

**AGREEMENT FOR PRELIMINARY SERVICES
FOR THE CONSTRUCTION OF IMPROVEMENTS**

This Agreement is made and entered into this ___ day of _____, 2014, between the Ross Valley School District hereinafter referred to as "DISTRICT" and _____ hereinafter referred to as "DEVELOPER," for the purposes of providing preliminary consulting services to facilitate and manage the **Wade Thomas Elementary School Facility Improvement Project**, as further described in Exhibit B hereto (the "Project").

WHEREAS, the Project will be located at 150 Ross Avenue, San Anselmo, California 94960 (the "Site");

WHEREAS, DISTRICT has retained Quattrocchi Kwok Architects ("Architect") to prepare plans and specifications for the Project, to be submitted to the California Division of State Architect ("DSA") as required by applicable laws.

WHEREAS, DEVELOPER desires to provide certain consulting services to the DISTRICT with respect to reviewing the Plans and Specifications for the Project, prepare cost estimates, prepare construction schedules, obtain proposals from trade contractors, and other related services in preparation for the Project's development;

WHEREAS, DEVELOPER represents that it and its referenced consultants and subcontractors are properly licensed and registered as required by law, and have the expertise and experience to obtain pricing from contractors, develop construction schedules, identify and order long lead items, coordinate construction activities with the Architect, review and execute lease documents and perform the other development services set forth in this Agreement; and

WHEREAS, DISTRICT and DEVELOPER 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 DEVELOPER's performance of its duties as set forth in this Agreement;

WHEREAS, the DISTRICT is authorized by Sections 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if those persons are specially trained and experienced and competent to perform the special services required; and

WHEREAS, the District selected Developer for construction of the Project by a competitive selection process.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I. -- SCOPE OF DEVELOPER SERVICES

A. Scope. DEVELOPER, as the DISTRICT's development consultant and authorized representative as contemplated by Business and Professions Code section 7040, agrees to perform the services described in Exhibit B.

- B. Warranty.** DEVELOPER 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 DEVELOPER's profession. DEVELOPER further represents and agrees that it will perform said services in a legally adequate manner in conformance with applicable federal, state and local laws, regulations, and guidelines, including, but not limited to, the State Allocation Board guidelines for school construction and regulations of the Division of the State Architect ("DSA").
- C. Schedule.** Services outlined above will commence on the date the DISTRICT issues a notice to proceed for the Agreement, and conclude on or about **February 27, 2015**, upon approval of the Lease Agreements by District's Board or termination of this Agreement by either party per the Agreement's terms. It is anticipated that construction on the Project will commence on or about **March 2, 2015**. A more detailed schedule will be provided in the construction provisions for the Project. Any extension shall be subject to reasonable approval in writing by the parties.
- D. Limited Authority.** The duties, responsibilities and limitations of authority of DEVELOPER shall not be restricted, modified or extended without written agreement between the DISTRICT and DEVELOPER.
- E. Construction.** For the Project, upon agreement on the Guaranteed Maximum Price ("GMP") the DISTRICT expects to authorize entering into the Lease Agreements to provide for the development of the Project; therefore, DEVELOPER shall perform the services described herein in a timely manner, consistent with the commencement and completion dates stated herein. The formal Lease Agreements shall govern the construction and delivery of the Project.

ARTICLE II. -- DISTRICT'S RESPONSIBILITIES

The DISTRICT shall provide to DEVELOPER information regarding requirements for the Project, including information regarding the DISTRICT's objectives, schedule, constraints and criteria. DISTRICT has retained the firm of Dannis Woliver Kelley to represent the DISTRICT in negotiations and preparation of legal documents, including the formal Lease Agreements in accordance with Education Code section 17406.

ARTICLE III. -- TERMINATION

- A. Termination by DEVELOPER.** This Agreement may be terminated by DEVELOPER upon fourteen (14) 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 can not be concluded within the fourteen (14) 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 DEVELOPER. In the event of such a termination by DISTRICT, the DISTRICT shall pay DEVELOPER 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 DEVELOPER pursuant to this Agreement, and expense reports up until the date of notice of termination plus any sums due DEVELOPER 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 completed work.

C. Ownership of Records. It is mutually agreed that all materials prepared by DEVELOPER under this Agreement shall become the property of the DISTRICT and DEVELOPER shall have no property right therein whatsoever. DEVELOPER 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 DEVELOPER shall deliver to the DISTRICT, all data, drawings, specifications, reports, estimates, summaries and other materials and commissions as may have been prepared or accumulated to date by the DEVELOPER in performing the Agreement (the "Termination Material").

ARTICLE IV. -- COMPENSATION TO DEVELOPER

In consideration of DEVELOPER's performance of services hereunder, DISTRICT agrees to:

Reimburse DEVELOPER in the total amount not to exceed Dollars (\$), for the performance of services contemplated by this Agreement. DEVELOPER 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. In the event DEVELOPER and DISTRICT enter into the lease/leaseback agreements for the development of the Project, this compensation for services rendered will be included as part of the Guaranteed Maximum Price to be paid to DEVELOPER by DISTRICT.

