

Board of Trustees Agenda Item

Board Meeting Date: December 10, 2012

Title of Item: Award of a Lease-Leaseback Preconstruction Services Agreement for the Foothill College Library Renovation, Measure C Project #121

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. Additionally, on June 18, 2012, the Board authorized the use of the Lease-Leaseback contractor selection process for the Foothill College Library Renovation project in accordance with Education Code 81335. The project will renovate the Foothill College Library, building 3500 and the Instructional Support Center (ISC, building 3600). Construction will include interior plan changes, new electrical and mechanical systems, interior and exterior finishes and roofing.

Purchasing Services advertised the Lease-Leaseback Request for Qualifications/Request for Proposals (RFQ/RFP) #1586-121 for the Foothill College Library Renovation project on June 26 and July 3, 2012 in the San Jose Post Record. A notice of the RFQ/RFP also was posted online on "BidNet" at www.govbids.com and the RFQ/RFP information was provided to nine Builders Exchanges and Plan Rooms. Additionally, Purchasing Services notified several contractors directly about the RFQ/RFP opportunity. District staff conducted a mandatory pre-submittal conference on July 10, 2012, and representatives from fourteen (14) contractor companies attended the conference. On July 31, 2012, nine (9) companies submitted Statements of Qualifications (SOQ's) in response to RFQ/RFP #1586-121.

A Selection Committee was established that consisted of: Kimberlee Messina, Vice President of Instruction & Institutional Research; Brenda Visas, Foothill College Director of Facilities & Special Projects; Heidi Birch, Gilbane-MAAS Project Manager; Patricia Alarcon, Ratcliff Architects Project Architect; Art Heinrich, Director of Bond Program Management; and Gina Bailey, Purchasing Services. Committee members individually scored each of the nine (9) SOQ's received. The 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, C. W. Driver, Inc. and Kitchell CEM, Inc. (Kitchell). The RFP was issued to the three (3) top-ranked companies and the Selection Committee conducted interviews on September 10, 2012.

Responses to the RFP were received on September 20, 2012. All three (3) companies supplied responses to the RFP that included competitive fee proposals for preconstruction services, construction services, contractor's contingency, and contractor's overhead and profit. Based on the proposals provided in relation to the scores of the RFQ and the interviews, Kitchell had the score with the lowest cost per qualification point and earned the top ranking.

Kitchell is an experienced contractor that has successfully completed Lease-Leaseback contracts with other public agencies such as Roseville City School District, Selma Unified School District, and South Monterey County Joint Union High School District. Furthermore, Kitchell completed the construction of the Redwood Shores Community Library and is in the process of concluding a Berkeley Public Library Renovation project at four of its city libraries.

The Selection Committee recommends approval of Kitchell as the Lease-Leaseback contractor for the Foothill College Library Renovation project and recommends award of a Preconstruction Services

Agreement (see attached) to Kitchell so that it can develop a Guaranteed Maximum Price (GMP) for the project. Kitchell's fee for preconstruction services is \$42,000. The Preconstruction Services Agreement, paragraph VII, provides that the contractor will additionally be reimbursed for reproduction costs and costs for confirmation of existing site conditions, including investigative demolition and other on-site activities. Kitchell and District staff estimates that reimbursable services will not exceed \$45,400. The total cost of the Preconstruction Services Agreement is \$87,400.

When design and bidding of the project is complete, Kitchell will develop a GMP for construction of the project. At that time District staff will present the GMP to the Board of Trustees and will recommend award of the Site Lease and Facilities Lease agreements, authorizing construction to proceed.

Construction is expected to occur beginning in the spring of 2014. Under the lease agreements, the District will lease the land to Kitchell and Kitchell will agree to construct the project pursuant to the District's Construction Provisions and Kitchell's responses to RFQ/RFP #1586-121. 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.

Recommendation: Approve Kitchell CEM, Inc. as the Lease-Leaseback contractor for the Foothill College Library Renovation project and authorize Gina Bailey, Interim Director, District Purchasing Services, to finalize and award the attached Preconstruction Services Agreement for the project to Kitchell CEM, Inc.

Submitted by:	Gina Bailey – Interim Director, Purchasing Services x6165
Additional contact names:	Charles Allen – Executive Director, Facilities, Operations, and Construction Management, Art Heinrich – Director, Bond Program Management
Is backup provided?	Yes

**EXHIBIT PA - PRECONSTRUCTION SERVICES AGREEMENT
FOR
FOOTHILL COLLEGE LIBRARY RENOVATION
LOS ALTOS HILLS, CALIFORNIA**

This Agreement entered this _____ day of _____, 2012, by and between the Foothill-De Anza Community College District, a public entity of the State of California, hereinafter called "District" and Selected Contractor, hereinafter called "Contractor."

