

PRECONSTRUCTION SERVICES AGREEMENT

This Preconstruction Services Agreement ("Agreement") is entered into by and between SANTA BARBARA UNIFIED SCHOOL DISTRICT, duly organized and validly existing under the Constitution and laws of the State of California (hereinafter the "District"), and FRANK SCHIPPER CONSTRUCTION CO., a California corporation, duly authorized to conduct business in the State of California, holding in good standing California State Contractors Licensing Board License No. 436175 (hereinafter "Consultant"), as of February 29, 2014 ("Effective Date"), for the purposes of providing all appropriate and specified preconstruction services for the District's DOS PUEBLOS HIGH SCHOOL RENOVATION OF SHOWER AND LOCKER ROOM PROJECT (hereinafter "Project").

WHEREAS, Consultant and District desire to enter into a lease-leaseback arrangement for construction of the Project pursuant to Education Code section 17406, which arrangement will be documented, if at all, by a Site Lease and Facilities Lease with attachments, including Construction Provisions ("Lease-Leaseback Documents").

WHEREAS, Education Code section 17402 states that the District must have adopted the Plans and Specifications for the Project after approval of those documents by the Division of the State Architect ("DSA"), which must occur prior to entering into the Lease-Leaseback Documents.

WHEREAS, District has retained the services of Kruger, Bensen, Ziemer Architects (hereinafter "Architect") to design the Project, and to prepare plans and specifications for the Project ("Plans and Specifications").

WHEREAS, Consultant desires to provide consulting services to the District with respect to reviewing the Plans and Specifications to identify and call out all deficiencies, incongruities and inconsistencies that may affect constructability of the Project, including but not limited to design and specification omissions, incomplete and/or inconsistent plans, details and specifications, and any lack of coordination, together with all other appropriate, necessary and/or required services ("Services" or "Preconstruction Services") to facilitate, and in preparation for, the successful development and construction of the Project.

WHEREAS, Consultant represents that it has the knowledge and experience necessary to perform the Preconstruction Services set forth in this Agreement and Exhibit "A."

WHEREAS, the parties acknowledge that the Consultant and District anticipate negotiating and entering into Lease-Leaseback Documents which utilize a Guaranteed Maximum Sum ("GMS" or "GMP") for complete construction of the Project, which will include the fee provided herein, and the parties also acknowledge that the District may opt not to enter into Lease-Leaseback Documents or otherwise proceed with the Project with Consultant, whether for lack of funding or other reasons in District's sole and absolute discretion.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I. - CONSULTANT'S SERVICES AND RESPONSIBILITIES

The Consultant's Services shall consist of the Preconstruction Services described herein to be performed by the Consultant, Consultant's employees, and Consultant's sub-consultants, if any, including those services enumerated in Article II of this Agreement and Exhibit "A" hereto. Consultant represents to District that it has the necessary and appropriate experience and expertise in public works construction of K - 8 school facilities, and related consulting, project management and supervision adequate to perform all Preconstruction Services to the highest standard and that it shall exercise best efforts, skill and judgment in furthering the interests of the District in the performance of the Services. All Services described in this Agreement shall be performed to the highest standard of care applicable to a licensed California building contractor, of Consultant's kind and level of experience in public works, particularly in public school projects, involving construction services, construction management services, and all specific Services described in this Agreement. Consultant shall not be subject to the professional standard of care of a licensed architect or professional engineer, shall not bear responsibility for errors in the Plans and Specifications resulting from the professional negligence or misconduct of any licensed architect or professional engineer, and shall not perform, or be responsible for the performance of any duties requiring licensure as an architect or professional engineer.

ARTICLE II. - SCOPE OF CONSULTANT'S SERVICES

1. **Scope.** Consultant agrees to perform the Services described herein and as more specifically set forth in Exhibit "A" entitled Scope of Preconstruction Services, which shall include Preconstruction Services based upon the design and construction documents provided by Architect, referred to herein as the "Plans and Specifications." The Consultant will not be performing actual design services for the Project, but instead will be providing complete constructability review services with the intent and purpose of identifying and calling out any deficiencies, incongruities and inconsistencies in the Plans and Specifications that may affect constructability of the Project, including but not limited to design and specification omissions, incomplete and/or inconsistent plans, details and specifications, and any lack of coordination, with the ultimate goal that the DSA approved Plans and Specifications for the Project will be complete such that the Project can be constructed by a competent licensed general building contractor in strict accordance with the DSA approved Plans and Specifications ("Approved Construction Documents") without Change Order or additional charge to District. The Consultant's Services shall be provided in one phase, as follows:

A. **Design Meetings.** Attendance at planning meetings with a project manager and one or more estimator representatives to discuss Project issues with District and Architect.

