AGREEMENT FOR PRELIMINARY CONSTRUCTION SERVICES
FOR THE DEVELOPMENT OF (INSERT PROJECT NAME HERE)

This Agreement is made and entered into this (INSERT DATE HERE), 2015 between the Santa Maria Joint Union High School District, hereinafter referred to as “District” and ________________, hereinafter referred to as “CONTRACTOR,” for the purposes of providing preliminary construction consulting services to facilitate the new construction of (INSERT PROJECT HERE)(the “Project”).

WHEREAS, the Project will be located at a District owned site (“Site”);

WHEREAS, District has retained (INSERT ARCHITECT HERE) to prepare plans and specifications for the Project;

WHEREAS, CONTRACTOR desires to provide certain construction consulting services to the District with respect to reviewing the Plans and Specifications for the Project, prepare cost estimates, prepare construction schedules, obtain pricing from subcontractors, provide value engineering services and constructability services in preparation for the Project’s development;

WHEREAS, CONTRACTOR represents that it and its referenced consultants are properly licensed and have the expertise and experience to obtain pricing from subcontractors, develop construction schedules, provide value engineering and constructability services, identify long lead items, plan for and coordinate construction activities with the Architect, review and negotiate lease documents and perform the other pre-construction related services set forth in this Agreement; and

WHEREAS, District and CONTRACTOR are interested in entering into lease agreements which include construction provisions and related exhibits for the development of the Project pursuant to Education Code section 17406 (collectively, the “Lease Agreements”) after Division of State Architect (“DSA”) approval of the project’s plans and specifications and CONTRACTOR’s performance of its duties as set forth in this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I.
SCOPE OF CONTRACTOR SERVICES

A. **Scope.** CONTRACTOR agrees to perform the following services including the specific pre-construction deliverables as described in **Exhibit B:**

1. **Review of Plans and Specifications.**

   a. CONTRACTOR shall work in cooperation with the District, the District’s Architect and such other entities as District shall designate, to review and comment on the Plans and Specifications for the Project (the “Plans and Specifications”). The Architect shall remain responsible for completing, stamping and submitting the final design documents for Division of State Architect approval. Notwithstanding the above, District acknowledges that
CONTRACTOR is not the Architect for the Project and that CONTRACTOR responsibilities and duties under this subsection shall not include the design of the Project which is the responsibility of the Architect.

b. CONTRACTOR shall assist the District by providing detailed evaluation of the Project, including the Plans and Specifications, the proposed construction budget, schedule requirements, and the District’s project budget.

c. CONTRACTOR shall attend regular meetings during Project development between the Architect, the District’s Program Manager, the District, and any other applicable consultants of the District as required.

d. CONTRACTOR shall perform one (1) constructability analysis of the Plans and Specifications and provide District with recommendations regarding long lead purchases.

e. After DSA Approval and subsequent to receipt of bids, CONTRACTOR will provide a Guaranteed Maximum Price (GMP) for the construction of the Project which will, if acceptable to the District, become the basis for the Lease and Construction Agreements.

f. CONTRACTOR will work jointly with District and District’s attorney to prepare the Lease and Construction Agreements for approval by the District’s Board.

B. **Warranty.** CONTRACTOR agrees and represents that it is qualified to properly provide the services set forth in this Agreement in a manner which is consistent with the generally accepted standards of CONTRACTOR’s profession. CONTRACTOR further represents and agrees that it will perform said services in a legally adequate manner in conformance with applicable federal, state and local laws and guidelines, including, but not limited to, Division of State Architect regulations and guidelines, State Allocation Board guidelines for school construction and applicable labor compliance program.

C. **Schedule.** Services outlined above will commence on the date the District issues a notice to proceed (“NTP”) for the Agreement, and conclude prior to commencement of construction. It is anticipated that construction will commence on a date to be determined in 2015. A more detailed schedule will be provided in the construction provisions. Any extension shall be subject to the reasonable approval in writing by the parties.

D. **Limited Authority.** The duties, responsibilities and limitations of authority of CONTRACTOR shall not be restricted, modified or extended without written agreement between the District and CONTRACTOR.

