

**YUBA COMMUNITY COLLEGE DISTRICT  
PRECONSTRUCTION SERVICES AGREEMENT**

(\_\_\_\_\_ Lease-Leaseback Project)

This Preconstruction Services Agreement (“Agreement”) is entered into by the YUBA COMMUNITY COLLEGE DISTRICT, a California public Community College District duly organized and validly existing under the Constitution and laws of said State of California (hereinafter the “District”), and [\_\_\_\_], a California corporation duly organized and existing under the General Corporation Law of the State of California [**Verify legal entity**] (hereinafter the “Consultant”), as of \_\_\_\_\_, \_\_\_\_ (“Effective Date”), for the purposes of providing value design service work associated with construction documents and plans (collectively, “Plans and Specifications”) for the construction of [\_\_\_\_] (“Project”).

**WHEREAS**, Consultant and District desire to enter into a lease-leaseback arrangement for the construction of the Project pursuant to Education Code section 81335 (“Lease-Leaseback Documents”);

**WHEREAS**, Education Code section 81332 states that the District must have adopted the Plans and Specifications for the Project prior to entering into the Lease-Leaseback Documents;

**WHEREAS**, District has retained [\_\_\_\_] (“Architect”) to prepare Plans and Specifications for the Project;

**WHEREAS**, Consultant desires to provide consulting services to the District with respect reviewing the Plans and Specifications and other related services in preparation for the Project’s development;

**WHEREAS**, Consultant represents that it has the knowledge and experience necessary to perform the services set forth in this Agreement;

**WHEREAS**, the parties acknowledge that the Consultant and District will negotiate and approve Lease-Leaseback Documents which utilize a guaranteed maximum sum equal to the entire construction budget for the Project, and which guaranteed maximum sum will not include the fee provided herein; and

**WHEREAS**, the Project shall conform to certain design criteria as set forth in Exhibit “A.”

**NOW, THEREFORE**, the parties hereto agree as follows:

**ARTICLE I.  
SCOPE OF CONSULTANT’S SERVICES AND RESPONSIBILITIES**

1. Scope. The Consultant’s services include those described in this Article and, in general, all those necessary to assist the Architect to produce accurate Plans and Specifications.

2. Collaboration. Consultant shall assist the Architect with providing a Project description which includes the needs and the requirements of the Project prior to drafting preliminary designs for the Project. Consultant with Architect shall jointly schedule and attend regular meetings with the District and the District's consultants. Consultant shall collaborate with Architect, the District and District's consultants regarding site use and improvements, and the selection of materials, building systems and equipment. Consultant shall provide on-going review and recommendations on the following: i) construction feasibility; ii) actions designed to minimize adverse effects of labor or material shortages; iii) time requirements for procurement, installation and construction completion; and (iv) factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies. Consultant shall participate in developing construction plans to address project risk and minimize disruptions to the District's educational programs at the Project site.

3. Preliminary Project Schedule. Consultant shall provide a written preliminary evaluation of the Project and schedule requirements. Such evaluation shall include alternative approaches to design and construction of the Project. Consultant shall provide a preliminary Project schedule ("Project Schedule") for review and approval by the District. The Project Schedule shall include all activity sequences and durations, milestone dates including estimating, bidding and submittal of the guaranteed maximum price proposal, constructability review and value engineering work, and delivery of materials or equipment requiring long-lead time procurements. Consultant shall recommend to the District and Architect a schedule for procurement of any long-lead time items which will constitute part of the work as required to meet the Project Schedule. If such long-lead time items are to be procured by the District, they shall be procured on terms and conditions acceptable to Consultant. Upon entering into the lease-leaseback agreement with Consultant, all contracts for such items shall be assigned by the District to Consultant, who shall accept responsibility of such items as if procured by Consultant. The Project Schedule shall be updated monthly and all changes from previous schedules must be indicated on the revised Project Schedule.

4. Meetings. Consultant shall attend regular Project coordination meetings during Project development between District's representative(s), and other Consultants of the District as required. Consultant shall make formal presentations to the governing board of District, if required. Consultant's services shall include attendance at all regular meetings with the District and any District consultants, and provide recommendations on: construction feasibility; quick action to minimize adverse effects of labor or material shortages; and knowledge of time requirements for procurement, installation, and construction costs including estimates of alternative designs or materials and possible economic savings or costs.