B. **Estimate Validation.** Review and validation of any cost estimate(s) which Architect develops upon completion of design and construction documents phases.

C. **Team Meetings.** Attendance at regular team meetings with a project manager, estimating representative(s) and Architect.

D. **Schedule.** Creation of a detailed, master critical path method (“CPM”) Project schedule which includes all milestone dates including, but not limited to, complete design, estimating, DSA submittals, agency approvals, utility services approvals, bidding, buyout, preparation and submittal of Consultant’s Guaranteed Maximum Sum proposal for construction of the Project, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, phasing, construction sequencing and durations, construction, commissioning and District move in, all as applicable. Consultant shall prepare and submit schedule updates with each estimate or more often if reasonably required or requested by District, to communicate market conditions or other conditions affecting the Project.

E. **Site Estimate.** Preparation of cost estimates based on DSA submittal documents. The cost estimates shall identify all trades and unit costs. Consultant shall also identify all allowances, contingencies, General Conditions costs and fees. If any cost estimate submitted to the District exceeds previously approved estimates for the Construction Budget, the Consultant shall make appropriate recommendations to the District for getting the Project back within budget. Consultant shall attend team meetings with both a project manager and estimating representative(s).

F. **Building Estimate.** Preparation of cost estimates based on DSA submittal documents for all improvements. The cost estimates shall identify all trades and unit costs. Consultant shall also identify all allowances, contingencies, General Conditions costs and fees. If any cost estimate submitted to the District exceeds previously approved estimates for the Construction Budget, the Consultant shall make appropriate recommendations to the District for getting the Project back within budget.

G. **Value Analysis.** Evaluation of the Project for value savings options and presentation of all value savings options to the District and Architect for review and consideration. Preparation of value analysis reviews with each estimate, indicating cost savings and schedule impact. Assistance to the Architect and District in considering operating and/or maintenance costs with respect to selection of systems and products for the Project, as applicable.

H. **Constructability Review.** Consultant shall perform detailed constructability reviews on the DSA submittal set of Plans and Specifications, and the final DSA approved Plans and Specifications, and identify to District in writing any errors, omissions, incongruities, lack of clarity and coordination, inconsistencies, and other issues impacting overall constructability. Consultant shall identify by page and detail the issues to be discussed and resolved to achieve complete, constructible Plans and Specifications. As part of the constructability review, Consultant shall identify in writing areas where value analysis principles could be applied, and identify long-lead items. In the event Consultant finds no deficiencies in the Plans and Specifications, which require clarification or revision to avoid confusion, delay or possible additional cost to achieve complete construction of the Project, Consultant shall provide written certification of Consultant’s conclusion and provision of complete Preconstruction Services.

I. **Construction Planning.** Assistance in construction planning, including phasing, staging, site logistics, sequencing, fencing, office locations, means and methods, and bid package development.

J. **Bidding Strategies.** Consultant shall establish bid package scoping and timing of bids and perform all necessary bidding functions for all trades and work required for the Project, and evaluate bids for deficiencies, capabilities and compliance with bid requirements and the Approved Construction Documents; and, Consultant shall work with trade - subcontractors, Architect and District to ensure bidders are providing the best value. Bid analysis shall include recommendations for trade contractor selection, including analysis of bid alternates, if any. Consultant shall use its standard pre-qualification process for the Project and allow District to have input on selection of contractors, if requested in writing by District.

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

3. **Schedule.** Consultant will perform constructability reviews and estimates and all Services promptly. All Preconstruction Services shall be completed by **APRIL 22, 2014**. Consultant shall provide their GMP proposal to the District on or before **APRIL 7, 2014**. If the preconstruction period is extended, the Consultant shall be compensated based on the hourly rates set forth in Exhibit "A," subject to prior written approval of the District, or as otherwise agreed to in writing by the parties.

4. **Access.** Consultant shall have access to the Site and the work at all times. Unless exempted, Consultant shall comply with the applicable requirements of Education Code sections 45125.1 and 45125.2 with respect to fingerprinting of employees who may have contact with the District's pupils. Consultant shall also ensure that all sub-consultants and other subcontractors, of every kind and nature, also comply with the requirements of Education Code sections 45125.1 and 45125.2.