E. **Construction.** Upon receipt of DSA approval and agreement on the GMP, the District expects to authorize entering into the formal lease, sub-lease and construction agreements (the “Lease Agreements”) to provide for the development of the Project; therefore, CONTRACTOR shall perform the services herein in a timely manner, consistent with the
ARTICLE II.
DISTRICT’S RESPONSIBILITIES

The District has and shall continue to provide to CONTRACTOR information regarding requirements for the Project, including information regarding the District's objectives, schedule, constraints and criteria. District has retained the firm of Caldwell Flores Winters, Inc. (“CFW”), to represent the District in negotiations and preparation of all legal documents, including the formal Lease Agreements in accordance with Education Code section 17406.

ARTICLE III.
TERMINATION

A. **Termination by CONTRACTOR.** This Agreement may be terminated by CONTRACTOR upon thirty (30) days written notice to District in the event of an uncured substantial failure of performance by District, unless the District has acted to commence cure efforts in any case where a reasonable cure cannot be concluded within the 30 day notice period.

B. **Termination by District.** This Agreement may be terminated at any time without cause by District upon fourteen (14) days written notice to CONTRACTOR. In the event of such a termination by District, the District shall pay CONTRACTOR for all undisputed services performed and expenses incurred, per this Agreement, supported by documentary evidence, including, but not limited to, payroll records, invoices from third parties retained by CONTRACTOR pursuant to this Agreement, and expense reports up until the date of notice of termination plus any sums due CONTRACTOR for Board approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process that would best serve the District if a completed product was presented.

C. **Ownership of Records.** It is mutually agreed that all materials prepared by CONTRACTOR under this Agreement shall become the property of the District and CONTRACTOR shall have no property right therein whatsoever. CONTRACTOR hereby assigns to District any copyrights associated with the materials prepared pursuant to the Agreement. Immediately upon termination and upon written request, the District shall be entitled to, and CONTRACTOR shall deliver to the District, all data, drawings, specifications, reports, estimates, summaries and such other materials and commissions as may have been prepared or accumulated to date by the District in performing the Agreement which is not CONTRACTOR privileged information, (the “Termination Material”) as defined by law, or CONTRACTOR’s personnel information.

ARTICLE IV.
COMPENSATION TO CONTRACTOR

In consideration of CONTRACTOR performance of services hereunder, District agrees to:
Compensate CONTRACTOR in the amount not to exceed ______________________ for the performance of services contemplated by this Agreement. Contractor shall be paid monthly for the actual fees and allowed costs and expenses for all time and materials required and expended for work requested and specified by the District as completed. Said amount shall be paid within thirty (30) days upon submittal to (and verification by) the District of a monthly billing statement showing completion of the tasks for that month on a line item basis.

CONTRACTOR shall be responsible for any and all costs and expenses incurred by CONTRACTOR, including but not limited to the costs of hiring sub-consultants, contractors and other professionals, review of the Project, Plans and Specification, review and preparation of necessary documentation relating to the development of the Project, all travel related expenses, as well as for meetings with District and its representatives, long distance telephone charges, copying expenses, salaries of CONTRACTOR staff and employees working on the Project, overhead, and any other reasonable expenses incurred by CONTRACTOR in performance of the services contemplated by this Agreement.

ARTICLE V.
LEASEBACK DOCUMENTS

District and CONTRACTOR anticipate entering into formal Lease Agreements which will govern the lease, construction and delivery of the Project subsequent to DSA approval of the Plans and Specifications and CONTRACTOR delivery of a GMP for the Project which is acceptable to the District.

ARTICLE VI.
MISCELLANEOUS

A. Indemnity. CONTRACTOR shall indemnify, defend and hold harmless District, its administrators, Board and employees from all claims, liabilities, lawsuits, costs, losses, expenses, damages or judgments arising from any negligent or intentional acts or omissions of CONTRACTOR, its agents, employees and consultants relating to CONTRACTOR performance of its obligations under this Agreement. District shall indemnify, defend and hold harmless CONTRACTOR from any claims, lawsuits, costs, losses, expenses, damages or judgments arising from any negligent or intentional acts or omissions of District relating to this Agreement. CONTRACTOR shall defend, indemnify and hold harmless the District from any claim for employment benefits, worker’s compensation or other benefits, by any agent or employee of CONTRACTOR.

B. Insurance. CONTRACTOR shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this Agreement the policies of insurance specified in this Section. Such insurance must have the approval of the District as to limit, form, and amount, and shall be placed with insurers with a current A.M. Best’s rating of no less than A:VII.

