PRECONSTRUCTION SERVICES AGREEMENT

(Humanities Modernization Lease-Leaseback Project)

This Preconstruction Services Agreement ("Agreement") is entered into by the SANTA BARBARA COMMUNITY COLLEGE DISTRICT, a public Community College District duly organized and existing under the laws of the State of California ("District"), and __________, a corporation duly organized and existing under the laws of the State of California ("Contractor"), as of ______________, 2012 ("Effective Date"), for the purposes of providing value design service work associated with construction documents and plans for the construction of the Humanities Modernization Project on the campus of Santa Barbara City College ("Project").

RECITALS

A. Contractor and District desire to enter into a lease-leaseback arrangement for the construction of the Project pursuant to Education Code section 81335. This arrangement will be documented by a Site Lease, Facilities Lease, and Construction Services Agreement ("Lease-Leaseback Documents.")

B. Pursuant to Education Code section 81332, the District has adopted Plans and Specifications for the Project prior to entering into the Lease Leaseback Documents.

C. District has retained DLR Group/WWCOT ("Architect") to prepare Plans and Specifications for the Project.

D. District has retained Lundgren Management Corporation ("CM") to provide construction management services in connection with the Project.

E. Contractor desires to provide consulting services to the District with respect to development of the Project and represents that it has the knowledge and experience necessary to perform the services set forth in this Agreement.

F. The parties acknowledge that the Contractor and District will negotiate and approve Lease-Leaseback Documents which utilize a guaranteed maximum price equal to the entire construction budget for the Project, and which guaranteed maximum price will not include the fee provided herein.

NOW THEREFORE, the parties agree as follows:

ARTICLE I
SCOPE OF CONTRACTOR'S SERVICES

1. Scope. The Contractor's services include those described in this Article and, in general, all those necessary in preparation for development and construction of the Project.
2. **Collaboration.** Contractor shall collaborate with Architect, CM, and District to implement execution of the Project in accordance with the Plans and Specifications. The intent of the Lease Leaseback Documents is to create a team that collaboratively harnesses the talents and insights of all participants to optimize project results, increase value to the District, minimize risk to the Contractor and Architect, reduce waste, and maximize efficiency through all phases of design, fabrication, and construction. Contractor shall advise District regarding site use and improvements, and the selection of materials, building systems and equipment. Contractor shall provide ongoing 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.

3. **Project Schedule.** Contractor will prepare a critical path method Project schedule, which includes all milestone dates including, but not limited to, DSA deferred submittals, agency approvals, utility services approvals, subcontractor bidding, buyout, preparation and submittal of Contractor's guaranteed maximum price proposal for construction of the Project, preparation of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, phasing, construction sequencing and durations, and District move-in and occupancy requirements. The Project Schedule shall be prepared with Primavera P3 or P6. The Contractors Project Schedule shall be used as a baseline for the Construction Services Agreement and shall be distributed to subcontractors during the bidding and establishment of the Guaranteed Maximum Price ("GMP").

4. **Meetings.** Contractor shall attend regular Project coordination meetings during Project development between District, Architect, CM, and other consultants of the District as required. CM shall make a written record of all such meetings documenting the discussions and decisions made. Contractor may be requested to make formal presentations to the governing board of District.

5. **Cost Estimates.** Contractor shall provide a fully transparent detailed cost estimate with supporting data, for review and approval by the District and their CM. This estimate shall be the basis for negotiations of the GMP for the Lease-Leaseback Documents. Contractor’s cost estimate shall be based upon the Project schedule and presented by building/area/site and broken down in detail in accordance with the CSI 2004 MasterFormat Standards in accordance with the District’s Work Breakdown Structure and cost coding phasing standards. The Contractor shall obtain 2-5 bids for each subcontractor trade and provide a bid evaluation matrix identifying each subcontractor ensuring that each subcontractor has priced their scopes of work equivalently.

The cost estimate shall identify all costs for the Project, including all trades and unit costs. Contractor 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 Project, if any, the Contractor shall make appropriate recommendations to the District to reduce the estimate to achieve the District’s Budget.

Contractor shall consider operating or maintenance costs when selecting systems for the District. Contractor shall provide estimate valuation services through the final development of the construction documents. In addition to estimate valuations, the Contractor 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 Contractor deem advisable.

6. **Value Engineering.** Contractor 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. Contractor 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 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. Completion of each VEP, 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. **Extent of Contractor’s Responsibility.** The recommendations and advice of Contractor concerning design alternatives shall be subject to review and approval of the District and the District’s consultants. It is not Contractor’s responsibility to ascertain that the Plans and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if Contractor recognizes that portions of the Plans and Specifications are at variance therewith, Contractor shall promptly notify Architect and the District in writing. Notwithstanding the foregoing, Contractor represents that as part of the scope of this Agreement, Contractor 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.

