

**LEASE LEASEBACK DELIVERY METHOD**

**PRECONSTRUCTION PROVISIONS**

***Historic Window Rehabilitation Project  
at Santa Barbara Junior High School Site***

1. Scope.

The Contractor's services include those described in this Article and, in general, all those necessary in preparation for development and construction of the Project.

2. Collaboration.

The intent of the Contract Documents is to create a team that collaboratively harnesses the talents and insights of all participants to optimize project results, increase value to the District, minimize risk to the Contractor and Architect, reduce waste, and maximize efficiency through all phases of design, fabrication, and construction. Contractor shall advise District regarding site use, site conditions, and improvements, and the selection of materials, building systems and equipment. Contractor shall provide on-going review and recommendations on the following: (i) construction feasibility; (ii) actions designed to minimize adverse effects of labor or material shortages; (iii) time requirements for procurement, installation and construction completion; and (iv) factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

3. Project Schedule.

Contractor will prepare a critical path method Project schedule, which includes all milestone dates including, but not limited to, DSA deferred submittals, agency approvals, utility services approvals, subcontractor bidding, buyout, preparation and submittal of Contractor's guaranteed maximum price proposal for construction of the Project, preparation of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, phasing, construction sequencing and durations, and District move-in and occupancy requirements. The Project Schedule shall be prepared with professional software agreed to by District. The Contractors Project Schedule shall be used as a baseline for the Construction Services Agreement and shall be distributed to subcontractors during the bidding and establishment of the Guaranteed Maximum Price ("GMP").

4. Apprenticable Occupation Compliance.

Contractor agrees that it, and its subcontractors at every tier, will use a skilled and trained workforce to perform all work on the Project or contract that falls within an apprenticeship occupation in the building and construction trades. Contractor, in consultation with the District, shall identify which occupations related to the Project are apprenticeship occupations as defined by the Chief of the Division of Apprentice Standards of the Department of Industrial Relations. Contractor will establish a program, acceptable to the District, to implement and verify

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compliance with the Skilled and Trained workforce and reporting requirements as provided in Education Code 17407.5 and Public Contract Code section 2600 *et seq.*

### **5. Meetings.**

Contractor shall attend regular Project coordination meetings during Project development between District, Architect, Construction Manager (if retained for the Project), and other consultants of the District as required. Contractor shall make a written record of all such meetings documenting the discussions and decisions made. Contractor may be requested to make formal presentations to the governing board of District.

### **6. Cost Estimate.**

During the development of the plans and specifications, Contractor shall review and validate the Architect's cost estimates. Additionally, the Contractor shall collaborate with the Construction Manager (if retained for the Project), Architect, and District and prepare a detailed cost estimate for the Project at the 50% Construction Documents Phase and at DSA submittal. The detailed cost estimates shall be broken down by CSI codes and include line items for contractor contingency, liability insurance, builder's risk insurance, bond, and Contractor's fee. The cost estimate at DSA submittal will be the basis for negotiations of the GMP. Contractor's duties with respect to the cost estimate shall include, upon request of the District, obtaining competitive subcontractor pricing for particular elements of the Project. Contractor shall not be entitled to any additional compensation for time spent in connection with the subcontractor bidding process.

### **7. Value Engineering.**

7.1. Contractor shall pursue opportunities to create additional value by identifying options to reduce capital or life cycle cost, improve constructability and functionality, or provide operational flexibility, while satisfying the District's programmatic needs. Contractor shall develop Value Engineering Proposals ("VEP") for District and Architect approval for alternative systems, means, methods, finishes, equipment and the like that satisfy the general design criteria of the Project, but which result in savings of time or money in constructing or operating and maintaining the Project. Each VEP shall describe the proposed change, identify all aspects of the Project affected by the change, specify the cost or time savings to be achieved if the VEP is accepted, and detail any anticipated effect on the Project's service life, economy of operation, ease of maintenance, appearance, design or safety standards. Completion of each VEP, including District and Architect approval of each VEP, is to be achieved sufficiently in advance to permit Architect to complete the construction document phase of the design and permit Architect to secure DSA approval.