5. Cost Estimates.

a. Consultant shall provide a detailed cost estimate for the Construction Budget with supporting data, for review and approval by the District. The cost estimate shall identify all costs for the Project, including all trades and unit costs. Consultant shall also identify all allowances, contingencies, General Condition costs and fees. All fees are to be represented by either fixed amounts or percentages and shall exclude all pre-construction services. If any cost estimate submitted to the District exceeds previously approved estimates for the Construction Budget, if any, the Consultant shall make appropriate recommendations to the

District. Consultant shall consider operating or maintenance costs when selecting systems for the District.

b. Consultant shall provide estimate valuation services through the final development of the construction documents. The Consultant shall prepare estimate validations against the 100% CD Statement of Probable Costs prepared by \_\_\_\_\_, dated \_\_\_\_\_, which is to provide the District the opportunity to confirm that the Project is proceeding within the District's budget parameters and shall set forth any assumptions or interpretations that Consultant used in making the estimate. This estimate shall be the basis for negotiations of the Guaranteed Maximum Sum for the Lease-Leaseback Documents. In addition to estimate valuations, the Consultant may also be expected to provide estimating of portions of the work, systems being considered, details as they are developed, and other estimating exercises the District, Architect and Consultant deem advisable.

6. Value Engineering.

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

7. Constructability Reviewed Of Construction Documents.

a. The Consultant shall review, using BIM modeling or LEAN modeling tools, the design and construction documents that have been submitted to DSA for clarity, consistency, constructability and coordination among the design disciplines' drawings and the construction trades and collaborate with Architect and the District in developing solutions to any identified issues. The formal Constructability Review shall be completed within \_\_\_\_ ( ) weeks so that the comments therein can be evaluated and incorporated as appropriate prior to DSA backcheck. The purpose of all of Consultant's Constructability reviews, including those before submission of the construction documents to DSA for approval and the formal Constructability Review, is to determine that the design comprises complete, accurate and fully coordinated drawings and specifications for construction, and thereby reduce the risk of disruption, delay, change orders and potential claims. Consultant will focus on accuracy, completeness, sequencing and coordination. Consultant's reviews will also seek out alternative construction materials and systems that may result in a cost or time savings to the District. The result of the reviews shall be provided in writing and as notations on the construction documents.

Nothing in the contract documents shall relieve Architect and the other design professionals from their obligation to perform their services and design the Project in accordance with the terms of their respective contracts and the applicable standard of care.

b. Consultant shall engage those subconsultants it deems necessary to participate in the Constructability reviews. However, regardless of whether consultant engages subconsultants, Consultant shall remain fully responsible for the Constructability reviews.

8. The duties, responsibilities and limitations of authority of the Consultant shall not be restricted, modified or extended without written agreement between the District and Consultant other than through the Lease-Leaseback Documents, which will be entered into at a later time. District shall not be responsible to Consultant for any claims or damages resulting from District's failure to enter into the Lease-Leaseback Documents.

9. Consultant shall have access to the work at all times.

10. Extent Of Consultant's Responsibility. The recommendations and advice of Consultant concerning design alternatives shall be subject to review and approval of the District and the District's professional consultants. It is not Consultant's responsibility to ascertain that the Plans and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if Consultant recognizes, or should reasonably have recognized, that portions of the Plans and Specifications are at variance therewith, Consultant shall promptly notify Architect and the District in writing. Notwithstanding the foregoing, Consultant represents that as part of the scope of this Agreement, Consultant shall carefully examine the site at which the work will be performed and the Plans and Specifications and other associated documents; perform all reasonable investigations essential to a full understanding of the difficulties that may be encountered in performing the work; be familiar with the terms and conditions thereof; and acquaint itself through reasonable discovery with the conditions under which the work is to be performed, including, without limitation, applicable laws, codes and other restrictions (including any restrictions identified by the District and that are related to the District's education program and/or requirements at the Project site), local labor conditions, local weather patterns, restrictions in access to and from the Project site, prior work performed by others on the Project, and obstructions and other conditions relevant to the work, the site of the work and its surroundings.

## **ARTICLE II. DISTRICT'S RESPONSIBILITIES**

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

### **ARTICLE III. 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 to the 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, 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 drawings and other 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 to 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, 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 drawings and other documents, whether delivered to the District or in the possession of the Consultant. Consultant and District expressly acknowledge that in the event of such termination, Consultant will not receive any additional termination costs, and that consideration for entry into this termination for convenience clause exists.

