

## **Board of Trustees Agenda Item**

**Board Meeting Date:** August 30, 2010

**Title of Item:** Award Lease-Leaseback Pre-construction Services Agreement for De Anza College Mediated Learning Center Project (Measure C)

### **Background and Analysis:**

On December 7, 2009 and January 19, 2010, Charles Allen, Executive Director of Facilities, Operations, and Construction Management, provided information briefings to the Board regarding the use of the Lease-Leaseback project delivery method, including the contractor selection process, for the Mediated Learning Center at De Anza College. The briefings included a discussion of the legal aspects of the process as well as its risks and benefits.

On February 1, 2010, the Board authorized the use of the Lease-Leaseback contractor selection process for this project in accordance with Education Code §81335.

The District's Selection Committee consisted of the De Anza College Vice President of Finance and Educational Resources, Letha Jean Pierre; the De Anza College Associate VP of College Operations, Donna Jones Dulin; the De Anza College Television Systems Engineer, Ed Breault; the Measure C Bond Director for De Anza College, Tom Armstrong; and the District's Purchasing Services Senior Buyer, Gina Bailey. Additionally, two representatives from the District's Architect, Ratcliff, served on the committee and had one vote between them. Furthermore, three representatives from the District's Program Manager, Gilbane Building Co., also served on the committee and had one vote between them.

The contractor selection process consisted of three parts:

1. Request for Qualifications (RFQ): The RFQ consisted of an open invitation to Contractors to submit their Statements of Qualifications (SOQ's). The SOQ's included information about the contractor's past performance, claims history, safety record, financial condition, bonding capacity, insurance, and project specific experience. The committee scored the SOQ's based upon a scoring system that was determined before the SOQ's were received. The Selection Committee awarded qualification points to each SOQ.
2. Interviews: Based upon responses to the RFQ, the District's Selection Committee ranked the contractors, created a list of finalists, and invited the six (6) top-ranked finalists to be interviewed. During the interviews, the committee awarded qualification points to the contractors based upon contractor presentations and answers to nine (9) questions.
3. Request for Proposal (RFP): After the interviews, the six top-ranked contractors submitted responses to a Request for Proposal. The responses to the RFP included the proposed fees for lease-leaseback services. The final ranking of the six (6) top-ranked contractors was determined by dividing their proposed fees by the total number of qualification points earned in step 1 and 2. The contractor with the lowest cost per qualification point achieved the top rank.

Purchasing Services advertised the Lease-Leaseback Request for Qualifications/Request for Proposals (RFQ/RFP) #1263-261 for the Mediated Learning Center (MLC) on April 2 and April 9, 2010. Purchasing Services also notified eleven Builders Exchanges and Plan Rooms, and advertised in the Daily Pacific Builder. Notice of the RFQ/RFP was also posted online at "BidNet" at [www.govbids.com](http://www.govbids.com). Additionally, Purchasing Services provided RFQ documents to the companies who participated in the PSEC lease-leaseback selection process, RFQ/RFP #1248-160.

The District conducted a mandatory pre-submittal conference on April 14, 2010, and representatives from twenty-two (22) companies attended the conference.

On May 18, 2010, fourteen (14) companies submitted Statements of Qualifications (SOQ's) in response to RFQ/RFP 1263-261.

During the SOQ evaluation, the fourteen (14) companies were scored and ranked. The Selection Committee invited the six top-ranked companies to continue to the interview and RFP steps. The six (6) top-ranked companies (in alphabetical order) were: Hathaway Dinwiddie Construction Company, Hensel Phelps Construction Co., McCarthy Building Companies, Inc., Roebbelen Contracting, Inc., Rudolph & Sletten, Inc., and Sundt Construction, Inc.

The Selection Committee conducted interviews on June 29 and June 30, 2010. During the interviews, each top-ranked contractor earned additional qualification points.

Responses to the RFP were due on July 21, 2010. Sundt Construction, Inc submitted the proposal with the lowest total fee for preconstruction services, construction services, contractor's contingency, and contractor's overhead and profit. This fact, in addition to its qualifications, earned Sundt the lowest cost per quality point and thus the top ranking.