W I T N E S S E T H

WHEREAS, the District desires to renovate its library facilities at Foothill College in Los Altos Hills, 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 \$87,400.00.
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 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, and in proportion to its own liability, 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.

KITCHELL

Authorized Contractor Signature

Date

Contractor's Tax I.D. Number

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

By _____
Authorized signature and Date

Charles Allen, Executive Director
Foothill-De Anza Community College District
12345 El Monte Road
Los Altos Hills, California 94022

December 2, 2012
Date Approved By Board of Trustees

**Exhibit "A" to Preconstruction Services Agreement
Scope of Services and Payment**

**LEASE LEASEBACK PRECONSTRUCTION SERVICES
for
FOOTHILL COLLEGE LIBRARY RENOVATION**

- I. **GENERAL:** Working closely with the District, the Architect and the Project Manager, the Contractor shall perform Preconstruction Services to prepare a Guaranteed Maximum Price (GMP) for renovation of the Library and adjacent facilities (Buildings 3500 and 3600) at the Foothill College campus in Los Altos Hills, California.
 - A. Definitions shall be those contained in the Construction Provisions, Exhibit D of the Facilities Lease.
 - B. The following Attachments are a part of this Agreement:
 1. Site Lease, dated June 20, 2012;
 2. Facilities Lease and Exhibits, dated June 20, 2012;
 - C. 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.
 1. The Architect will prepare agendas and meeting minutes of design meetings conducted by the Architect and attended by the Contractor at the offices of the Architect or the District.
 - D. The District will provide design documents to the Contractor for use in completing the work of this Agreement.
 1. Design documents will be provided at each phase of design that requires Contractor review and/or preparation of an estimate. Three (3) sets of printed documents and two discs with documents in electronic format will be provided to the contractor in each case.
 2. Reproducible design documents will be provided to the Contractor for Bidding Services for duplication by the Contractor for that portion of the work. Electronic format distribution of documents for bidding is strongly encouraged over distribution of printed copies.

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

- A. Review Project background documents including, but not limited to, the Environmental Impact Report, programming and design documents, geotechnical investigations, Project Stabilization Agreement, surveys, estimates and schedules.
- B. Become familiar with the Project site by observation and active investigation of existing conditions.
- C. 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 and construction activities. At a minimum, update the schedule at each major design milestone.
- D. Review the design, confer with the College and Project Manager and make recommendations regarding the phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work and take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.
- E. Provide a list of long-lead items, if any, that are critical to meet the Project Schedule requirements and recommend a schedule for their procurement.
- F. Monitor regulatory approvals required during the design phases.
- G. Work with the Architect in reviewing and developing the construction documents.
 - 1. The Architect will issue design documents for review at each phase requiring a cost estimate and will consolidate and track input from the Contractor, District, Project Manager and other reviewers.
 - 2. The Contractor shall review the design documents at each phase, making recommendations to the Architect, appropriate to the level of design, regarding constructability, construction materials, methods, systems, phasing, schedules, and costs.
 - 3. The Contractor shall conduct full and complete constructability reviews at 50% and 100% Construction Documents.
- H. During the design phases, respond to requests from the Architect for informal cost analysis, including comparisons between materials or systems being considered for inclusion in the Project design.

- I. Prepare construction cost estimates and evaluate the cost estimates against the Project Construction Budget at each milestone listed below. Recommend, if necessary, the appropriate action to correct and/or avoid potential cost overruns.
 1. Develop the construction cost estimates in a format consistent with Exhibit “D”, Estimating Standards.
 2. Construction cost estimates shall be developed/updated and submitted to the District by the Contractor, with copies to the Architect and Project Manager, at each of the following design phases:
 - a. 100% Schematic Design
 - b. 100% Design Development
 - c. 50% and 100% Construction Documents
- J. After preparation of each cost estimate, conduct meetings with the Architect and the Architect’s estimator to compare estimates prepared by each party and to reconcile differences in the estimates in collaboration with the District and the Project Manager. If the Architect and the Contractor fail to reconcile their estimates, the District will make the final determination of the estimated cost and the need to develop value engineering measures. Both the Architect’s and the Contractor’s Cost Estimates shall be prepared in accordance with Exhibit D, Estimating Standards.
- K. The Contractor and the Architect shall be jointly responsible for designing and bidding the Project to cause it to be constructed within the Project Construction Budget. The Contractor shall:
 1. Cooperate with the Architect, the District and the Project Manager so that the Project meets the Construction Budget at each design phase.
 2. Suggest alternative materials, systems and solutions to improve value to the District and/or reduce project cost.
 3. Assist the District and Architect to develop bid alternates (deductive or additive) to control Project costs and to enable full utilization of the project budget.
 4. Conduct meetings related to cost control (value engineering) as needed to maintain the Project Construction Budget.
 5. Notify the District and the Architect of unintended effects that may result from design changes or cost reductions made to control costs.

