



Date: August 3, 2010
To: Dr. J. Brian Sarvis, Superintendent
From: David J. Hetyonk, Director of Facilities and Operations
Subject: Approval of Preconstruction Services Agreement with Schock Contracting Corporation for Lease Lease-back Construction Delivery Method for the Multimedia Arts and Design Academy Relocation Project at Santa Barbara High School

August 10, 2010 Consent Agenda

Background:

On July 6, 2010 the board approved the Lease Lease-back (LLB) construction delivery method for the Multimedia Arts and Design Academy (MAD) Relocation Project at Santa Barbara High School. The board also approved the Agreement for Legal Services with Atkinson, Andelson, Loya, Rudd & Romo for Various Contracts and Validation.

Issue:

The next step in the process is the Preconstruction Services Agreement with the selected contractor for the project. The agreement is attached.

Fiscal Impact:

Not to exceed \$5,500

Funding Source:

MAD Foundation Loan (fund 35)

Recommendation:

That the Board Approve Preconstruction Services Agreement with Schock Contracting Corporation for Lease Lease-back Construction Delivery Method for the Multimedia Arts and Design Academy Relocation Project at Santa Barbara High School

Attachment(s)?	<input checked="" type="checkbox"/>	Yes (if so, please attach)	<input type="checkbox"/>	No	<input type="checkbox"/>	Powerpoint	<input type="checkbox"/>	Overhead	<input type="checkbox"/>	Consultant
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PRECONSTRUCTION SERVICES AGREEMENT

This Preconstruction Services Agreement (“Agreement”) is entered into by SANTA BARBARA SCHOOL DISTRICTS, duly organized and validly existing under the Constitution and laws of the State of California (hereinafter the “District”), and SCHOCK CONTRACTING CORPORATION, a California corporation duly authorized to conduct business in the State of California, holding in good standing California State Contractors Licensing Board License # 691211 (hereinafter “Consultant”), as of August 10, 2010 (“Effective Date”), for the purposes of providing preconstruction services for the District’s SANTA BARBARA HIGH SCHOOL MULTIMEDIA ARTS AND DESIGN ACADEMY RELOCATION PROJECT (hereinafter “Project”).

The Project includes but is not limited to:

Interior renovations of existing 4790 square foot classroom building. Work includes mechanical and electrical improvements; floor and wall coverings; and non-structural door, window, and wall alterations.

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

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

WHEREAS, District has retained Kruger Bensen Ziemer Architects, Inc. (“Architect”) to prepare plans and specifications for the Project (“Plans and Specifications”).

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

WHEREAS, Consultant represents that it has the knowledge and experience necessary to perform the services set forth in this Agreement and Exhibit “A.”

WHEREAS, the parties acknowledge that the Consultant and District anticipate negotiating and entering into Lease-Leaseback Documents which utilize a guaranteed maximum sum for complete construction of the Project, which guaranteed maximum sum will include the fee provided herein, and the parties also acknowledge that District may opt not to enter into

Lease-Leaseback Documents or otherwise proceed with the Project with Consultant, whether for lack of funding or other reasons in District's absolute discretion.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I. - CONSULTANT'S SERVICES AND RESPONSIBILITIES

The Consultant's services shall consist of those services performed by the Consultant, Consultant's employees and Consultant's consultants as enumerated in Article II of this Agreement and Exhibit "A" hereto.

ARTICLE II. - SCOPE OF CONSULTANT'S SERVICES

1. **Scope.** Consultant agrees to perform the services described in this Article and as more specifically set forth in Exhibit "A" entitled Scope of Preconstruction Services, which shall include preconstruction services based upon design and construction documents provided by Architect. The Consultant will not be performing actual design services for the Project, but instead will be providing complete constructability review services with the intent and purpose of identifying and calling out any deficiencies and inconsistencies in Architect's Plans and Specifications that will affect constructability of the Project, including but not limited to design and specification omissions, incomplete and/or inconsistent plans, details and specifications, and any lack of coordination, with the ultimate goal that the DSA approved Plans and Specifications for the Project will be complete such that Consultant can construct the Project pursuant to Lease-Leaseback Documents without Change Order or additional charge to District. The Consultant's services shall be provided in two phases: Phase 1 - Planning and Phase 2 - Project Development.

A. **Phase 1**

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

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

(3) **Value Analysis.** Actively evaluate the Project for value savings options and present all value savings options to the District and Architect for review and consideration.

B. **Phase 2**

(1) **Team Meetings.** Attend regular team meetings with a project manager, estimating representative(s) and Architect.