The Selection Committee recommends award of the attached Preconstruction Services Agreement to Sundt Construction, Inc. so that it can prequalify subcontractors, obtain competitive bids from subcontractors, develop an actual Guaranteed Maximum Price (GMP), develop a Preliminary Construction Schedule, and provide the other services described in the Preconstruction Services Agreement. Sundt's fee for preconstruction services is \$100,000. The Preconstruction Services Agreement, paragraph VII(C) provides that the contractor will additionally be reimbursed at actual cost for reimbursable services defined as printing, advertising, and site condition confirmation and that such expenses will not exceed \$70,000.

The following items will be included in the GMP:

1. Direct Cost of the Work (See Exhibit A, Article V of the Preconstruction Services Agreement)
2. Contractor's Construction Services (equal to the proposed dollar amount in Sundt's RFP response)
3. Contractor's Overhead & Profit (Direct Cost of Work x percentage proposed in Sundt's RFP response)
4. Contractor's Contingency Fund (Direct Cost of Work x percentage proposed in Sundt's RFP response)

Provided that District staff and Sundt agree to a GMP and to project milestone dates and completion dates indicated in the Preliminary Construction Schedule, District staff plans to

return to the Board by December 6, 2010 and recommend that the Board of Trustees award the Site Lease and Facilities Lease agreements to Sundt Construction, Inc. to construct the project based upon DSA-approved construction documents within the agreed-upon duration for an amount not to exceed the GMP. Under the two agreements, the District will lease District-owned land to Sundt, and Sundt will agree to construct the Project pursuant to the District's Construction Provisions and its responses to RFQ/RFP 1263-261. The District will receive incremental title to the constructed property in accordance with payments made. The District will pay for and take title to all improvements no later than completion of construction of the Project, at which time the leases will be terminated.

The Mediated Learning Center project is funded by Measure C.

**Recommendation:** Authorize Carmen Redmond, Director of District Purchasing Services, to award the attached Preconstruction Services Agreement to Sundt Construction, Inc. in an amount not to exceed \$170,000.

Submitted by:	Carmen Redmond, Director of Materials and Purchasing Services
Additional contact names:	Tom Armstrong, Measure C Bond Projects Director for De Anza College; Charles Allen, Executive Director of Facilities, Operations, and Construction Management; Gina Bailey, Senior Buyer
Is backup provided?	Yes

**PRECONSTRUCTION SERVICES AGREEMENT  
FOR  
MEDIATED LEARNING CENTER  
DE ANZA COLLEGE  
CUPERTINO, CALIFORNIA**

This Agreement entered this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the Foothill-De Anza Community College District, a public entity of the State of California, hereinafter called "District" and Sundt Construction, Inc., hereinafter called "Contractor."

WITNESSETH

WHEREAS, the District desires to provide for the construction of a new Mediated Learning Center at DeAnza College (the "Project");

WHEREAS, the Contractor and District desire to enter into a lease-leaseback arrangement for the construction of the project pursuant to Education Code section 81335;

WHEREAS, the Contractor desires to establish a Guaranteed Maximum Price prior to entering into a Site Lease Agreement and Facilities Lease Agreement;

WHEREAS, it is necessary and desirable that Contractor be engaged by District for the purpose of performing services hereinafter described:

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

1. Services to be performed by Contractor. In consideration of the payments hereinafter set forth, Contractor shall perform services for District in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A" attached hereto and by this reference made a part hereof. Contractor shall perform all the services described in Exhibit A for the sum not to exceed \$170,000.00.
2. Payments. In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A", District shall make payment to Contractor in the manner specified in Exhibit "A".
3. Relationship of the Parties. It is understood that this is an Agreement by and between Independent Contractor(s) and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of Independent Contractor.
4. Non-Assignability. Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of District, and any attempted assignment without such prior written consent in violation of this Section automatically shall terminate this Agreement.
5. Contract Term. This Agreement shall be in effect as specified in Exhibit "A". The District may terminate this contract at any time for any reason by providing thirty (30) days notice to Contractor. Termination to be effective on the date specified in the notice. In the event of termination under this paragraph, Contractor shall be paid for all work provided to the date of termination.
6. Hold Harmless and Indemnification: To the fullest extent permitted by law, the Contractor shall indemnify and save harmless the District, its officers, agents, employees and servants from all claims, suits or actions of every

