

## **Board of Trustees Agenda Item**

**Board Meeting Date:** August 6, 2012

**Title of Item:** Award Lease-Leaseback Preconstruction Services Agreement for the De Anza College Advanced Technology Center (ATC) Renovation Project

### **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 District projects. The briefings included a discussion of the legal aspects of the process as well as its risks and benefits. On February 6, 2012, the Board authorized the use of the Lease-Leaseback contractor selection process for the De Anza College ATC Renovation project in accordance with Education Code 81335.

Purchasing Services advertised the Lease-Leaseback Request for Qualifications/Request for Proposals (RFQ/RFP) #1475-245 for the ATC on March 6, 2012 and March 13, 2012. Purchasing Services also notified nine Builders Exchanges and Plan Rooms, and advertised in the San Jose Post Record. Notice of the RFQ/RFP was also posted online at "BidNet" at [www.govbids.com](http://www.govbids.com). Additionally, Purchasing Services notified twenty-four (24) companies about the RFQ/RFP opportunity. The District conducted a mandatory pre-submittal conference on March 20, 2012, and representatives from twenty-four (24) companies attended the conference. On April 17, 2012, fourteen (14) companies submitted Statements of Qualifications (SOQ's) in response to RFQ/RFP #1475-245.

A Selection Committee was established that consisted of: Letha Jeanpierre, Vice President of Finance and Educational Resources, Donna Jones-Dulin, Associate Vice President of College Operations, Rowena Tomaneng, Associate Vice President of Instruction, Ella Bisconti, Project Manager for Gilbane-MAAS, Merideth Marschack, Noll & Tam Architects, Tom Armstrong, District Bond Director, and Annette Perez, Purchasing Services Senior Buyer. The Selection Committee invited the three (3) top-ranked companies to continue to the interview and RFP steps. Those top-ranked companies (in alphabetical order) were: Blach Construction Company, Kitchell CEM Inc., and Sundt Construction, Inc. The Selection Committee conducted interviews on June 6, 2012.

Responses to the RFP were received on July 9, 2012. All three (3) companies supplied responses to the RFP that included competitive fee proposals for preconstruction services, construction services, contractors contingency, and contractors overhead and profit. Based on the proposals provided in relation to the scores of the RFQ and the interviews, Sundt had the score with the lowest cost per qualification point and earned the top ranking.

The Selection Committee recommends award of a Preconstruction Services Agreement (see attached) to Sundt Construction, Inc. so that it can develop a Preliminary Construction Schedule, proceed with reviewing the design documentation for constructability, prequalify subcontractors for bidding, obtain competitive bids from subcontractors, and develop an actual Guaranteed Maximum Price (GMP). Sundt's fee for preconstruction services is \$49,000. 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. District staff estimates that reimbursable services will not exceed \$10,000.

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 on December 3, 2012 and recommend that the Board of Trustees award the Site Lease and Facilities Lease

agreements to Sundt 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 Sundt's responses to RFQ/RFP #1475-245. 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.

This project is funded by Measure C.

**Recommendation:** Authorize Carmen Redmond, Director of District Purchasing Services, to finalize and award the attached Preconstruction Services Agreement to Sundt Construction, Inc.

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, Annette Perez, Senior Buyer, Purchasing Services.
Is backup provided?	Yes

**PRECONSTRUCTION SERVICES AGREEMENT  
FOR  
ADVANCED TECHNOLOGY CENTER  
DE ANZA COLLEGE  
CUPERTINO, CALIFORNIA**

This Agreement entered this 25th day of July, 2012, 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 renovate the Advanced Technology Center facility at the De Anza College campus in Cupertino, California (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 \$59,000.
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 written claim, a demand for arbitration or 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.  
2860 Gateway Oaks Drive, Suite 300  
Sacramento, CA 95833

  
\_\_\_\_\_  
Authorized Signature  
J. Cody Pearson, Senior Vice President

25 July 2012  
\_\_\_\_\_  
Date

86-0366154  
\_\_\_\_\_

Contractor's Tax I.D. Number

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

By \_\_\_\_\_  
Authorized signature and Date

Carmen Redmond, Purchasing Services Director  
Foothill-De Anza Community College District  
12345 El Monte Road  
Los Altos Hills, California 94022

\_\_\_\_\_, 2012  
Date Approved by Board of Trustees

**Exhibit "A" to Preconstruction Services Agreement**

**Scope of Services and Payment  
LEASE-LEASEBACK PRECONSTRUCTION SERVICES  
for  
ADVANCED TECHNOLOGY CENTER AT  
DE ANZA COLLEGE**

- I. **GENERAL:** Working closely with the Foothill – De Anza Community College District, the Architect and the Program Manager, the Contractor shall perform Preconstruction Services to prepare a Guaranteed Maximum Price for construction of the Advanced Technology Center, located on the De Anza College campus.
- A. Definitions shall be those contained in the Construction Provisions, Exhibit D of the Facilities Lease.
  - 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. Draft Site Lease, dated June 12, 2012;
    - 2. Draft Facilities Lease and exhibits, dated June 12, 2012;
    - 3. Construction Documents, latest available release as documented by transmittal to the Contractor.
  - 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.
- 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, surveys, estimates, and schedules.