7.2. The recommendations and advice of Contractor concerning design alternatives shall be subject to review and approval of the District and the District's consultants. It is not Contractor's responsibility to ascertain that the Plans and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if Contractor recognizes that portions of the Plans and Specifications are at variance therewith,

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Contractor shall promptly notify Architect and the District in writing. Notwithstanding the foregoing, Contractor represents that as part of the scope of these Preconstruction Services, Contractor shall carefully examine the site at which the work will be performed and the Plans and Specifications and other associated documents; perform all reasonable investigations essential to a full understanding of the difficulties that may be encountered in performing the work; be familiar with the terms and conditions thereof; and acquaint itself through reasonable discovery with the conditions under which the work is to be performed, including, without limitation, applicable laws, codes and other restrictions (including any restrictions identified by the District and that are related to the District's education program and/or requirements at the Project site), local labor conditions, local weather patterns, restrictions in access to and from the Project site, prior work performed by others on the Project, and obstructions and other conditions relevant to the work, the site of the work and its surroundings.

### **8. Constructability Review.**

Contractor shall perform a constructability review of the DSA Submittal set of drawings and specifications. Upon completion of its review, the District will provide a list of approved constructability items that will be incorporated into the construction documents. The Contractor shall ensure that all constructability items are adequately understood and incorporated into the GMP. If the Contractor finds any discrepancies in the approved constructability items, drawings, specifications or other bid documents, the Contractor shall prepare and transmit a report identifying any conflicts to the District. Otherwise any conflicts in the drawings (excluding errors and omissions, unknown conditions or force majeure) shall be included in the GMP so as to eliminate frivolous change orders in the Construction Services Agreement.

### **9. GMP Proposal, Negotiation and Board Approval.**

9.1.1. At the completion of preconstruction services, Contractor shall provide the District with a proposal for the GMP. The proposal shall include the detailed cost estimate prepared by Contractor at DSA submittal. Contractor shall include with its GMP proposal the following:

9.1.1.1. a list of the drawings and specifications, including all addenda thereto, and the conditions of the contract which were used in the preparation of the GMP proposal;

9.1.1.2. a list of allowances and a statement of their basis;

9.1.1.3. a list of the clarifications and assumptions reasonably made by Contractor in preparation of the GMP proposal to supplement the information contained in the drawings and specifications; and

9.1.1.4. the date of substantial completion (i.e. that stage in the progress of the work when the work is complete in accordance with the Contract Documents so the District can occupy or use the work for its intended purpose), upon which the proposed GMP is based, and a schedule of the Construction Documents, issuance dates, project milestones and critical activities

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upon which the date of substantial completion is based in a format and with such detail as the District instructs.

9.1.2. The Contractor, with District's permission, may include allowances in the GMP only where a design, service, or construction element is not sufficiently specified to enable Contractor to obtain a bid. Allowance items will be documented based on the verified invoice costs. Allowance items shall not include general requirements, general conditions costs not specific to the allowance item, or Contractor's overhead and fee.

9.1.3. The Contractor shall meet with the District to review the GMP proposal and the written statement of its basis. In the event that the District does not accept or otherwise discovers any inconsistencies or inaccuracies in the information presented, it will promptly notify the Contractor, who shall make appropriate adjustments to the GMP proposal, its basis, or both, in a manner approved by District.

9.1.4. Upon the District's acceptance of the GMP, the GMP shall be presented to the District's Board of Education for approval. The Construction Provisions of the Facilities Lease shall be amended to reflect the Board approved GMP. The GMP proposal shall not be effective unless approved by the District's Board of Education. Except for services identified in these Preconstruction Provisions, Contractor shall not proceed with any work until the GMP is approved by the District's Board of Education.

9.1.5. Acceptance of the GMP by the District is within the sole and absolute discretion of the District and its Governing Board. In the event Contractor and District are unable to finalize a GMP which is approved by the District's Governing Board, the District has the right to terminate the Preconstruction Services and Construction Services of the Contractor.

### **10. Subcontractor Selection and Bidding.**

Construction subcontracts with a value exceeding one-half of one percent of the GMP must be awarded on either a best value basis or to the lowest responsible bidder. Contractor shall develop a subcontractor selection program acceptable to the District which establishes reasonable qualification criteria and standards and identifies the basis for award. The process above may include prequalification or short-listing. Contractor shall provide public notice of availability of work to be subcontracted in accordance with publication requirements applicable to the competitive bidding process of the District, including a fixed date and time on which qualifications statements, bids, or proposals will be due. All subcontractors performing work pursuant to subcontracts with a value not in excess of one-half of one percent of the GMP shall be approved by District.

### **11. District's Responsibilities.**

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

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### **12. Preconstruction Services Fee.**

12.1 Contractor will charge the District fees for preconstruction services as follows: A not to exceed fee of \$28,575. This fee is a NTE fee for preconstruction services for the project, inclusive of all three sites (the other two sites being Santa Barbara High School and La Cumbre Junior High).