name, kind and description, brought for, or on account of (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, or (C) by reason of any failure to withhold and /or pay to the government income and/or employment taxes from earnings under this contract as made necessary by Section 530 of the Revenue Act of 1978, including but not limited to the concurrent active or passive negligence of the District, its officers, agents, employees or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which the District has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of the Contractor to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778.4 of the California Civil Code.

Contractor's duty to defend shall be triggered by notice to Contractor that District has been served with a summons or complaint which alleges facts falling within the scope of Contractor's indemnity obligations.

7. Insurance. Insurance requirements are attached as Exhibit "I."

8. Non-Discrimination.

A. General. No person shall, on the grounds of race, color, national or ethnic origin, religious affiliation or non-affiliation, gender, marital status, sexual orientation, age, physical or mental disability, or political affiliation, be excluded from participation in, be denied the benefits, or be subjected to discrimination under this Agreement.

B. Employment. Contractor shall insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this Agreement. Contractor's personnel policies shall be made available to District upon request.

9. Substitutions: If particular people are identified in Exhibit "A" as working on this contract the Contractor will not assign others to work in their place without written permission from the District Purchasing Agent. Any substitution shall be with a person of commensurate experience and knowledge.

10. Sole Property of the District: Any system or documents developed, produced or provided under this contract shall become the sole property of the District. Notwithstanding any other provision herein, any intellectual property discovered or developed by Contractor in the course of performing or otherwise as a result of its work hereunder shall be the sole property of the District.

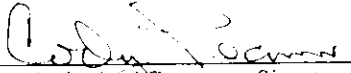
11. Expenditure Of Public Funds. Contractor agrees to comply with Government Code Section 8546.7 which provides that the contracting parties for any contract involving expenditure of public funds in excess of \$10,000.00 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract.

12. Confidentiality. In performing its duties hereunder the Contractor may from time to time gain incidental access to confidential information and records including student record information as defined by 20 USC section 1232g. The parties agree that such incidental access is not a provision or conveyance or disclosure to Contractor of student record information in violation of section 1232g or of any similar state law. Contractor agrees that if in the performance of its duties it does obtain such access it shall refrain from any removal, use or disclosure to any third person of such information and records and shall take any and all necessary affirmative steps to maintain the confidentiality, and avoid such removal, use or disclosure, whether intentional or inadvertent, of such records and information.

13. Merger Clause. This Agreement, including Exhibit "A" attached hereto and incorporated herein by reference, constitutes the sole agreement of parties hereto and correctly states the rights, duties and obligations of each party as of the document's date. Any prior agreement, promises, negotiations or representations between the

parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the District Purchasing Agent. In the event of a conflict between the terms, conditions or specifications set forth herein and those in Exhibit "A" attached hereto, the terms, conditions or specifications set forth herein shall prevail.

Sundt Construction, Inc.



Authorized Contractor Signature

7.29.12

Date

Sundt Construction, Inc.  
Cody Pearson, Senior Vice President  
2860 Gateway Oaks Drive, Suite 300  
Sacramento, Ca 93583

86-0366154

Contractor's Tax I.D. Number

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

By \_\_\_\_\_  
Authorized Signature and Date

Carmen A. Redmond, C. P. M., Director of Purchasing Services  
Foothill-De Anza Community College District  
12345 El Monte Road  
Los Altos Hills, California 94022

\_\_\_\_\_, 2010  
Date Approved by Board of Trustees

**Exhibit “A” to Preconstruction Services Agreement**

**Scope of Services and Payment  
LEASE LEASEBACK PRECONSTRUCTION SERVICES  
for  
MEDIATED LEARNING CENTER  
DE ANZA COLLEGE**