(2) **Schedule.** Establish a master critical path method ("CPM") Project schedule which includes all milestone dates including, but not limited to, complete design, estimating, DSA submittals, agency approvals, utility services approvals, bidding, buyout, preparation and submittal of Consultant's guaranteed maximum sum proposal for

construction of the Project, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurements, phasing, construction sequencing and durations, construction, commissioning and District move in. Provide schedule updates with each estimate or more often if reasonably required to communicate market conditions or other conditions affecting the Project. Provide a separate bidding schedule for each phase of construction as applicable.

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

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

(5) **Value Analysis.** Provide value analysis reviews with each estimate and throughout each Bid Phase, indicating cost savings and schedule impact. Assist the Architect and District in considering operating and/or maintenance costs with respect to selection of systems and products for the Project.

(6) **Constructability Review.** Provide detailed, written constructability reviews both prior to and upon completion of each proposed DSA submittal document and all related specifications. Review documents for errors, omissions, clarity, consistency, coordination and overall constructability. Consultant shall provide written reports, identifying by page and detail the issues to be discussed and resolved. As part of the constructability review, Consultant shall identify areas where value analysis principles could be applied, and identify long-lead items.

(7) **Construction Planning.** Provide assistance in construction planning, including phasing, staging, site logistics, sequencing, fencing, office locations, means and methods, and bid package development.

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

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

3. **Schedule.** Consultant will perform constructability reviews and estimates promptly upon receipt of the documents. Preconstruction Services shall be completed by December 1, 2010. If the preconstruction period is extended, the Consultant shall be compensated based on the hourly rates in this Agreement (See Exhibit "A"), subject to prior approval of the District.

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

5. **Ability to Add Scope of Work.** District may add additional work to Consultant's scope of work including, by way of example, and not limitation: Procurement of materials and equipment (e.g., long lead items, furniture and equipment, multi-use room bleachers, lighting equipment, etc.) and preparation or procurement of necessary shop drawings.

ARTICLE III. - DISTRICT'S RESPONSIBILITIES

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

ARTICLE IV. - TERMINATION

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

2. In the event of a termination based upon abandonment or postponement by District, the District shall pay Consultant for all services performed and all expenses incurred under this Agreement supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement, subject to the "Not To Exceed" amount payable to Consultant provided herein, plus any sums due the Consultant for Board approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process of completion and to complete and incomplete documents whether delivered to the District or in the possession of the Consultant.

3. This Agreement may be terminated without cause by District upon fourteen (14) days written notice to the Consultant. In the event of a termination without cause, the District shall pay Consultant for all services performed and all expenses incurred under this Agreement

supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination, subject to the "Not To Exceed" amount payable to Consultant provided herein, plus any sums due the Consultant for Board approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process of completion and to complete and incomplete documents whether delivered to the District or in the possession of the Consultant. In addition, Consultant will be reimbursed for reasonable termination costs through the payment of three percent (3%) of the original contract amount paid to Consultant up to the date of termination, or three percent (3%) of the remaining contract balance, whichever is less. This three percent (3%) payment is agreed to compensate the Consultant for the actual level of completion reached on the date of termination and is consideration for entry into this termination for convenience clause.

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

ARTICLE V. - COMPENSATION TO CONSULTANT

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

1. Consultant shall be compensated for services described in Article II – Scope of Consultant's Services, on a "Not To Exceed" or "NTE" basis in the amount of \$5,500.00 (Five Thousand Five Hundred Dollars) which amount shall be included in the Guaranteed Maximum Sum for construction of the Project. In the event the Project does not proceed, Consultant shall be compensated for work completed pursuant to Article IV above. In every other respect, Consultant shall be responsible for all costs and expenses incurred for providing the services required by this Agreement, including costs of hiring sub-consultants and other professionals, travel expenses to the Project site and meetings with District and its representatives, long distance telephone charges, copying expenses, salaries of Consultant's staff

and employees working on the Project, overhead, and any other cost and expense reasonably required of, and actually incurred by Consultant in performance of its obligations under this Agreement.

2. District shall pay Consultant within thirty (30) days of receipt of an approved invoice from Consultant. The agreed to billable rates are listed in Exhibit "A," which are inclusive of Consultant's Fees. Invoices shall be broken down in detail and include supporting back-up documentation prior to the District's approval and payment.

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

ARTICLE VI. - EMPLOYEES AND CONSULTANTS

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

2. Consultant's consultants shall be licensed to practice in California and have relevant experience with California school design and construction during the last five years. If any employee or consultant of Consultant is deemed not acceptable to the District during performance of the work, then that individual shall be replaced with an acceptable, competent person at the District's request.