5. **Ability to Add Scope of Work.** District may add additional work to Consultant's scope of work including, by way of example, and not limitation: Procurement of materials and equipment and preparation or procurement of necessary shop drawings.

ARTICLE III. - DISTRICT'S RESPONSIBILITIES

The District shall provide to Consultant information regarding requirements for the Project, including information regarding the District's objectives, schedule, constraints and criteria.

ARTICLE IV. - TERMINATION

1. This Agreement may be terminated by either party upon fourteen (14) days written notice to the other party in the event of a substantial failure of performance by such other party, including insolvency of Consultant, or if the District should decide to abandon or indefinitely postpone the Project.

2. In the event of a termination based upon abandonment or postponement by the District, the District shall pay Consultant for all services performed and all expenses incurred under this Agreement supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement, subject to the "Not To Exceed" or "NTE" maximum amount and any prior written authorization for additional services issued by District. 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 of completion and to complete and incomplete documents whether delivered to the District or in the possession of the Consultant.

3. This Agreement may be terminated without cause by District upon fourteen (14) days written notice to the Consultant. In the event of a termination without cause, the District shall pay Consultant for all services performed and all expenses incurred under this Agreement supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination, subject to the "Not To Exceed" or "NTE" maximum amount and any prior written authorization for additional services issued by District. 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 of completion and to complete and incomplete documents whether delivered to the District or in the possession of the Consultant. In addition, Consultant will be reimbursed for reasonable termination costs through the payment of three percent (3%) of the original contract amount paid to Consultant up to the date of termination, or three percent (3%) of the remaining contract balance, whichever is less. This three percent (3%) payment is agreed to compensate the Consultant for the actual level of completion reached on the date of termination and is consideration for entry into this termination for convenience clause.

4. In the event of a dispute between the parties as to performance of the work or the interpretation of this Agreement or payment, the parties shall attempt to resolve the dispute. Pending resolution of any dispute, Consultant agrees to continue the work diligently to completion. If the dispute is not resolved, Consultant agrees it will neither rescind the Agreement nor stop the progress of the work. Any controversy or claim arising out of or relating to this Agreement shall be settled by mediation in Santa Barbara County, in accordance with the rules of the Superior Court ("Mediation Rules"). To the extent that the provisions within this Article do not conflict with the Mediation Rules, the parties agree to all of the provisions set forth in this Article. If requested, the parties agree to permit Architect to participate in any mediation. If the parties are unable to agree on a mediator within thirty (30) days of the receipt of a written request for mediation, they shall request that the presiding judge of the Superior Court designate one. The District shall pay one-half of the cost of the mediation and the Consultant shall pay one-half of the cost of mediation, or if Architect participates in the mediation, each party shall pay their respective share of the cost of mediation. Each party shall be responsible for its own attorney's fees and costs through any such mediation. Any mediator chosen or designated must have experience in public works K - 12 school construction issues. Notwithstanding the foregoing, once a written request for mediation has been made, each party shall have the right to conduct discovery pursuant to the procedures set forth in the Civil Discovery Act of 2005, as amended, even if an action has not been filed. In the event mediation is not successful, Consultant agrees that no litigation shall be initiated before completion of the Project.

ARTICLE V. - COMPENSATION TO CONSULTANT

District shall compensate Consultant for the services required hereunder, as follows:

1. Consultant shall be compensated for all Preconstruction Services, on a "Not To Exceed" or "NTE" basis in the amount of **\$22,979.00 (TWENTY-TWO THOUSAND, NINE HUNDRED SEVENTY-NINE DOLLARS)** which amount shall be included in the Guaranteed Maximum Sum for construction of the Project, if District proceeds with the Project. District shall provide to Consultant necessary documents produced by Architect, including its consultants, and other design professionals engaged by District related to the Project. In the event the Project does not proceed, Consultant shall be compensated for work completed pursuant to Article IV. In every other respect, Consultant shall be responsible for all costs and expenses incurred for providing the Services required by this Agreement, including but not limited to costs of hiring sub-consultants and other professionals, travel expenses to the Project site and meetings with District and its representatives, long distance telephone charges, copying expenses, salaries of Consultant's staff and employees working on the Project, overhead, and any other cost and expense reasonably required of, and actually incurred by Consultant in performance of its obligations under this Agreement.