1. GENERAL: Working closely with the District, the Architect and the Program Manager, the Contractor shall perform Preconstruction Services to prepare a Guaranteed Maximum Price for construction of the De Anza College Mediated Learning Center.
  - A. Definitions shall be those contained in the Construction Provisions, Exhibit D of the Facilities Lease, as attached.
  - B. The District will provide Construction Documents to the Contractor for use in completing the work of this Agreement.
    1. Construction Documents to be initially provided to the Contractor, as listed below, have been submitted for review to the Division of the State Architect (DSA). Design and Pre-bid Services shall be completed using these documents, or updated versions of same.
    2. Upon approval by the Division of the State Architect, approved Construction Documents will be provided to the Contractor for Bidding Services.
    3. Five (5) sets of reproducible printed documents and two discs with documents in electronic format will be provided to the contractor in each case.
  - C. The following Attachments are a part of this Agreement:
    1. Site Lease, dated June 18, 2010;
    2. Facilities Lease, dated June 18, 2010;
    3. Construction Documents, latest available release as documented by transmittal to the Contractor.
    4. MLC Site As-built Drawings
    5. LEED Scorecard
  - D. The Contractor shall conduct meetings related to the scope of services of this Agreement and shall prepare and distribute agendas before the meeting and meeting minutes after the meetings, shall attend Project-related meetings requested by District and College personnel, and shall attend District Board of Trustees meetings related to the Project.
  - E. The Contractor shall participate in activities and provide documentation required by the USGBC (U.S. Green Building Council) to achieve the Council's LEED Platinum certification for the Project.

II. DESIGN & PRE-BID SERVICES: The Contractor shall provide the following services and any related services needed to develop a Guaranteed Maximum Price to construct the Project:

- A. Review Project background documents including, but not limited to, the Environmental Impact Report, geotechnical investigations, Project Stabilization Agreement, MLC site As-built Drawings, LEED Scorecard, surveys, estimates, and schedules.
- B. Review Project Construction Documents for constructability, completeness, clarity, consistency and coordination, and make recommendations to the Architect for improvement or completion.
- C. Confirm Project site conditions, including locating and coordinating utilities and points of connection, and make recommendations for corrections to Construction Documents if required.
- D. Based upon available Construction Documents, recommended corrections, and corrections required by the Division of the State Architect, prepare a cost estimate (Contractor's Preconstruction Estimate) to determine the Project's GMP.
  1. Obtain approval of the Contractor's Preconstruction Estimate from the District and the Architect to establish the final Project GMP budget.
  2. Recommend, if necessary, appropriate actions to correct and/or avoid potential cost overruns.
  3. Previous estimates prepared by the Architect and/or Program manager will be provided to the Contractor for information only.
- E. Prepare a preconstruction activity schedule, in a scheduling format approved by the District, of all preconstruction activities, including design completion, regulatory agency permits, bidding, entitlement, required Board of Trustees actions and other project-related issues and activities, and update the schedule as necessary to reflect the most recent project developments.
- F. Within four (4) weeks approval of this Agreement, develop a draft of the Preliminary Construction Schedule for the construction phase of the Project in the format required by the Construction Provisions. The duration of the draft Preliminary Construction Schedule shall be the same as that for the District's Proposed Construction Schedule (Exhibit "C") unless otherwise agreed upon in writing by the Contractor and the District.
- G. Prepare Subcontractor Bid Packages:
  1. Develop the most logical, competitive, seamless and distinct subcontractor bid packages with all scopes of work included in the packages.
  2. Include bid alternates approved in writing by the District (deductive or additive) in each subcontractor bid package to control Project costs and to enable full utilization of the project budget.
  3. Utilize applicable requirements of the Construction Provisions for soliciting subcontractor bid packages, but develop (with the District's participation and subsequent review) Additional Provisions that address specific requirements



for bid packages, schedule, and the responsibilities of all parties. The Additional Provisions and its attachments may include requirements for the Contractor's programs to promote safety and quality, or for other Contractor-initiated programs.

