



PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this “**Agreement**”) is entered into as of October 13, 2015 by and between El Camino Real Alliance, a California non-profit public benefit corporation (“**Client**”), and Pacific Charter School Development, Inc., a California non-profit public benefit corporation (“**Pacific**”), for professional services in connection with the project described on **Exhibit A** (the “**Project**”).

PACIFIC’S ENGAGEMENT AND SERVICES.

1.1 **Services.** Client hereby agrees to retain Pacific to provide, and Pacific agrees to provide the services described in attached **Exhibit B** (the “**Services**”). Pacific shall provide sufficient organization and management to perform such services in an expeditious and economical manner consistent with the interests of Client.

1.2 **Term.** The term of Pacific’s engagement shall commence as of the date hereof and shall continue, subject to earlier termination or extension as provided below, until the earlier of (i) completion of the Project and (ii) two (2) years from the date of this Agreement.

1.3 **Changes to Services.** Client may not make any changes to the Services, including additions, deletions, or revisions to its scope nor extend or shorten its duration without Pacific’s prior written consent. If Client and Pacific agree to make any changes to the Agreement that result in a material increase in the scope or duration of the Services, there shall an equitable adjustment to Pacific’s compensation and the term of the Agreement to be reasonably agreed to by the parties.

1.4 **Termination for Cause or Convenience.** In the event of any termination (for cause or convenience), at Client’s request Pacific shall deliver to Client all materials relating to the Project received by Pacific from Client or received from third parties at the direction of Client.

(a) **Termination for Cause.** Either party may terminate this Agreement for cause if the other party (the “**Breaching Party**”) commits a material breach of any part of this Agreement and does not cure such breach within ten (10) calendar days of receipt of the other party’s (the “**Non-Breaching Party**”) written notice to the Breaching Party of such breach demanding such cure. If such breach is curable but not within such ten (10) calendar day period, then the Non-Breaching Party shall grant the Breaching Party additional time to cure, provided that the Breaching Party provides within such ten (10) calendar day period a written cure plan that is reasonably acceptable to the Non-Breaching Party, and then diligently commences and continues such cure according to the approved written plan. If Client terminates this Agreement for cause and Pacific does not cure any material breach then Pacific shall not be entitled to any further payments under this Agreement but shall not be required to return any amounts paid by Client prior to the termination date. If Pacific terminates this Agreement for cause, then Pacific shall be entitled to the amounts owed to Pacific as if Client had terminated the Agreement for Convenience.



(b) **Termination for Convenience.** Client may terminate this Agreement for convenience whenever Client determines that such termination is in its best interests. In the event Client terminates this Agreement for convenience, Pacific shall be entitled to the payment then due through the monthly period during which Client terminates this Agreement (as described in Section 3.2 below), plus twenty percent (20%) of the Fee balance remaining on this Agreement. In the event Client decides not to move forward with acquisition of the Project site and terminates this Agreement, Pacific shall not be entitled to twenty percent (20%) of the Fee balance remaining.

1.5 **Exclusions from Services.** Pacific is not licensed to and does not provide any of the services listed below:

- Architectural, Engineering or other Design Services
- General Contracting
- Legal Services
- Safety Program Design or Enforcement
- Accounting Services
- Environmental Assessment or Monitoring
- Quantity Surveying or Cost Estimating
- FF&E procurement, coordination, or installation
- Property Management

As such, Pacific shall not be named as a party to any action brought by Client in matters of design errors and omissions, construction defects, jobsite accidents, or any other event relating to the above (collectively "**Excluded Services**") and shall be specifically indemnified by Client and by the general contractors, sub-contractors, architects and other design consultants contracted with by Client and working on the Project against actions brought by others against Pacific for Excluded Services unless arising out of Pacific's gross negligence or willful misconduct. Client shall cause its contracts with such third parties to contain a written indemnification in form reasonably satisfactory to Pacific.

PACIFIC AND CLIENT'S RESPONSIBILITIES.

2.1 **Pacific Responsibility.** Pacific shall perform the Services in a timely and professional manner, utilizing best practices consistent with the time constraints set forth in this Agreement for the fees set forth in Section 3. Client shall delegate to Pacific the overall responsibility for making decisions in respect to the Project consistent with Pacific's scope of Services as defined herein, and after Pacific's consultation with Client's Representative. Pacific shall, subject to Section 1.3, accede to Client's decisions in all such matters so long as such decisions do not interfere with Pacific's obligations under this Agreement. Pacific shall be entitled to rely upon the accuracy and completeness of information, surveys, and reports provided by Client. Pacific shall review with Client Pacific's methods and approach to completing the Services, including major milestones. In addition, Pacific shall review its preliminary findings and plans with Client prior to providing Client with its final deliverables under the scope of Pacific's Services under this Agreement. Pacific's representative for the Project is John Sun.



2.2 Client Responsibility.

(a) Client shall cooperate fully with Pacific efforts in completing the tasks undertaken to be undertaken by Pacific under this Agreement.

