEL THE AGREEMENT WITHOUT FURTHER NOTICE TO OPERATOR.

- 18. Integrated Document. This Agreement and any attached Schedule, Exhibit, or Addendum, etc. shall embody the entire agreement between UNIVERSITY and CONSULTANT for the scope of services and the terms and conditions. No verbal agreements or conversation with any officer, agent or employee of either party prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement.
- 19. Severability of Provisions. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.
- 20. Controlling Provisions. In the case of an inconsistency between the provisions of this Agreement and any Schedule, Exhibit, or Addendum attached hereto, the terms of this Agreement shall govern.
- 21. Amendments. This Agreement may be amended at any time by mutual written agreement of the parties hereto.
- 22. Applicable Law. This Agreement shall be governed by California law.
- 23. Force Majeure. If the UNIVERSITY'S performance of obligations under this Agreement is materially hampered, interrupted, or interfered with for reasons

including, but not limited to: fire, casualty, lockout, strike, labor conditions, unavoidable accident, riot, war, earthquake, landslides, or other acts of God, or by the enactment, issuance, or operation of any municipal, county, State, or federal law, ordinance or executive, administrative, or judicial regulation, order or decree, or by any local or national emergency, the UNVIERSITY shall be excused from performance of this Agreement and will not be responsible for payment of services not yet rendered.

24. Asbestos. Certain portions of the UNIVERSITY campus, located at 24255 Pacific Coast Highway, have been found to include asbestos-containing building material (ACBM). If you would like detailed information on the location of ACBM and/or suspect ACBM areas, please contact Facilities Management & Planning or the University Risk Manager. If the services provided in Schedule A would likely cause CONSULTANT to come into contact, or be exposed to such areas, CONSULTANT must sign an additional statement related to ACBM.
25. Dumping of Construction/Industrial Materials. CONSULTANT shall not dump or dispose of any liquid or soluble construction/industrial waste materials in any UNIVERSITY drain, sink, or sewer line. Additionally, CONSULTANT shall not dump said materials anywhere on UNIVERSITY grounds, or in UNIVERSITY gutters. The materials covered by this prohibition include, but are not limited to: Hazardous materials and wastes, paints (whether water or oil based), solvents, cleaners, adhesives, drywall materials, and other soluble building material.

IN WITNESS WHEREOF, UNIVERSITY and CONSULTANT have executed this Agreement as of the date first written above.

ATTEST:

by _____
PEPPERDINE UNIVERSITY

Date _____

ATTEST:

by _____
PEPPERDINE UNIVERSITY

Date _____

ATTEST:

by _____

Date _____

PROVISION CONCERNING ASBESTOS*

Certain portions of the Pepperdine University campus, located at 24255 Pacific Coast Highway, have been found to include asbestos-containing building material (ACBM). An inspection conducted by Certified Engineering & Testing Company, Inc. has identified ACBM and/or suspect ACBM in the following areas:

1. Appleby Center
2. Ahmanson Fine Arts Center
3. Brock House
4. Central Plant Operations
5. Elkins Auditorium
6. Field Baseball Stadium
7. Field Heritage Hall
8. Firestone Fieldhouse
9. Huntsinger Academic Center
10. Landscape and Irrigation Offices (previously Equestrian Center)
11. Mallman House
12. McConnell School Of Law
13. Payson Library
14. Pendleton Computer Center
15. Rockwell Academic Center
16. Runnels Poolhouse
17. Smothers Theatre
18. Stauffer Chapel
19. Student Health Center
20. Student Housing:
Dorm 1-17, George Page Residential I, Phi Alpha Bldg., Phi Beta Bldg.,
Rho Bldg., Seaver Apartments, Sigma Bldg., Tau Bldg. & Annex, Upsilon
Bldg.
21. Tyler Campus Center

Substantial medical and scientific evidence indicates that human exposure to airborne asbestos fibers significantly increases the risk of contracting cancer and other debilitating or fatal diseases, including, but not limited to, asbestosis. Asbestos exposure is only a health risk if the fibers become airborne.

Any moving, drilling, boring, or otherwise disturbing asbestos-containing building material may result in airborne asbestos fibers and may therefore present a health risk. Consequently, no such activity should be attempted by anyone who is not trained and qualified to handle ACBM. Should your activities bring you into contact with what you believe may be ACBM and you are not properly trained and/or accredited by the appropriate regulatory agency to work with ACBM in the quantity required by the job, you shall stop work immediately and contact Central Plant Operations or the University Risk Manager.

If your work involves contact with ACBM, you represent by signing below that you have passed appropriate certification examinations, that you are registered with and/or accredited by all appropriate federal, state and/or local regulatory agencies including, but not limited to the Environmental Protection Agency (EPA) and the California Occupational Safety and Health Administration (CAL-OSHA), and that you, your agents, and subcontractors are properly trained to work with ACBM without causing a health risk to you or others.

* List updated April 12, 2002.

Pepperdine University has adopted an operations and management program to manage the ACBM. The plan includes but is not limited to:

- I. Periodic reinspection and surveillance information,
- II. Suggested procedures for fiber release episodes,
- III. Measures to minimize potential fiber releases, and
- IV. Information on training programs for building engineering and maintenance staff.

The plan is available for review and photocopying during regular working hours in the University Risk Management office located on the first floor of Thornton Administrative Center.

Pursuant to section 25915.2(b) of the California Health and Safety Code, it is the contractor's responsibility once this notice is received to provide a copy of the notice to his employees or contractors working within an area designated as having ACBM.

By signing this contract, you: 1) acknowledge receipt of this notice; 2) promise to provide this notice to those persons required to receive it by section 25915.2(b) of the California Health and Safety Code; 3) represent that you have already reviewed, or promise to review the University's asbestos-containing materials operations and maintenance program; 4) warrant that you, your agents, and subcontractors are properly trained, registered, and certified for the kind of services to be rendered in relation to the quantity of ACBM that will be contacted; 5) promise that you have the knowledge to comply and that you will comply with all relevant federal, state and local statutes and/or regulations.

ATTEST:

By: _____

DATE: _____

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