4. Include the draft Preliminary Construction Schedule in all subcontractor bid packages.
5. Do not cause the subcontractors to include any construction contingency or allowances in their bids. Include Contractor's Contingency only in the Contractor's GMP calculation.
6. Determine the number and make-up of the subcontractor bid packages and review the proposed subcontractor bid documents and subcontractor agreements with the Program Manager and the District.
7. Pre-qualify all major subcontractors (at least mechanical, electrical, plumbing and those subcontractors whose estimated value of the work is over five percent of the Contractor's Preconstruction Estimate) using reasonable public notification, qualification criteria and standards. Provide a list of prequalified subcontractors to the District.
8. Obtain competitive quotations for the printing and reproduction of the bid sets, review those quotations with the District, and purchase the sets from the selected printer. The District will reimburse the Contractor for the actual cost of printing and reproducing the subcontractor bid packages without mark-up.

III. BIDDING SERVICES: The Contractor shall provide all services required to obtain subcontract prices in order to determine the GMP, including all of the following:

1. Solicit and competitively bid subcontractor bid packages complying with the Construction Provisions and the Additional Provisions.
2. Identify a minimum of six (6) qualified subcontractors for each bid package, unless fewer subcontractors are approved in writing by the District. If the Contractor proposes to self-perform portions of the construction work totaling more than one-half of one percent of the GMP, solicit at least two proposals for that scope of work from other subcontractors.
3. Issue subcontractor bid packages to qualified subcontractors. Identify in each bid package the construction budget for the scope of work for that bid package. Bidders shall be encouraged to suggest cost saving ideas to their proposals, but separate from their bid prices.
4. Receive questions from bidders and coordinate preparation of responses by the Architect and/or District. Issue addenda to the subcontractors.
5. Receive a minimum of three (3) bids from subcontractors for each bid package. Review the bids with the District, Architect and Program Manager, and identify the lowest responsive and responsible bidder for each bid package, including

alternates. The Contractor shall not disqualify the apparent responsive and responsible low bidder without clear cause.

6. Confirm and document bidders' compliance with the Project Stabilization Agreement.
7. Review the scope of work of each selected subcontractor to confirm that no ambiguities, conflicts, or omissions occur between bid packages.
8. If the GMP resulting from the subcontractor bids exceeds the budget established by the Contractor's Preconstruction Estimate, the Contractor shall, at no additional cost to the District, recommend cost reductions and/or bid alternates and shall re-issue bid packages in order to reach the budget.

IV. GUARANTEED MAXIMUM PRICE & CONSTRUCTION SCHEDULE: Based upon bids accepted by the Contractor, and applying the percentage fees and lump sum costs proposed by the Contractor in the Request for Proposal to the actual Direct Cost of the Work, the Contractor shall prepare a Guaranteed Maximum Price (GMP) for the Project and shall complete the Preliminary Construction Schedule.

A. Include the following in the GMP:

1. Direct Cost of the Work (See Article V below)
2. Contractor's Construction Services (Determined by proposed dollar amount in RFP)
3. Contractor's Overhead & Profit (Direct Cost of Work x %age proposed in RFP)
4. Contractor's Contingency Fund (Direct Cost of Work x %age proposed in RFP)

B. The Contractor shall execute the Non-collusion Affidavit (Exhibit "B") as a part of its GMP submission.

C. Initial Project Schedule: Complete the Preliminary Construction Schedule as required by Construction Provisions Article 8.3.1 and submit the schedule to the Program Manager and District for review in accordance with Construction Provisions Article 8.3.2.

D. Agreement on a Guaranteed Maximum Price & Project Schedule: If the District and Contractor agree to a Guaranteed Maximum Price and to the Project Milestone dates and completion dates indicated in the Preliminary Construction Schedule, the District will award Site Lease and Facilities Lease agreements to the Contractor to construct the project within the agreed-upon duration for an amount not to exceed the GMP.

E. Contractor, by signing this Agreement, agrees to execute the Site Lease and Facilities Lease agreements with the District for the construction phase of the project, and to honor fees proposed by the Contractor in response to the Request for Proposal.