(b) Client shall be responsible for paying all invoices for the Project, including those submitted to Client by Pacific, which are received by Pacific from third parties and which Pacific has reviewed for accuracy, in a timely manner and before such invoices become past due. Pacific and Client shall cooperate to ensure that all third party invoices submitted to Pacific are contemporaneously submitted to Client. Pacific shall endeavor to review invoices from third parties and provide the same with Pacific's comments to Client no later than fifteen (15) days prior to the due date of such invoices.

(c) Client shall: (i) provide to Pacific full information regarding the Project; and (ii) designate a representative who shall be fully acquainted with the Project and have authority to approve matters requiring Client's approval and to render decisions promptly. Client's representative for the Project is Marshall Mayotte, who singly may make decisions on behalf of Client and Pacific is hereby authorized to rely on such representative's decisions.

PROFESSIONAL SERVICES FEE.

3.1 Calculation of Professional Services Fee. As compensation for services rendered under this Agreement by Pacific, Client shall pay Pacific a "Development Services Fee." Pacific's Project Development Services Fee shall be NINETY THOUSAND (\$90,000), which shall be payable according to the schedule provided in Section 3.2. Client shall provide payment to Pacific within thirty (30) days of being presented with an invoice for such milestones. A late fee of TEN PERCENT (10%) per annum or the maximum allowed by law, whichever is less, shall be due and payable for any invoices not paid within the aforementioned period.

3.2 Payment Schedule. The fees described in Section 3.1 above shall be paid according to the payment schedule set forth below.



Tasks	Fee	Estimated timeframe	Description
Close escrow Project design Construction bid	\$15,000/mo.	December 2015 to January 2016	Finalize property purchase; refine project scope, cost and timeline; obtain construction bids and select contractor; obtain construction permits if necessary
Construction and school move-in	\$15,000/mo.	February to May 2016	Construction and school move-in
Total	\$90,000	6 months	

In the event the project scope or schedule is extended past May 2016, Client shall pay Pacific a monthly fee of FIFTEEN-THOUSAND DOLLARS (\$15,000) per month.

RESERVED.

5. **INDEPENDENT CONTRACTOR.**

5.1 **Status.** Pacific is an independent contractor of Client and shall not perform the Services under this Agreement as an employee of Client. Client shall have no right to control or direct the method, details or means by which Pacific performs the Services required under this Agreement. Pacific shall have no authority to enter into any contract or incur any liability or obligation on behalf of Client without the prior written approval of Client.

5.2 **Compliance.** Pacific assumes full responsibility for the payment of all taxes pertaining to services rendered and compensation paid under this Agreement. Pacific further assumes full responsibility for compliance with any and all applicable worker's compensation insurance or similar laws pertaining to services rendered and compensation paid under this Agreement.

6. **INSURANCE AND INDEMNITY.**

6.1 **Client's Liability Insurance.** Client shall maintain insurance policies for commercial general liability insurance, builder's risk insurance, and such other insurance for the Project as will protect Client and Pacific against claims – including construction defects claims – which may arise from the Project and/or this Agreement. Any such policies shall name Pacific as an additional insured.

6.2 **Contractors Liability Insurance.** Client shall require all contractors, subcontractors and suppliers performing work or providing materials to the Project to maintain commercial general liability



insurance and to cause Client and Pacific to be named as additional insureds on such policies. All written contracts with contractors, subcontractors and suppliers shall require the above.

6.3 **Indemnity by Client.** Client shall indemnify, defend and hold harmless Pacific and its employees, agents and representatives from and against any and all claims, demands, damages, losses, liabilities, obligations, costs and expenses, including attorneys' fees (collectively, "Losses and Liabilities"), arising out of or in connection with claims asserted by third parties (including without limitation any governmental agency, homeowners association, or similar organization) relating to the Project, or any breach by Client of its obligations hereunder, or any willful misconduct or active negligence of Client, but excepting therefrom any Losses and Liabilities which arise out of or in connection with any gross negligence or willful misconduct of Pacific or any breach by Pacific of this Agreement. This indemnity specifically includes acts taken by Pacific in connection with the Project prior to the execution of this Agreement.

6.4 **Indemnity by Pacific.** Pacific shall indemnify, defend and hold harmless Client and its employees, agents and representatives from and against any and all claims, demands, damages, losses, liabilities, obligations, costs and expenses, including attorneys' fees arising out of or in connection with any willful misconduct or gross negligence of Pacific or any breach by Pacific of this Agreement.

6.5 **Consequential Damages.** In no event shall either party be liable for the other's indirect, special or consequential damages.

7. **ARBITRATION.**

7.1 **AAA.** All claims, disputes and other matters in questions arising out of, or relating to, this Agreement or its breach, except for claims which have been waived by the making or acceptance of final payment, shall be decided by arbitration in accordance with the Rules of the American Arbitration Association or JAMS, as decided by the party bringing a claim or dispute, unless the parties mutually agree otherwise. The arbitrator shall establish reasonable procedures for discovery. This Agreement to arbitrate shall be specifically enforceable.

7.2 **Demand.** Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the arbitrator. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

7.3 **Award.** The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.