13. Extra Services. The following services are not contemplated as part of these Preconstruction Provisions, but may be performed by Contractor upon prior written authorization by the District:

Exploratory demo or site investigation  
Design build or design assist services  
Architectural, structural, civil, landscape, MEP consultants or consultant services  
BIM

13.1 Prior to performance of work for Extra Services, Contractor will either quote a fee estimate to District for these services, which will be subject to District approval, or Contractor will perform the Extra Services on a time and materials basis, as agreed to by District. Upon completion of any of the aforementioned Extra Services which District may request and authorize Contractor to perform, Contractor shall submit a separate invoice to District for its fees in performing the Extra Services. District will pay each invoice for Extra Services within 30 days of receipt.

### **14. Consultants.**

Contractor shall submit, for written approval by the District, the names of any consultants proposed for the Project. Nothing in these Preconstruction Provisions shall create any contractual relation between the District and any consultant employed by the Contractor under the terms of these Preconstruction Provisions. Contractor'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 consultant of the Contractor is not acceptable to the District, then that individual shall be replaced with an acceptable competent person at the District's request.

### **15. Termination.**

15.1 These Preconstruction Provisions may be terminated by either party upon 14 days written notice to the other party in the event of a substantial failure of performance by such other party, including insolvency of Contractor or if the District should decide to abandon or indefinitely postpone the Project. These Preconstruction Provisions may also be terminated without cause by District upon 14 days written notice to the Contractor. Contractor acknowledges that consideration for entry into this termination for convenience clause exists.

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15.2 In the event of a termination or postponement by District, the District shall pay to the Contractor for all services performed and all expenses incurred under these Preconstruction Provisions supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement, plus any sums due the Contractor for Board-approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of these Preconstruction Provisions, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings and other documents, whether delivered to the District or in the possession of the Contractor. Contractor and District expressly acknowledge that in the event of termination, Contractor will not receive any additional termination costs.

### **16. Insurance.**

Contractor shall have in place, prior to the commencement of Preconstruction Services, Commercial General Liability Coverage and Worker's Compensation Insurance in accordance with the insurance requirements set forth in the General Conditions, and which is otherwise satisfactory to the District. Specifically, Contractor shall comply with the requirements as to form of insurance, coverage amounts, endorsements and proof of carriage as set forth in the General Conditions.

### **17. Indemnity.**

17.1. To the fullest extent permitted by law, all services performed under these Preconstruction Provisions shall be at the risk of the Contractor alone. Contractor agrees to defend, indemnify, and hold harmless the District, its governing board and board members, its employees, officers, the Construction Manager, the Architect and its consultants, the State of California, all of its political subdivisions, and their employees ("District/Indemnitees") against any and all liabilities, judgments, claims, damages, losses, and expenses, including, but not limited to, demands arising from injuries or death to persons (Contractor's employees included), and damage to property, real or personal, arising from services provided under these Preconstruction Provisions and performed by Contractor's employees, agents, subcontractors, material or equipment suppliers, invitees, or licensees, regardless of whether such claims or litigation arise in part out of the negligence of Districts/Indemnitees, save and except for claims or litigation arising out of the sole negligence or sole willful misconduct of Districts/Indemnitees.

17.2. The coverage of the indemnification contained in this section shall include, without limitation, reasonable attorneys' and expert consultants' fees and court costs incurred by the District/Indemnitees in connection with any of the foregoing. Payment to Contractor by District shall not be a condition precedent to enforcing District/Indemnitees' right to indemnification. The indemnity set forth in this section shall survive the expiration or term of these Preconstruction Provisions until such time as action against District/Indemnitees is barred by the applicable statute of limitations.

### **18. General Provisions.**

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18.1. Contractor, in the performance of services under these Preconstruction Provisions, shall be and act as an independent contractor. Contractor understands and agrees that Contractor and all of Contractor's employees 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. Contractor assumes the full responsibility for the acts and/or omissions of Contractor's employees or agents as they relate to the services to be provided under these Preconstruction Provisions. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective Contractor's employees.

18.2 District shall not be responsible to Contractor for any claims or damages resulting from District's failure to approve the GMP or otherwise proceed with the Construction Services and/or the Project.

18.3 Nothing contained in these Preconstruction Provisions shall create a contractual relationship with or a cause of action in favor of any third party against either the District or Contractor.

18.4 The District and Contractor, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to these Preconstruction Provisions with respect to the terms of these Preconstruction Provisions. Contractor shall not assign these Preconstruction Provisions.

### **End Preconstruction Provisions**