F. The Contractor shall, with reasonable diligence, ensure that the Construction Documents are free of ambiguities, conflicts, or omissions in the subcontractor bid packages, and shall guarantee to the District that the total project shall be built for a sum not to exceed

the Guaranteed Maximum Price (including the Contractor's Contingency Fund) within the duration of the Preliminary Construction Schedule.

- G. Once the District executes the Leases and issues a notice to proceed for the construction phase of the project, Contractor shall enter into contracts with the bidders selected for each bid package. If the value of the work of a subcontract is greater than one-half of one percent of the GMP, then that subcontractor shall be a listed subcontractor, and the District shall enforce Public Contract Code Section 4100 et. seq.
  - H. If the District and Contractor fail to agree to a GMP, the District may terminate this Agreement and proceed with the construction phase through other means, or may choose not to construct the Project. Bid packages, bids, and other documents prepared by the Contractor or received in response to the Contractor's bidding services shall become the property of the District.
- V. **DIRECT COST OF THE WORK:** The term "direct cost of the work" shall mean costs necessarily incurred by the Contractor in the proper performance of the work, but not including Contractor's Construction Services, Contractor's Contingency or Overhead and Profit. The Direct Cost of the Work shall include the following items:
- A. **Labor Costs:**
    - 1. Wages of construction workers directly employed by the Contractor to perform the construction of the work at the Site or, with the District's agreement, at off-site workshops.
    - 2. Actual costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits, associated with the construction workers directly employed by the Contractor, and as required by law.
  - B. **Subcontractor Cost:** Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.
  - C. **Cost of Materials and Equipment Incorporated in the Completed Work:** Actual costs, including transportation of materials and equipment incorporated or to be incorporated in the completed Work, including costs of materials in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage, but not including equipment or tools used in the Work having a replacement value of \$500 or less.
  - D. **Cost of Other Materials and Equipment and Related Items:**
    - 1. Actual costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the Site and fully consumed in the performance of the work.
    - 2. Costs of removal of debris from the site.

E. Miscellaneous Costs:

1. Sales, use or similar taxes imposed by a governmental authority which are related to the work and for which the Contractor or District is liable.
2. Fees of testing laboratories for tests required by the Contract Documents to be performed by the Contractor, except those related to defective or nonconforming work for which reimbursement is excluded by the Contract Documents.
3. Cost of surveys if required for the work.

F. Other Costs: Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the District.

VI. TIME:

- A. The services of this Agreement shall be completed by the Contractor no later than 90 days after a notice to proceed is issued to the Contractor by the District.
- B. The length of this Agreement shall be 180 calendar days to allow for administrative closure of the Agreement; all invoices from the Contractor must be submitted for payment 45 days before termination of the Agreement.

VII. FEE & PAYMENT

- A. The services of this Agreement shall be completed by the Contractor according to the schedule set forth in Article VI for the fee stated below.
- B. Compensation for miscellaneous costs incurred in completing the scope of work of this Agreement shall be included in the Contractor's lump sum fee, including elements such as, but not limited to, travel and lodging, mileage incurred, reprographics other than bid printing, computer plotting, reproductions, courier, telephone and FAX charges.
- C. The following reimbursable expenses are not included in the compensation for services and will be reimbursed at the Contractor's actual cost, and shall not exceed the amount stated below.
  1. Reproduction Costs: Reproduction costs of required plans, specifications, bid and contract documents beyond those described above, including all bid sets, addenda, or other District-requested reproduction costs.
  2. Advertising: Additional costs for bid advertising, beyond those required of the Contractor by this Agreement, if requested by the District.
  3. Site Condition Confirmation: Cost of field labor, material and equipment needed to confirm site conditions as required by paragraph II C.

D. Perform the services of this Agreement for the following fee:

Services	\$ 100,000	LUMP SUM AMOUNT
Reimbursable Expenses	<u>\$ 70,000</u>	NOT TO EXCEED AMOUNT
TOTAL FEE	\$ 170,000	

E. Payment will be made by the District to the Contractor monthly in proportion to completion of services, and upon submission of acceptable documentation of reimbursable expenses.