8. **Constructability Review.** The District has engaged a third party consultant to perform a constructability review of the DSA Submittal set of drawings and specifications. The CM, Architect and District have compiled a list of approved constructability items that will be incorporated into the construction documents. The Contractor shall ensure that all constructability items are adequately understood and incorporated into the GMP. If the Contractor finds any discrepancies in the Approved Constructability Items, drawings, specifications or other bid documents, the Contractor shall prepare and transmit a report identifying any conflicts to the District. Otherwise any conflicts in the drawings (excluding errors and omissions, unknown conditions or force majeure) shall be included in the GMP so as to eliminate frivolous change orders in the Construction Services Agreement.

9. **Bonding Capacity.** Contractor shall provide District with satisfactory evidence of Contractor's ability to provide payment and performance bonds for construction of the Project.

**ARTICLE II**

**DISTRICT’S RESPONSIBILITIES**

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

**ARTICLE III**

**COMPENSATION TO THE CONTRACTOR**

The District agrees to pay the Contractor for full performance of all services contemplated under the terms of this Agreement, a not-to-exceed fee of _________, ("Basic Fee"). Contractor shall keep track of work completed, and maintain documentation to substantiate such work, including a description of the work provided, hours worked, and expenses. Contractor shall bill for labor on an hourly basis in accordance with the rate schedule attached hereto as Exhibit A. The Basic Fee includes all costs and expenses associated with the performance of the Scope of Services under this Agreement, including the costs of hiring sub-consultants and other professionals necessary to complete the Scope of Services. Contractor shall track time and expenses for preconstruction services only until such time as Contractor submits a GMP proposal to the District which is accepted and approved by District. Contractor’s fees incurred for preconstruction shall be included as a line item in the GMP and shall be billed and paid as part of Contractor’s first progress payment in connection with construction of the Project. In the event the Contractor is terminated for any reason and does not perform the construction phase of the Project, the Contractor shall retain the fees paid though the point of such termination.
ARTICLE IV
CONSULTANTS

1. Contractor shall submit, for written approval by the District, the names of any consultants proposed for the Project. Nothing in this Agreement shall create any contractual relation between the District and any consultant employed by the Contractor under the terms of this Agreement.

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

ARTICLE V
TERMINATION

1. This Agreement may be terminated by either party upon 14 days written notice to the other party in the event of a substantial failure of performance by such other party, including insolvency of Contractor 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 Contractor 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 Contractor 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 Contractor.

3. This Agreement may be terminated without cause by District upon 14 days written notice to the Contractor. In the event of a termination without cause, the District shall pay to Contractor 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 Contractor 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 Contractor. Contractor and District expressly acknowledge that in the event of such termination, Contractor will not receive any additional termination costs, and that consideration for entry into this termination for convenience clause exists.
ARTICLE VI
INDEMNITY AND INSURANCE

1. To the extent permitted by law, Contractor 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 Contractor's employees or Contractor's consultants' employees arising out of Contractor's work under this Agreement;

(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 Contractor or any person, firm or corporation employed by the Contractor 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 Contractor, or any person, firm or corporation employed by the Contractor, 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 Contractor, at Contractor'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 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.

2. District does hereby agree to indemnify, hold harmless, and defend Corporation, its employees, officers, agents, and consultants 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.

3. Contractor 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 Contractor and District from claims which may arise out of or result from Contractor's actions or inactions relating to the Agreement, whether such actions or inactions be by themselves or by any consultant 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) Contractor 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 $2,000,000 combined single limit, bodily injury and property damage liability per occurrence, including: owned, non-owned and hired vehicles; broad form property damage; products/completed operations; and personal injury.

(c) Each policy of insurance required in (a) and (b) above shall name District and its officers, agents and employees, and Architect and CM, as additional insureds; shall state that, with respect to the operations of Contractor hereunder, such policy is primary and any insurance earned 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. Contractor shall notify District in the event of material change in, or failure to renew, each policy. Prior to commencing work, Contractor shall deliver to District certificates of insurance as evidence of compliance with the requirements herein. In the event Contractor 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 Contractor, and in such event Contractor shall reimburse District upon demand for the cost thereof.

ARTICLE VII
MISCELLANEOUS

1. Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that Contractor and all of Contractor'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. Contractor assumes the full responsibility for the acts and/or omissions of Contractor's employees or agents as they relate to the services to be provided under this Agreement. Contractor 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 Contractor's employees.

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

3. 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 Contractor.
4. The District and Contractor, 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. Contractor shall not assign this Agreement.

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

6. 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.

7. 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.

8. This Agreement represents the entire Agreement between the District and Contractor 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 Contractor.