DEVELOPER shall be responsible for any and all costs and expenses incurred by DEVELOPER, including but not limited to the costs of hiring sub-consultants, sub-contractors and other professionals, review of the Project's Plans and Specifications, 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 DEVELOPER staff and employees working on the Project, overhead, and any other reasonable expenses incurred by DEVELOPER in performance of the services contemplated by this Agreement.

ARTICLE V. -- LEASE DOCUMENTS

DISTRICT and DEVELOPER 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 DEVELOPER's delivery of a GMP for the Project which is acceptable to the DISTRICT. Parties anticipate entering into said documents for the Project on or about March, 2015.

ARTICLE VI. -- MISCELLANEOUS

- A. Indemnity.** DEVELOPER shall indemnify, defend and hold harmless DISTRICT, its officers, officials, administrators, Board, employees, agents, representatives, and volunteers ("District Indemnities") from all claims, liabilities, lawsuits, costs, losses, expenses, damages or judgments arising from any negligent, reckless, or intentional acts or omissions of DEVELOPER, its agents, employees, consultants and subcontractors relating to DEVELOPER's performance of its obligations under this Agreement. DEVELOPER shall also defend, indemnify and hold harmless the District Indemnities from any claim for employment benefits, worker's compensation or other benefits, by any agent, consultant, subcontractor, or employee of DEVELOPER.
- B. Insurance.** DEVELOPER shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this Agreement and the Project, 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, DEVELOPER 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, DEVELOPER's insurer will provide complete certificates of insurance and upon request certified copies of all required insurance policies, including endorsements effecting the coverage required by this Agreement. DEVELOPER 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 DEVELOPER.
 2. In addition to any other remedy the DISTRICT may have, if DEVELOPER fails to maintain the insurance coverage as required in this Agreement, 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 DEVELOPER are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by DEVELOPER under the Agreement.

6. DEVELOPER and its subconsultants and subcontractors shall, at their expense, maintain in effect at all times during the performance of work on the Project not less than the following coverages and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the DISTRICT. The maintenance by DEVELOPER and its subconsultants and subcontractors of the following coverage and limits of insurance is a material element of this Agreement. The failure of DEVELOPER or of any of its subconsultants or subcontractors 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 DEVELOPER, its contractors, subconsultants and subcontractors from all claims under Worker's Compensation and Employer's Liability Acts, including Longshoremen'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. DEVELOPER shall execute a certificate in compliance with Labor Code Section 3700, on the form attached to this Agreement as Exhibit A.
 - b. Claims Against DISTRICT - If an injury occurs to any employee of DEVELOPER for which the employee or his/her dependents, in the event of his death, may be entitled to compensation from the DISTRICT, for which compensation is claimed from the DISTRICT, and if such injury is a compensable injury, there will be retained out of the sums due DEVELOPER under this Agreement, an amount sufficient to cover such compensation, 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 any sums due, or to become due to DEVELOPER. If the amount the DISTRICT is required to pay as compensation exceeds the amount due by DISTRICT to DEVELOPER, DEVELOPER shall pay DISTRICT the amount in excess of amounts withheld by the DISTRICT.
8. Commercial General and any Auto 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, consultants, subcontractors, 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 Commercial General and any auto Automobile Liability insurance coverage shall also include, or be endorsed to include, the following:
 - (i) Provision or endorsement naming the District Indemnities and each of its officers, officials, employees, agents, and volunteers as additional insureds in regards to: liability arising out of the performance of or failure to perform any work under the

Agreement or on the Project; liability arising out of activities performed by or on behalf of DEVELOPER; premises owned, occupied or used by DEVELOPER; or automobiles owned, leased, hired or borrowed by DEVELOPER. The coverage shall contain no special limitations on the scope of protection afforded to the District Indemnities.

- (ii) Provision or endorsement stating that for any claims related to the Project, DEVELOPER's insurance coverage shall be primary insurance as respects the District Indemnities, and that the District Indemnities is/are additional insured(s). Any insurance or self insurance maintained by the District Indemnities shall be in excess of DEVELOPER's insurance and shall not contribute with it.
- (iii) Provision or endorsement stating that DEVELOPER's failure to comply with reporting or other provisions of the policies including breaches of representations shall not affect coverage provided to the District Indemnities.
- (iv) Provision or endorsement stating that DEVELOPER'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 DEVELOPER under the Agreement, including, without limitation, that set forth in Article VI, Section A, Indemnity.

- C. No Design Responsibility.** DISTRICT acknowledges that DEVELOPER, in performing those services set forth in this Agreement, will be acting as a knowledgeable and experienced contractor in carrying out its duties under this Agreement and is not acting, and does not purport to act, as a design professional.
- D. Independent Contractor.** DEVELOPER, in the performance of this Agreement, is and shall be an independent contractor. DEVELOPER understands and agrees that DEVELOPER and all of DEVELOPER's employees, agents, contractors, subcontractors, consultants, and subconsultants shall not be considered officers, officials, employees or agents of the DISTRICT.
- E. 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 DEVELOPER.
- F. Binding on Successors.** The DISTRICT and DEVELOPER, 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. DEVELOPER shall not assign this Agreement.