4. In the event of a dispute between the parties as to performance of the work or the interpretation of this Agreement, or payment dispute, the parties shall attempt to resolve the dispute. Pending resolution of this 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 work. Any controversy or claim arising out of or relating to this Agreement shall be settled by binding arbitration in Yuba County in accordance with the rules of the Yuba Superior Court ("Arbitration Rules"). To the extent that the provisions within this Article do not conflict with the Arbitration 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 arbitration. If the parties are unable to agree on the arbitrator within thirty (30) days of the receipt of a written request for arbitration, they shall request that the presiding judge of the Yuba Superior Court designate one. The District shall pay one-half of the cost of the arbitration and the Consultant shall pay one-half of the cost of arbitration or, if Architect participates in the arbitration, each party shall pay one-third of the cost of arbitration. Each party shall be responsible for its own attorney's fees and costs as to any such arbitration. Any arbitrator chosen or designated must have experience in construction issues. Notwithstanding the foregoing, once a written request for arbitration has been made, each party shall have the right to conduct

discovery pursuant to the procedures set forth in the Civil Discovery Act of 1986, as amended, even if an action has not been filed.

**ARTICLE IV.  
COMPENSATION TO THE CONSULTANT**

The District agrees to pay the Consultant for full performance of all services contemplated under the terms of this Agreement, of \$\_\_\_\_\_, (“Basic Fee”) billed on a monthly basis based on the percentage of completion of the Scope of Work completed during the previous month. Each invoice shall be supported by documentation substantiating such invoice including a description of the work provided, hours worked, personnel rates, and expenses. The Basic Fee shall include all costs and expenses associated with the performance of the Scope of Services under this Agreement, including the costs of hiring subconsultants and other professionals necessary to complete the Scope of Services.

**ARTICLE V.  
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 subconsultants employed by the Consultant under the terms of this Agreement.

2. Consultant’s subconsultants 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 the Consultant is not acceptable to the District, then that individual shall be replaced with an acceptable competent person at the District’s request.

**ARTICLE VI.  
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 during all phases of the Project and concerning any material condition in the requirements, scope, performance and/or sequence of the work.

2. District shall not be responsible to Consultant for any claims or damages resulting from District’s failure to enter into Lease-Leaseback Documents.

3. To the extent permitted by law, Consultant agrees to indemnify, defend and hold District entirely harmless from all liability arising out of:

a. Any and all claims under workers’ compensation acts and other employee benefit acts with respect to Consultant’s employees or Consultant’s subconsultant’s employees arising out of Consultant’s work under this Agreement; and

b. Liability for damages for: (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of

law; or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by the Consultant or any person, firm or corporation employed by the Consultant upon or in connection with the Project, except for liability resulting from the active and primary negligence, or willful misconduct of the District, its officers, employees, agents or independent contractors who are directly employed by the District;

c. Any loss, including injury or death to persons or damage to property caused by any act, neglect, default or omission of the Consultant, or any person, firm or corporation employed by the Consultant, either directly or by independent contract, including all damages due to loss sustained by any person, firm or corporation including the District, arising out of, or in any way connected with the Project, including injury or damage either on or off District property; but not for any loss, injury, death or damages caused by active and primary negligence of the District.

The Consultant, at Consultant's own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings to the extent of the above described indemnification that may be brought or instituted against the District, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the District, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

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 the Agreement, whether such actions or inactions be by themselves or by any subconsultant or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

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, 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 certificates 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.

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 Worker's Compensation. Consultant assumes the full responsibility for the acts and/or omissions of Consultant's employees or agents as they relate to the services to be provided under this Agreement. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective Consultant's employees.

6. District does hereby agree to indemnify, hold harmless, and defend Corporation, its employees, officers, agents, and subconsultants from any action taken by any person or entity attempting to challenge the propriety or legal authority of District to enter into this Agreement, the Lease-Leaseback Documents or any other related documents.

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. The 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.

9. This Agreement shall be governed by the laws of the State of California.

10. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

11. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

12. This Agreement represents the entire Agreement between the District and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended or modified only by an agreement in writing signed by both the District and the Consultant.

13. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in a registered or certified form with postage fully prepaid or by express



EXHIBIT A

**DESIGN CRITERIA**

(TO BE INSERTED, IF ANY)

DRAFT