- L. Authorization to proceed with the next step in the design or bidding process is contingent upon the District's written acceptance of the building cost estimates prepared by the Contractor, as reconciled with the Architect's estimate and compared to the Project Construction Budget.
- M. The Project Construction Budget is \$10,500,000.00.
 - 1. The Project Construction Budget is the amount of funding allocated by the District for construction of the work of the Project, specifically including all costs required to be included in the GMP by Article IV, paragraph A of this Exhibit A.
 - 2. The Project Construction Budget does not include the District's Construction Contingency Fund, site acquisition costs, design fees, or the Contractor's fees for the Preconstruction Services included in this Agreement.
 - 3. The Project Construction Budget does not include the cost of providing furniture, fixtures and equipment not specifically included in the Project.
 - 4. The Project Construction Budget may be modified by the District. The District will notify the Contractor in writing of any such modifications.
- N. Develop a draft of the Preliminary Construction Schedule for the Project in the format required by the Construction Provisions.
- O. 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.
- P. Identify those additional surface and subsurface investigations that are required to provide the necessary information to construct the Project. This will include a thorough investigation of building components, including above ceiling and attic space, to be conducted with the design team and college facilities staff members who have a current working knowledge of the buildings.
- Q. Confirm Project site conditions, including locating and coordinating utilities and points of connection, and make recommendations for corrections to Architect's Construction Documents if required. Reasonable costs for investigation will be reimbursed to the Contractor in accordance with Article VII, paragraph C.
- R. Prepare a Site Utilization Plan indicating site work limits and operational limitations, and assist the Architect and District in preparation of Division 1 specifications affecting site utilization.
- S. 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 subcontractor bid packages to control Project costs and to enable full utilization of the project budget, such that the resulting GMP, including applicable bid alternates, is less than, but close to, the Project Construction Budget.
 3. Use applicable requirements of the Construction Provisions for soliciting subcontractor bid packages, and 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 Project Manager, Architect 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 Project Construction Budget) 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.
- T. 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 cost of reproduction will be reimbursed to the Contractor in accordance with Article VII, paragraph C.

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

- A. Solicit and competitively bid subcontractor bid packages complying with the Construction Provisions, Supplemental Provisions, and the Additional Provisions.

- B. Provide the District with a list of at least six (6) subcontractors for each bid package, unless fewer subcontractors are approved in writing by the District.
- C. Encourage subcontractor participation in order to receive a minimum of three (3) sealed bids for each bid package. If fewer than three 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.
- D. If the Contractor proposes to self-perform portions of the work totaling more than one-half of one percent of the GMP, the Contractor shall solicit at least three (3) proposals for that scope of work from other prequalified subcontractors who have been approved by the District.
- E. Issue subcontractor bid packages to prequalified subcontractors. Bidders shall be encouraged to suggest cost saving ideas to their proposals, but separate from their bid prices.
- F. Receive questions from bidders, send copies of all questions to the Project Manager and the Architect, and coordinate the preparation of responses to the questions by the Architect and/or District and Project Manager.
- G. Conduct site tour(s) for subcontractors to view the site prior to bidding.
 - 1. Accompany all visiting bidders with a responsible member of the Contractor's staff.
- I. If selective exploratory demolition or other site investigation is needed to define site conditions, arrange for such work to be completed, as approved by the District. Reasonable costs for investigation will be reimbursed to the Contractor in accordance with Article VII, paragraph C. Issue addenda to the subcontractors with copies sent to the Architect, District and Project Manager.
- J. 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 Project Manager.
- K. For bid packages proposed to be self-performed by the Contractor, arrange for the District 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 Project Manager, Architect and Contractor.
- L. Review all bids with the District, Architect and Project 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.