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- 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 anticipated 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. Assist the District and Program Manager in the planning and coordination of schedules and work limits of the Project and adjacent and related District projects.
- F. Prepare a Site Utilization Plan indicating site work limits and operational limitations.
- G. 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.
- H. 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.
  - 1. Include in the Schedule pertinent Project milestones affecting or affected by adjacent and related District projects.
  - 2. 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.
- I. 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.

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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 and the Site Utilization Plan 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 (5%) of the Contractor's Preconstruction Estimate) using reasonable public notification, qualification criteria and standards. The prequalification process shall utilize a standard questionnaire for applicants and a uniform rating system to determine qualification, and shall include an appeal process for applicants initially deemed not to be qualified. Provide a list of prequalified subcontractors to the District.
8. If electronic distribution of bid packages is not utilized by the Contractor, obtain competitive quotations for the printing and reproduction of 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. Provide the District with a list of at least six (6) qualified subcontractors for each bid package, unless fewer subcontractors are approved in writing by the District.
3. Encourage subcontractor participation in order to receive a minimum of three (3) sealed bids for each bid package. If fewer than three (3) bids are received for a bid package, the District reserves the right to require the Contractor to rebid or seek bids from additional subcontractors, at no additional cost to the District.

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4. If the Contractor proposes to self-perform portions of the construction work totaling more than one-half of one percent of the GMP, the Contractor shall solicit at least five (5) proposals for that scope of work from other subcontractors.
5. 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.
6. Receive questions from bidders, and require bidders to send copies of the questions directly to the Program Manager. Coordinate preparation of responses to the questions by the Architect and/or District and Program Manager.
7. Issue addenda to the subcontractors with copies sent to the Architect, District and Program Manager.
8. Receive sealed bids from subcontractors for each bid package the Contractor does not propose to self-perform. Open the sealed bids in the presence of representatives of the District, the Architect and the Program Manager.
9. For bid packages proposed to be self-performed by the Contractor, arrange for the Program Manager to receive sealed bids from the Contractor and from subcontractors. A District representative will open the sealed bids in the presence of representatives of the Program Manager, Architect and Contractor.
10. If fewer than three (3) bids are received for a bid package, the District reserves the right to require the Contractor to rebid or seek bids from additional subcontractors, at no additional cost to the District.
11. Review all 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.
12. If protests or challenges from bidders are received by the Contractor, notify the District and Program Manager within twenty-four (24) hours of receipt of a protest or challenge. The District will notify the Contractor in similar manner if protests or challenges are received by the District or Program Manager.
13. Confirm and document bidders' compliance with the Project Stabilization Agreement.
14. Review the scope of work of each recommended subcontractor to confirm that no ambiguities, omissions or conflicts between bid packages occur. If ambiguities, omissions or conflicts are found, take appropriate steps to resolve them.

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15. 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 (\$579,480)
  3. Contractor's Overhead & Profit (Direct Cost of Work x 3.95%)
  4. Contractor's Contingency Fund (Direct Cost of Work x 1.00%)
- B. The Contractor shall execute the Non-collusion Declaration (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 Project Milestone dates (if any) 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. The 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, within thirty (30) calendar days the Contractor shall enter into subcontract agreements with all subcontractors selected and shall provide a list of those subcontractors to the District, indicating which subcontracts are for base contract work that has a value in excess of one half of one percent of the amount of the GMP. Any

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proposed subcontractor substitution thereafter shall be done in conformance with the requirements and procedures set forth in Public Contract Code sections 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.

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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 one hundred thirty (130) calendar days after a Notice to Proceed is issued to the Contractor by the District.
- B. The length of this Agreement shall be one hundred eighty (180) calendar days to allow for administrative closure of the Agreement; all invoices from the Contractor must be submitted for payment forty-five (45) calendar 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 (Lump Sum)	\$49,000
Reimbursable Expenses (Not to Exceed)	<u>\$10,000</u>
TOTAL FEE	\$59,000

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- 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.

Submit payment applications to:

Susan Moore  
Gilbane/MAAS  
c/o Foothill College  
12345 El Monte Road  
Los Altos Hills, CA 94022

-End of Exhibit A-

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

**NON-COLLUSION DECLARATION**

STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA


I, Joseph Malisewski, being first duly sworn, deposes and says that I am the 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 his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any person, corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

By executing this Declaration on behalf of this Contractor, I hereby represent that I have full power to execute, and hereby does execute, this Declaration on behalf of the Contractor.

Executed this 19th day of July, 2012, at Santa Clara, Santa Clara County, California.

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

Signature: 

END OF DOCUMENT

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# ACKNOWLEDGMENT

State of California )  
County of Sacramento )

On July 19, 2012 before me, Su-Anne Jackson, Notary Public

personally appeared Joseph Malisews,  
who proved to me on the basis of satisfactory evidence to be the person(s)  
whose name(s) is/are subscribed to the within instrument and acknowledged to  
me that he/she/they executed the same in his/her/their authorized capacity(ies),  
and that by his/her/their signature(s) on the instrument the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of  
California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Su-Anne Jackson* (Seal)







## **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.