1. Remit payment applications to:

Irina Thornton  
Gilbane/MAAS  
c/o De Anza College  
21250 Stevens Creek Blvd.  
Cupertino, CA 95152

-End of Exhibit A-

**Exhibit "B" to Preconstruction Services Agreement**

**NON-COLLUSION AFFIDAVIT**

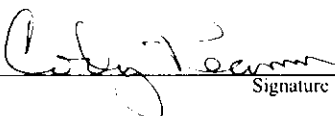
STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

I, Cody Pearson, being first duly sworn, deposes and says that I am the Senior Vice President of Sundt Construction, Inc., the party submitting the foregoing Guaranteed Maximum Price. In connection with the Guaranteed Maximum Price the undersigned declares, states and certifies that:

1. The Guaranteed Maximum Price is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization or corporation.
2. The Guaranteed Maximum Price is genuine and not collusive or sham.
3. The Contractor has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any other bidder or anyone else to put in sham bid, or to refrain from bidding.
4. The Contractor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price, or that of any other bidder, or to fix any overhead, profit or cost element of the bid price or that of any other bidder, or to secure any advantage against the public body awarding the contract or of anyone interested in the proposed contract.
5. All statements contained in the Guaranteed Maximum Price and related documents are true.
6. The Contractor has not, directly or indirectly, submitted the bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any person, corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Executed this 29 day of July, 2010, at Sacramento, County of Sacramento, California

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
\_\_\_\_\_  
Signature

Cody Pearson, Senior Vice President  
Sundt Construction, Inc.  
2860 Gateway Oaks Drive, Suite 300  
Sacramento, CA 93583

END OF DOCUMENT

## **Exhibit "I" Insurance Requirements**

The Contractor shall not commence work under this Agreement until all insurance required under this section has been obtained and such insurance has been approved by the District. The Contractor shall furnish the District with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the District of any pending change in the limits of liability or of non-renewal, cancellation, or modification of the policy. The insurance carrier shall have a Best Rating of A-VII or better unless otherwise approved by the District's Risk Management Division.

The Contractor shall indemnify, defend and hold the District, its Board of Trustees, officers, agents and employees harmless from any and all claims, damages, losses, causes of action and demands, including reasonable attorney's fees and costs, incurred in connection with or in any manner arising out of Contractor's performance of the work contemplated by this Agreement. Acceptance of this Agreement constitutes that the Contractor is not covered under the District's general liability insurance, employee benefits or worker's compensation. It further establishes that the Contractor shall be fully responsible for such coverage. Contractor shall maintain in force, throughout the term of this Agreement, insurance as follows:

**Worker's Compensation and Employer Liability Insurance:** The contractor shall have Worker's Compensation (statutory limits) and Employers' Liability insurance with limits not less than \$1,000,000 each accident, \$1,000,000 employee and \$1,000,000 each disease, provided that Contractor has employees as defined by the California Labor Code;

**Commercial Liability Insurance:** The Contractor shall have Commercial Liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for contractual liability, personal injury, broadform property damage, independent contractors, products and completed operations;

**Commercial Automobile Liability Insurance:** The Contractor shall Commercial Automobile Liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable;

**Professional Liability Insurance:** The Contractor shall have Professional Liability insurance where applicable, with limits not less than \$1,000,000 each claim/annual aggregate, with respect to coverage for errors and omissions arising from professional services rendered under this Agreement, with any deductible not to exceed \$25,000 each claim.

If any of the required insurance is written on a claims-made coverage form, such insurance shall be maintained for a period of three (3) years following termination of this Agreement. General and Automobile liability policies shall include as Additional Insureds, the District, its officers, agents, employees and servants, shall be primary to any other insurance or self-insurance available to the Additional Insureds and shall apply separately to each, except the inclusion of Additional Insureds shall not operate to increase the required limits of such insurance. Contractor shall not commence work under this Agreement until required insurance has been obtained

In the event that any provision of this section is breached, or in the event that any notice is received which indicates that any required insurance coverage will be diminished or cancelled, the District at its option may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.