1. Prior to execution of this agreement and prior to commencement of any work, CONTRACTOR shall furnish the District with original endorsements effecting coverage for all policies required by the Agreement. The endorsements shall be
signed by a person authorized by the insurer to bind coverage on its behalf. Subject to acceptance by the District, CONTRACTOR insurer will provide complete certified copies of all required insurance policies, including endorsements effecting the coverage required by this Section. CONTRACTOR agrees to furnish one copy of each required policy to the District, and additional copies as requested in writing, certified by an authorized representative of the insurer. Approval of the insurance by the District shall not relieve or decrease any liability of CONTRACTOR.

2. In addition to any other remedy the District may have, if CONTRACTOR fails to maintain the insurance coverage as required in this Section, the District may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as is required herein, and the District may deduct the cost of such insurance from any amounts due or which may become due under this Agreement.

3. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, terminated by either party, reduced in coverage or in limits except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to the District.

4. Any deductibles must be declared to, and approved by, the District.

5. The requirement as to types, limits, and the District’s approval of insurance coverage to be maintained by CONTRACTOR are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by CONTRACTOR under the Agreement.

6. CONTRACTOR shall, at its expense, maintain in effect at all times during the performance or work under the Agreement not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the District. The maintenance by CONTRACTOR of the following coverage and limits of insurance is a material element of this Agreement. The failure of CONTRACTOR to maintain or renew coverage or to provide evidence of renewal may be treated by the District as a material breach of this Agreement.

7. Worker’s Compensation and Employer’s Liability Insurance.

   a. Worker’s Compensation - Insurance to protect CONTRACTOR, its contractors and subcontractors from all claims under Worker’s Compensation and Employer’s Liability Acts, including Longshoremens’s and Harbor Worker’s Act (“Acts”), if applicable. Such coverage shall be maintained, in type and amount, in strict compliance with all applicable state and Federal statutes and regulations. CONTRACTOR shall execute a certificate in compliance with Labor Code Section 1861, on the form attached to this Agreement as Exhibit A.
b. **Claims Against District** - If an injury occurs to any employee of CONTRACTOR for which the employee or his/her dependents, in the event of his death, may be entitled to compensation from the District under the provisions of said Act, for which compensation is claimed from the District, and if such injury is a compensable injury under said Acts, there will be retained out of the sums due CONTRACTOR under this Agreement, an amount sufficient to cover such compensation as fixed by said Acts, until such compensation is paid or it is determined that no compensation is due. If the District is required to pay such compensation, the amount so paid will be deducted and retained from such sums due, or to become due to CONTRACTOR.

8. **Comprehensive General and Automobile Liability Insurance.**

a. The insurance shall include, but shall not be limited to, protection against claims arising from death, bodily or personal injury, or damage to property resulting from actions, failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than $2,000,000.00 per occurrence.

b. The comprehensive general and automobile liability insurance coverage shall also include, or be endorsed to include, the following:

   (i) Provision or endorsement naming the District and each of its officers, employees, and agents, as additional insureds in regards to: liability arising out of the performance of any work under the Agreement; liability arising out of activities performed by or on behalf of CONTRACTOR; premises owned, occupied or used by CONTRACTOR; or automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to the District, its officers, officials, employees or volunteers.

   (ii) Provision or endorsement stating that for any claims related to this Project, CONTRACTOR insurance coverage shall be primary insurance as respects the District, its officers, officials, employees and volunteers to the extent the District is an additional insured. Any insurance or self-insurance maintained by the District, its officers, officials, employees or volunteers shall be in excess of CONTRACTOR’s insurance and shall not contribute with it.

   (iii) Provision or endorsement stating that CONTRACTOR’s failure to comply with reporting or other provisions of the policies including breaches of representations shall not affect coverage provided to the District, its officers, officials, employees, or volunteers.
(iv) Provision or endorsement stating that CONTRACTOR’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

(v) Provision or endorsement stating that such insurance, subject to all of its other terms and conditions, applies to the liability assumed by CONTRACTOR under the Agreement, including, without limitation, that set forth in Article VI, Section A, Indemnity.

C. **Independent Contractor.** CONTRACTOR, in the performance of this Agreement, is and shall be an independent contractor. CONTRACTOR understands and agrees that CONTRACTOR and all of CONTRACTOR employees, agents, consultants, and subconsultants shall not be considered officers, employees or agents of the District.