G. Governing Law. This Agreement shall be governed by the laws of the State of California, and venue for any action to enforce shall be in the County in which the Project is located.

H. Modifications. This Agreement may be amended or modified only by an agreement in writing signed by both the DISTRICT and DEVELOPER.

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

“DISTRICT”
ROSS VALLEY SCHOOL
SCHOOL DISTRICT

“DEVELOPER”

By: _____
Name: Rick Bagley, Ed.D.
Title: Superintendent

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.

By: _____
Name: _____
Title: _____

Exhibit B
Draft Scope of Work

Specific Inclusions:

Start Up/Project Orientation

- A. *Startup Meeting*
 - 1. Meet with Architect to review and confirm program, design and construction constraints, construction scope, sequencing and phasing and potential timelines.

- B. *Budgeting/Cost Estimates*
 - 1. Perform quantity survey of improvements represented in 75% CDs and DSA submittal documents for all demolition, earthwork, utility and finish improvements.
 - 2. Develop Rough Order of Magnitude (R.O.M.) Budget based on 75% Construction Documents presented in CSI (Construction Specification Institute) format and refine based upon DSA submittal documents.
 - 3. Meet with Architect & District to present and discuss R.O.M. budget.

- C. *Value Engineering*
 - 1. Review plans and specifications for each design increment and evaluate design concepts, systems and details for cost effectiveness, space usage, and schedule efficiencies.
 - 2. Provide a report that will offer insight into the efficiencies of the concepts and systems proposed and will propose more cost effective alternatives, if any.
 - 3. The analysis will be captured in a timely written report to Architect that is sensitive to District approval timelines.

- D. *Document Review/Constructability Analysis*
 - 1. Through each phase of design, Developer will perform constructability analysis to validate the construction viability for the concepts and systems proposed.
 - 2. With each subsequent design increment, identify items that have been incorporated and provide feedback either why items are not incorporated or offer the potential need for items to be captured in the following design increment.
 - 3. The analysis will be captured in a timely written report to Architect that is sensitive to District approval timelines and project milestones.

- E. *Preliminary Submittals*
 - 1. Provide construction mockup for site concrete paving for Architect and Owner approval.

- F. *Site Evaluation*
 - 1. Evaluate existing site to determine access requirements, staging opportunities, undocumented utility appurtenances, condition of salvage items, and impacts from observable soil conditions.

2. Locate and pothole existing site utilities as required.
3. Develop written report capturing observations and subsequent recommendations and submit to owner along with existing utility map.

G. Staging and Logistics

1. Develop Construction Staging and Phasing plan in collaboration with Architect.
2. Indicate contractor lay-down areas, access points, temporary construction facilities (trailers, site fencing, etc).
3. Indicate campus traffic sequencing and special controls impacting campus operations.

H. Preliminary Scheduling

1. Develop CPM schedule in collaboration with Architect to graphically represent remaining key PSA milestones.
2. Develop detailed construction sequences and durations and capture relevant owner Milestones for overall project (post PSA services)

I. Meetings

1. Attend up to six (6) team meetings for scope, design and proposal reviews.

J. Procurement/Guaranteed Maximum Price (GMP) Proposal Development

1. Meet with Architect & District to outline District GMP bidding requirements.
2. Prior to and in preparation of final GMP development, develop detailed scopes of work for associated subcontractor bid packages as required.
3. Advertise and solicit subcontractor and vendor proposals for each applicable trade utilizing vendor databases and local resources for solicitation.
4. Perform final detailed quantity survey and develop detailed labor and material estimates for full scope of work to facilitate Developer in-house trade estimating and selected subcontractor scopes.
5. Evaluate subcontractor and vendor proposals for price, completeness, responsiveness and qualifications.
6. Develop final GMP proposal utilizing selected subcontractors, material vendors and selected self-perform trade estimates and submit to owner in final cost proposal formats.
7. A GMP Proposal review meeting would be initiated to present and review the proposal and final construction schedule to the Architect and Owner.

Timelines:

- Project Start-up 1 Week
- Budgeting/Cost Estimating 2 Weeks
- Constructability/Value Engineering 1 Week
- Preliminary Submittals 1 Week
- Site Evaluation 1 Week
- Preliminary Scheduling 1 Week
- Construction Logistics/Phasing 1 Week
- GMP Estimate/Proposal 1-1/2 Weeks

- Note: The above timelines do not include project review time by District and are not necessarily sequential.

Client Responsibilities:

In order to complete the items described in the Scope of Services above, the District will provide the following information.

- A. *Project and Site Information*
 1. Other pertinent data including as-built documents that identify existing utility infrastructure (previously provided)
 2. Geotechnical investigative report for sub-grade recommendations (Previously Provided)
 3. School calendar

**Exhibit C
Project Description**

A. Summary of Project

Replacement of three current portable classrooms with three permanent modular classrooms and new restrooms.

B. Detailed Description of Project

See Attached Exhibit C-1, QKA drawing A1.1, Campus Site Plan.