2. District shall pay Consultant within sixty (60) days of receipt of an approved invoice from Consultant. The agreed to billable rates are listed in Exhibit "A," which are inclusive of all of Consultant's Fees, overhead, and profit. Invoices shall be broken down in detail and include supporting back-up documentation prior to the District's approval and payment.

3. If for whatever reason the Project does not proceed into the Construction Services Phase, Consultant will be compensated for the work completed through the time the Services were performed, subject to the NTE maximum amount and any prior written authorization for additional services issued by District.

ARTICLE VI. - EMPLOYEES AND CONSULTANTS

1. Consultant shall submit, for written approval by the District, the names of any consultants, including sub-consultants, proposed for the Project. Nothing in this Agreement shall create any contractual relationship between the District and any consultants employed by Consultant under the terms of this Agreement. A consultant shall be deemed approved if District does not object in writing within ten (10) business days of receipt of notice of the proposed consultant.

2. Consultant's consultants shall be licensed to practice in California and have relevant experience with California public school design and construction during the last five years. If any employee or consultant of Consultant is deemed not acceptable to the District during performance of the work, then that individual shall be replaced with an acceptable, competent person at the District's request, without expense or charge to District.

ARTICLE VII. - MISCELLANEOUS

1. Consultant shall make a written record of all meetings, conferences, discussions and decisions made between or among the District, Consultant and District's Consultants, including Architect, during all phases of the Project and concerning any material condition in the requirements, scope, performance and/or sequence of the work for the Project.

2. District shall not be responsible to Consultant for any claims or damages resulting from District's election not to enter into the Lease-Leaseback Documents or proceed with the Project using Consultant's services. It is the intention of the parties that, once the Plans and Specifications are approved by DSA and any other necessary governmental agencies, Consultant agrees to enter into the Lease-Leaseback Documents along with any other documents necessary to construct the Project in conformance with the approved Plans and Specifications and construct the Project within the District's approved Construction Budget, if so desired by District.

3. Consultant shall indemnify, defend and hold harmless District, its Board, Board members, officers, employees, agents, assigns, and successors in interest, from and against any and all liability, damages, losses, claims, demands, actions, causes of action, costs, and expenses, including, without limitation, attorney's fees, and judgments arising from any conduct, active or passive, of Consultant, its employees, agents of every kind and nature, and consultants relating, in whole or in part, to Consultant's performance of its obligations under this Agreement. District shall indemnify, defend and hold harmless Consultant from any and all liability, damages, losses, claims, demands, actions, causes of action, costs, and expenses, including, without limitation, attorney's fees, arising from any negligent or intentional wrongful acts or omissions of District relating to this Agreement. Consultant shall defend, indemnify and hold harmless the District from any and all liability, damages, losses, claims, demands, actions, causes of action, costs, and expenses, including, without limitation, attorney's fees, related to employment benefits, workers' compensation or other benefits, of any kind or nature, asserted by or on behalf of any employee or agent of Consultant or any of Consultant's consultants, sub-consultants or other subcontractors.

4. Consultant shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to District which will protect Consultant and District from claims which may arise out of or result from Consultant's actions or inactions relating to this Agreement, whether such actions or inactions be by Consultant, its agents, employees, consultants or sub-consultants, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts or omissions any of them may be liable. The aforementioned insurance shall include the following:

- a. Consultant shall carry Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California.
- b. Comprehensive general and auto liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit, bodily injury and property damage liability per occurrence, and \$2,000,000 in aggregate, including:

- (1) owned, non-owned and hired vehicles;
- (2) broad form property damage;
- (3) products/completed operations; and,
- (4) personal injury.

c. Each policy of insurance required in (a) and (b) above shall name District and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of Consultant hereunder, such policy is primary and any insurance carried by District is excess and non-contributory with such primary insurance; and, shall state that not less than thirty (30) days' written notice shall be given to District prior to cancellation. Consultant shall notify District in the event of material change in, or failure to renew, each policy. Prior to commencing work, Consultant shall deliver to District proof of insurance as evidence of compliance with the requirements herein. In the event Consultant fails to secure or maintain any policy of insurance required hereby, District may, at its sole discretion, secure such policy of insurance in the name of and for the account of Consultant, and in such event, Consultant shall reimburse District upon demand for the cost thereof, or District may withhold the cost of such insurance from amounts due Consultant.

5. Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that Consultant and all of Consultant's employees, consultants, sub-consultants or other subcontractors shall not be considered officers, employees or agents of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation insurance. Consultant assumes full responsibility for the acts and/or omissions of Consultant's employees, agents, consultants or sub-consultants as they relate to the services to be provided under this Agreement. Consultant assumes full responsibility for payment of all federal, state and local taxes, and all contributions, including all employment benefits, unemployment insurance, social security and income taxes for Consultant's employees, consultants, sub-consultants or other subcontractors.

6. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the District or Consultant.

7. District and Consultant, 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. Consultant shall not assign this Agreement without the express, written consent of District, which may be withheld by District for any reason or no reason, in District's absolute discretion.

8. This Agreement shall be governed by the laws of the State of California. Venue for any action or proceeding shall rest in Santa Barbara County.

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9. This Agreement represents the entire Agreement between District and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral, with respect to the Preconstruction Services which are the subject of this Agreement. This Agreement may be amended or modified only by an agreement in writing signed by both District and Consultant.

SANTA BARBARA UNIFIED SCHOOL DISTRICT

By: _____
Meg Jetté, Assistant Superintendent

FRANK SCHIPPER CONSTRUCTION CO.

By: _____
Paul Wieckowski, President

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EXHIBIT “A”

SCOPE OF PRECONSTRUCTION SERVICES

The following is a list of the services to be provided under this Agreement consistent with the terms, purpose and intent of Article 2 of the Preconstruction Services Agreement (“Agreement”). Consultant agrees to furnish these services on a “Not To Exceed” or “NTE” basis for the amount set forth in the Agreement. Consultant will bill actual costs on a monthly basis subject to the NTE amount, and Consultant submits a Guaranteed Maximum Sum proposal to District, which is accepted and approved by District, or as otherwise reasonably directed by the District.

Estimating

- Prepare complete construction cost estimates at DSA submittal and GMP proposal milestones.
- All estimates will be broken down by trade and approved Plans and Specifications section format.
- All estimates will include a variance report, if appropriate or requested by District, that shows the differences between the estimates.
- Develop bid packages and solicit a minimum of three (3) bids for each subcontractor trade to establish the Guaranteed Maximum Sum (“GMS” or “GMP”).
- Develop and include a site logistics plan and project schedule and distribute to the bidders during the bid process.
- Collaborate as needed with the District, Architect and Engineers.

Value Savings

- Identify options for value engineering - savings ideas.
- Work with the District and Architect to refine ideas and provide pricing feedback.
- Work with the Architect to verify that the accepted savings ideas are incorporated into the final Plans and Specifications as approved by DSA (“Construction Documents”).

Constructability Reviews

- Provide site survey/review for the District and Architect’s use and incorporation into budget, GMP proposal, and detailed critical path method (“CPM”) schedule.
- Provide constructability review of the DSA submittal set and final Plans and Specifications. Deliverables will include the writings specified in the Agreement including, but not limited to, a report by drawing number, detail and specification section.

Scheduling

- Provide a detailed CPM schedule (“Schedule”).
- The Schedule will include all phases and milestones as set forth in the Agreement, including preconstruction services, bid process and award of contracts, construction activities, and Project close out.
- The Schedule will be updated as reasonably requested by District.

Bidding

- Coordinate all bidding activities in order to arrive at a Guaranteed Maximum Sum for complete construction of the Project under District’s Lease-Leaseback Documents. Consultant shall solicit a minimum of three bids for each trade - subcontractor scope of work needed to complete the Project, unless otherwise agreed to by District in writing.
- Consultant’s Guaranteed Maximum Sum proposal for construction of the Project will include an open book approach to show District all bids received with a detailed analysis and recommendations for award of contracts for each trade, together with detailed line item costs for all Project site overhead, General Conditions, bonds, insurance, fee and all other amounts proposed to be billed by Consultant to District, including percentage of home office overhead applicable to the Project.

The following are Consultant’s billing rates for Preconstruction services:

Classification	Rates
Principal	\$135/hr
Preconstruction Manager	\$105/hr
Project Manager	\$90/hr
Estimator	\$90/hr
Superintendent	\$80/hr
Project Engineer	\$70/hr
Consultants	TBD
Materials	TBD

The final bill for Preconstruction services will include actual labor rates plus a burden of 55% labor tax, plus 1.5% incidentals. These amounts for each classification of worker, when combined in the final billing for preconstruction services, shall not exceed the hourly rates specified.