ARTICLE VII. - MISCELLANEOUS

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

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

3. Consultant shall indemnify, defend and hold harmless District, its Board, Board members, officers, employees, agents, assigns, and successors in interest, from and against any and all liability, damages, losses, claims, demands, actions, causes of action, costs, and expenses, including, without limitation, attorney's fees, and judgments arising from any conduct, active or passive, of Consultant, its employees, agents of every kind and nature, and consultants relating,

in whole or in part, to Consultant's performance of its obligations under this Agreement. District shall indemnify, defend and hold harmless Consultant from any and all liability, damages, losses, claims, demands, actions, causes of action, costs, and expenses, including, without limitation, attorney's fees, arising from any negligent or intentionally wrongful acts or omissions of District relating to this Agreement. Consultant shall defend, indemnify and hold harmless the District from any and all liability, damages, losses, claims, demands, actions, causes of action, costs, and expenses, including, without limitation, attorney's fees, related to employment benefits, workers' compensation or other benefits, of any kind or nature, asserted by or on behalf of any employee or agent of Consultant or of any of Consultant's subconsultants or other subcontractors.

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

- a. Consultant shall carry Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California.
- b. Comprehensive general and auto liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit, bodily injury and property damage liability per occurrence, and \$2,000,000 in aggregate, including:
 - (1) owned, non-owned and hired vehicles;
 - (2) broad form property damage;
 - (3) products/completed operations; and
 - (4) personal injury.
- c. Each policy of insurance required in (a) and (b) above shall name District and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of Consultant hereunder, such policy is primary and any insurance carried by District is excess and non-contributory with such primary insurance; shall state that not less than thirty (30) days' written notice shall be given to District prior to cancellation. Consultant shall notify District in the event of material change in, or failure to renew, each policy. Prior to commencing work, Consultant shall deliver to District proof of insurance as evidence of compliance with the requirements herein. In the event Consultant fails to secure or maintain any policy of insurance required hereby, District may, at its sole discretion, secure such policy of insurance in the name of and for the account of Consultant, and in such event, Consultant shall reimburse District upon demand for the cost thereof, or District may withhold the cost of such insurance from amounts due Consultant.

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

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

8. District and Consultant, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to this Agreement with respect to the terms of this Agreement. Consultant shall not assign this Agreement without the express, written consent of District, which may be withheld by District for any reason or no reason, in District's absolute discretion.

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

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

**SANTA BARBARA
SCHOOL DISTRICTS**

SCHOCK CONTRACTING CORPORATION

By: _____
Dr. J. Brian Sarvis
Superintendent

By: _____
John R. Schock
President

EXHIBIT "A"

SCOPE OF PRECONSTRUCTION SERVICES

The following is a listing of the services to be provided under this Agreement consistent with the terms, purpose and intent of Article 2 of the Preconstruction Services Agreement ("Agreement"). Consultant agrees to furnish these services on a Not To Exceed ("NTE") basis for the amount set forth in the Agreement. Consultant will bill actual costs on a monthly basis subject to the NTE amount, until the project is approved by the Division of the State Architect ("DSA") and Consultant submits a Guaranteed Maximum Sum proposal to District, which is accepted and approved by District.

Estimating

- Prepare complete construction cost estimates at construction documents and final DSA approval milestones.
- All estimates will be broken down by trade and approved Plans and Specifications section format.
- All estimates will include a variance report that shows the differences between the estimates at various stages.

Value Savings

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

Constructability Reviews

- Provide constructability review of design documents and the DSA submittal set of the Plans and Specifications. Deliverables will include a report by drawing number, detail and specification section and include a keynoted set of drawings and specifications. Consultant shall include a column for the Design team/District to comment on each item.

Scheduling

- Provide a detailed critical path method ("CPM") schedule as set forth in the Agreement.
- The Schedule will include all phases and milestones as set forth in the Agreement, including design, preconstruction services, DSA review, construction activities, and Project close out.

- The Schedule will be updated on a monthly basis.

Bidding

- Coordinate all bidding activities in order to arrive at a Guaranteed Maximum Sum for complete construction of the Project under Lease-Leaseback Documents. Consultant shall solicit a minimum of three bids for each trade - subcontractor scope of work needed to complete the Project.
- Include a site logistics plan and schedule to the bidders during the bid process.
- Consultant's Guaranteed Maximum Sum proposal for construction of the Project, which is accepted by District, will include an open book approach to show District all bids received with a detailed analysis and recommendations for award of contracts for each trade, together with detailed line item costs for all home office overhead, Project site overhead, General Conditions, bonds, insurance, fee and all other amounts billed by Consultant to District.

Hourly Billing Rates

Classification	Rates
Project Manager	\$93.00/hr
Project Engineer	\$87.00/hr
Superintendent	\$83.00/hr
MEP Coordinator	\$75.00/hr
Project Coordinator	\$75.00/hr
Estimator	\$65.00/hr
Contractor Administrator	\$65.00/hr