D. **No Third Party Rights.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party (that is not a party to this agreement) against either the District or CONTRACTOR.

E. **Binding on Successors.** The District and CONTRACTOR, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to this Agreement with respect to the terms of this Agreement. CONTRACTOR shall not assign this Agreement.

F. **Governing Law.** This Agreement shall be governed by the laws of the State of California.

G. **Modifications.** This Agreement may be amended or modified only by an agreement in writing signed by both the District and CONTRACTOR.

This Agreement has been entered into as of the day and year first written above.

DISTRICT: 

__________________________________________

By: ____________________________
Name: ____________________________
Superintendent

CONTRACTOR: 

__________________________________________

By: ____________________________
Name: ____________________________
Title: ____________________________
Exhibit A

(Workers’ Compensation Certificate)

CERTIFICATE OF COMPLIANCE WITH LABOR CODE § 3700

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

CONTRACTOR:

By: __________________________
Name: ________________________
Title: _________________________
Exhibit B

(Scope of Work - Project Deliverables)

**CONTRACTOR - Scope of Work & Project Deliverables**

- **Construction Schedule:** CONTRACTOR will develop a detailed construction schedule utilizing the critical path method. This schedule will provide a logical means of establishing and tracking the Project and for the organization of activities into areas established by project criteria. CONTRACTOR shall utilize Primavera software or comparable for the development of the detailed construction schedule. The schedule shall incorporate coordination of site activities and phasing to avoid disruption of the learning environment.

- **Construction Cost Estimation:** CONTRACTOR shall prepare cost estimates at the conclusion of each phase of design for the design proposed by the Architect in current, uninflated dollars. The cost estimates shall reflect all project costs including site preparation costs, hard costs, soft costs, furniture, fixtures and equipment and testing and inspection costs. Contractor shall provide the cost breakdown in a format approved by the District’s Program Manager and consistent with Construction Specifications Institute (CSI) standards. The phases of design include: (1) schematic, (2) Design Development, (3) Construction Development, and (4) DSA Submittal.

- **Value Engineering:** CONTRACTOR shall be required to perform value engineering services to identify opportunities to reduce project cost at the conclusion of the Construction Development phase of design and prior to DSA submittal. The value engineering services shall be provided in the form of a report to the Program Manager and shall identify value engineering opportunities, alternative materials and alternative methods and the associated cost savings estimated by the CONTRACTOR.

- **Responsibility Matrix:** CONTRACTOR will develop a responsibility matrix for the key team members (District/Architect/IOR) which will identify the roles and responsibilities of each entity for the Project as mutually agreed upon by all parties.

- **Work Site Management Plan:** CONTRACTOR shall work with the Architect to develop a construction site management plan consisting of, but not limited to, staging areas, deliveries of materials and supplies, site fencing and location of construction site field office.

- **Constructability Review:** CONTRACTOR will conduct one technical review of the Plans and Specifications. The purpose of this review will be to examine whether the design intent can be successfully implemented in the field. A report of the CONTRACTOR’s findings will be distributed to the Program Manager and the Architect. CONTRACTOR will participate in a meeting with the Architect to determine if the comments will be included in the final bid set of documents. CONTRACTOR will work with Architect to ensure that all front end documents conform to technical specifications and meet District standards.
• **Procurement Phase:** CONTRACTOR will, in consultation with the District and the Program Manager, conduct a pre-qualification of subcontractors and market the Project to the local contracting community. CONTRACTOR will write detailed scopes of work for each bid package and put the Project out to bid.

• **Development of GMP:** CONTRACTOR will solicit, receive, open, and evaluate the bids for completeness, responsiveness, and price for purposes of assembling and proposed a GMP to the District. CONTRACTOR will negotiate with the most responsive bidders and provide the district with a report ranking and recommending bidders for “best value”. Once the GMP has been negotiated, it shall be submitted to the District for approval.

• **Attendance at Weekly Construction Meetings:** CONTRACTOR shall be available to attend weekly design meetings with the Program Manager and the Architect (Design Team) as needed to review design and provide reports and information required under the scope of this Agreement.

• **Weekly Reporting:** CONTRACTOR shall submit a weekly report of its activities to Program Manager for review. The report shall be provided in a format that is acceptable to the Program Manager.

CONTRACTOR:

__________________________________________

By: ________________________________
Name: ________________________________
Title: ________________________________