7.4 **Related Claims.** All claims that arise out of this Agreement, which are related to or dependent upon each other, shall be heard by the same arbitrator or arbitrators even though the parties are not the same unless a specific contract prohibits such consolidation.

8. GENERAL PROVISIONS.

8.1 **Attorneys' Fees.** If any party commences or is made a party to a lawsuit, arbitration or other proceeding to enforce or interpret this Agreement, the prevailing party in such proceeding shall be entitled to recover from the other party all reasonable attorneys' fees and other costs incurred in connection with such proceeding, including without limitation any appeal or enforcement of any judgment or decision rendered in such proceeding.

8.2 **Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed duly given (i) on the date of delivery if personally delivered, (ii) one business day after delivery by overnight courier, telegram or facsimile (provided that the sender retains a printed confirmation of delivery to the facsimile number provided below), or (iii) three business days after mailing if mailed by first class mail certified or registered, postage prepaid, return receipt requested, to the parties at their addresses set forth below, or such other address designated from time to time in writing by such party to all other parties.

Pacific Charter School Development, Inc.
811 West 7th Street, Suite 310
Los Angeles, CA 90017
Fax: (213) 542-4701
Attention: John Sun, CEO

El Camino Real Alliance
5440 Valley Circle Boulevard
Woodland Hills, CA 91367
Fax: (818) 595-7500
Attention: Marshall Mayotte, CBO

8.3 **Amendment and Waiver.** This Agreement may be amended only by a written document signed by all parties to this Agreement. Waiver of any provision of this Agreement shall not be deemed or constitute a waiver of any other provision, nor shall such waiver constitute a continuing waiver.

8.4 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, beneficiaries, legal representatives, successors and assigns. This Agreement may only be assigned with the prior written approval of the other party.

8.5 **Governing Law and Severability.** This Agreement shall be governed by and construed



under the laws of the State of California, without regard to its conflicts of laws provisions. If any provision of this Agreement is invalid or unenforceable, and if the deletion of such provision would not adversely affect the receipt of any material benefit of the bargain by either party hereto, such provision shall (i) be modified to the minimum extent necessary to render it valid and enforceable, or (ii) if it cannot be so modified, be deemed not to be a part of this Agreement and shall not affect the validity or enforceability of the remaining provisions.

8.6 **Counterparts.** This Agreement may be executed in any number of counterparts, and each set of duly delivered identical counterparts, which includes all signatories, shall be deemed to be an original instrument.

8.7 **Construction.** This Agreement has been negotiated at arms length and each party has been represented by legal counsel. Accordingly, any rule of law (including without limitation California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party drafting it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effectuate the intent of the parties and the purpose of this Agreement.

8.8 **Further Assurances.** The parties covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out this Agreement.

8.9 **Entire Agreement.** This Agreement represents the entire agreement between the parties with respect to the subject matter set forth above, and supersedes all previous oral and written agreements, communications, representations, and commitments between Pacific, Client, and their respective predecessors.

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IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date set forth above.

EL CAMINO REAL ALLIANCE

PACIFIC CHARTER SCHOOL DEVELOPMENT, INC.

By: _____

By: _____

Name: Marshall Mayotte

Name: John Sun

Title: Chief Business Officer

Title: Chief Executive Officer

[Signature Page to Professional Services Agreement]



EXHIBIT A

Project Description

El Camino Real Charter High School proposes to acquire an existing K-8 private school site located at 7401 Shoup Avenue in West Hills, CA, and carry out minor renovations to create a new campus for its high school independent studies program. The facility would utilize the property's existing Conditional Use Permit, and would open in Spring 2016.



EXHIBIT B Scope of Services

Pacific's scope of development services include:

- **Site Evaluation:** conduct due diligence and evaluate site for intended use by Client as a high school independent study facility:
 - Assistance to client in determining the project scope, including space program
 - Assessment of existing improvements
 - Preliminary site planning
 - Assessment of entitlements
 - Traffic issues and environmental issues (CEQA and environmental site assessment)
 - Community outreach issues
 - Affordability analysis in the form of a high level project budget and cost estimate
- **Site Acquisition:** coordination of close of escrow
- **Design:** management of the project design; provide design recommendations
- **Manage Budget and Schedule:**
 - Development and maintenance of the master project schedule including review and reports on schedule changes and updates with Client's representative
 - Development and maintenance of the Project budget, including hard-cost and soft- cost budgets and cost-to-completion estimates
 - Review and approval of project invoices to be paid by Client
- **Construction**
 - Initial coordination for start-up activities and site preparation
 - Management of bid process and negotiation of construction contract
 - Oversight of contractor performance
 - Project administration, including Client/architect/contractor meetings, shop drawing processing, requests for information and design team coordination
 - Contract administration, including bid analysis and change order negotiation and management, and approval per Pacific's pre-established processes
 - Document control for contracts, construction documents, field orders, warranties, and the like
 - Management of punch-list close-out
- Project Financing is not included in the scope of work, as Client is financing the project in its entirety.