- M. If protests or challenges from bidders are received by the Contractor, notify the District and Project 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 Project Manager.
 - N. Confirm and document bidders' compliance with the Project Stabilization Agreement.
 - O. 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.
 - P. If the GMP resulting from the subcontractor bids, including use of all deductive bid alternates, exceeds the Project Construction Budget, the Contractor shall recommend cost reductions and/or additional bid alternates and shall, at no additional cost to the District, 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 (RFP) to the actual Direct Cost of the Work, the Contractor shall prepare a Guaranteed Maximum Price (GMP) and shall complete the Preliminary Construction Schedule for the Project.
- A. Include the following in the GMP:
 - 1. Direct Cost of the Work (See Article V below)
 - 2. Contractor's Construction Services
 - 3. Contractor's Overhead & Profit
 - 4. Contractor's Contingency Fund
 - 5. Allowances agreed upon by Contractor and District
 - 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 Project 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 complete 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, 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 completed 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 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 proposed subcontractor substitution thereafter shall be made 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 Required to Complete the 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 Removal of Materials: Actual costs, including transportation, fees and lawful disposal of materials to be removed from the Project site.
- E. 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.
- F. 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.
- G. 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 560 days after a notice to proceed is issued to the Contractor by the District.
- B. The length of this Agreement shall be 730 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 stated 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 lump sum 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. Site Condition Confirmation: Cost of field labor, material and equipment needed to confirm site conditions as required by paragraph II M.
 - 3. Other Costs: Cost of additional miscellaneous services requested by the District.
- D. Perform the services of this Agreement for the following fee:

Preconstruction Services (Lump Sum)	\$ 42,000.00
Reimbursable Expenses (Not to Exceed)	<u>\$ 45,400.00</u>
TOTAL FEE	\$ 87,400.00

- E. Payment for Preconstruction Services will be made by the District to the Contractor monthly in proportion to completion of services, based upon a schedule of values agreed upon between the Contractor and the District. Payment for Reimbursable Expenses will be made monthly upon submission of acceptable documentation of expenditure.

- 1. 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

NONCOLLUSION DECLARATION TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid. The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder 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 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. Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____,
(Date)

at _____,
(City) (State)

(Signature)

(Address)

(Name Printed or Typed)

(City, State)

(_____)
(Area Code and Telephone Number)

PROPOSED CONSTRUCTION SCHEDULE - EXHIBIT "C"