9. 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 registered or certified form with postage fully prepaid:

   **If to the Contractor:**
   [LLB Entity Official Name and Title]
   [LLB Entity Address]

   **If to District:**
   Joseph E. Sullivan
   Santa Barbara Community College District
   721 Cliff Drive
   Santa Barbara, CA 93109

The Contractor and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

10. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

11. This Agreement is to be deemed to have been prepared jointly by the Parties hereto; any uncertainty or ambiguity existing herein shall not be interpreted against either Party but according to the application of rules of contracts generally.
12. Contractor acknowledges that District has the right to opt not to enter into
the Lease-Leaseback documents or otherwise proceed with the Project with Contractor,
whether for lack of funding, legal challenge to the lease-leaseback process, or any other
reasons in District’s sole and absolute discretion.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be
executed by their respective duly authorized officers, as of the Effective Date.

SANTA BARBARA COMMUNITY COLLEGE DISTRICT

By: ___________________________
    [District Signatory]

[LLB Entity]

By: ___________________________
    [Signatory], [Title]
EXHIBIT A
Contractor's Personnel Rate Schedule
RESOLUTION
OF THE GOVERNING BOARD OF THE
SANTA BARBARA COMMUNITY COLLEGE DISTRICT

RE: ADOPTION OF 10% PROGRESS PAYMENT
RETENTION AMOUNT FOR THE HUMANITIES BUILDING
MODERNIZATION PROJECT

The Board of Trustees of the Santa Barbara Community College District resolves as follows:

WHEREAS, Senate Bill No. 293, Chapter 700, Stats. 2011, adds Section 7201 to the Public Contract Code ("PCC") effective January 1, 2012, which applies to all contracts entered into on or after January 1, 2012, between a public entity and an original contractor, between an original contractor and a subcontractor, and between all subcontractors thereunder, relating to the construction of any public work of improvement until January 1, 2016, and prohibits retention proceeds from exceeding 5% of the payment due, as specified; and

WHEREAS, PCC Section 7201(b)(4) provides that, notwithstanding any other provisions of the subdivision, the retention proceeds withheld from any payment by the awarding entity may exceed 5% on specific projects where the governing body of the public entity, or designee, has approved a finding during a properly noticed and formally scheduled public hearing prior to bid that the project is substantially complex and therefore requires a higher retention amount than 5% and the awarding entity includes both this finding and the actual retention amount in the bid documents; and

WHEREAS, Staff has advised this Board that construction of the Humanities Building Modernization project at an estimated cost in excess of $8 million will be a substantially complex project and has recommended that the Board adopt a 10% retention amount for this project;

The Board resolves and finds as follows:

1. The above recitals are true.
2. The construction of the Humanities Building Modernization project at an estimated cost in excess of $8 million will be a substantially complex project and therefore requires a 10% retention amount.
3. The superintendent or his designee is authorized to include the Board's finding that the project will be substantially complex and therefore requires a 10% retention amount in any future bid documents for the project.
4. This Resolution shall take effect upon its adoption.
PASSED AND ADOPTED this 26th day of April 2012. This Resolution was adopted by the following vote:

Ayes:

Noes:

Absent:

Concur:

I hereby certify that the foregoing is a full, true, and correct transcript of a resolution duly adopted and affirmed by the Board of Trustees of the Santa Barbara Community College District at a duly constituted regular meeting of said Board, held on 26 of April 2012, as it appears upon the minutes of said meeting.

Dr. Jack Friedlander
Acting Superintendent/President and Secretary/Clerk to the Board of Trustees
**SANTA BARBARA COMMUNITY COLLEGE DISTRICT**

**BID TABULATION**

**Project:** Learning Resource Center-Furniture Package  
**Bid:** #677

**Date:** Friday, April 6, 2012  
**Time:** 2:00 p.m.

<table>
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<th>Contractor</th>
<th>Base Bid</th>
<th>Price Sheets</th>
<th>Addendum Ack.</th>
<th>Bid Bond</th>
<th>Sub Contractor List</th>
<th>Contractor Licensing Statement</th>
<th>Experience Statement</th>
<th>MBE/WBE</th>
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**Bid Opened by:** R. Morales

**Bid Opening Attended by:** Dawn Ziemer, Jay Sullivan, Julie Hendricks
# BID TABULATION

## SANTA BARBARA COMMUNITY COLLEGE DISTRICT

### Project: Learning Resource Center-Interior Refurbishment

**Bid:** #678

**Date:** Friday, April 6, 2012

**Time:** 3:00 p.m.

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**Bid Opened by:** R. Morales

**Bid Opening Attended by:** D. Ziemer, S. McCleister, B. Varble, J. Hendricks, R. Morales, J. Sullivan
# BID TABULATION

## BID #679

**Project:** LEARNING RESOURCE CENTER ROOF RESTORATION

**Date:** Thursday, April 12, 2012  
**Time:** 3:00 p.m.

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<th>Sub Contractor List</th>
<th>Contractor Licensing Statement</th>
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Bid Opened by: Kara Pizano  
Bid Opening Attended by: Julie Hendricks, Jay Cruise, Mark Davin  
Copies Sent to: Alex Forbes, Joe Sullivan, Julie Hendricks, Purchasing