FOOTHILL COLLEGE LIBRARY RENOVATION

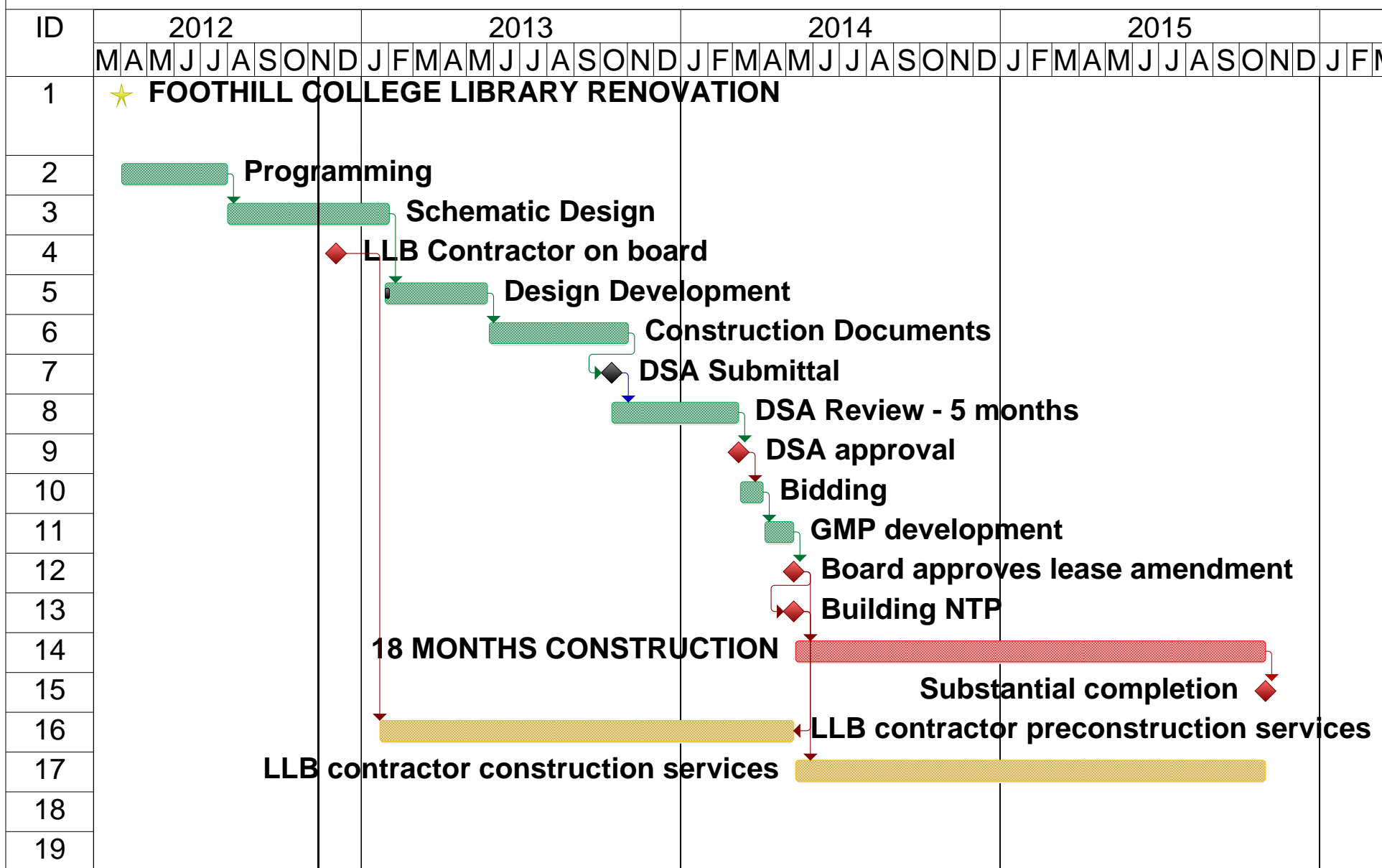


EXHIBIT “D” TO PRECONSTRUCTION SERVICES AGREEMENT

ESTIMATING STANDARDS

I. GENERAL:

- A. Both the Contractor and the Architect shall prepare statements of probable cost (estimates) for the Project at the design phases stated in the Contractor’s Preconstruction Services Agreement and the Architect’s design agreement with the District.
- B. The intent of these Estimating Standards is to provide consistency between estimates; to ensure that assumptions, exclusions and inclusions considered by estimators are consistent with the intent of the Architect’s design; and to ensure that contingencies for design, construction and escalation assumed by different estimators are consistent.
- C. The provisions of these Standards apply to both the Architect and the Contractor.
- D. The Architect, Contractor, District and Project Manager shall confer prior to beginning the first estimate to confirm procedures and formats.
- E. Prepare estimates that include detail corresponding to the level of design completion, with increasing detail as the design progresses.
- F. Establish internal estimating design allowances consistent with good professional practice and appropriate to the phase of design; larger design allowances used at early phases should diminish to zero in the final estimate.

II. FORMAT:

- A. Prepare estimates in a Unifomat format. If required for purposes of comparison and reconciliation, allow for a CSI (Construction Specifications Institute) format summary.
- B. Provide an introductory section that includes a project description including building and site areas; list of documents used in the estimate; items included and excluded from the estimate; other assumptions, exclusions and clarifications; applicable design allowances and escalation allowances; allowances for undefined work; additive and deductive alternates; type of estimate (Schematic Design, Design Development or Construction Documents); and other information pertinent to the estimate.

- C. Provide an overall construction cost summary that corresponds to elements of the Contractor's Guaranteed Maximum Price (GMP) breakdown:
- Direct Cost of the Work
 - Contractor's Construction Services
 - Contractor's Overhead & Profit
 - Contractor's Contingency Fund
 - District's Allowances (if applicable)
1. The Architect is advised that costs that are often considered "general conditions" and assigned a percentage value are spread among the elements listed above, and must be allocated to the correct element to allow comparison.
 2. Do not include a contingency allowance for change orders which may occur during construction; the District carries a construction contingency in an overall project budget.
 3. Provide a summary of the total estimated cost, including proposed additive or deductive alternates, as compared to the District's Project Construction Budget. The Project Construction Budget is the amount of funding allocated by the District for construction of the Project, specifically including the costs listed above.
- D. Provide a construction cost summary for each major portion of the work in Unifomat or CSI format, as agreed between the Architect and Contractor.
- E. Provide backup sheets for each division of work to include the basic information of description, quantities, units, and unit prices. Provide backup sheets for additive or deductive alternates being considered for inclusion in the Project.
- F. If the Project includes renovation/addition and new work, provide estimates for each separately, using the same formatting.

END OF DOCUMENT

Exhibit "I" to Preconstruction Services Agreement

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.