

Fresno Unified's tale of two deals

Insider Building

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Ed note: After receiving reader comments, CVObserver is changing the name of our coverage on Fresno Unified's legal troubles. Up to this point, we have referred to it as "Gastongate." However, the scandal has widened far beyond Gaston Middle School and warranted a more apt name. From here on, CVO will refer to it as "the Insider Building scandal."

Controversy over Fresno Unified's Insider Building scandal has a new wrinkle.

A newly unearthed document reconfirms the old adage that the devil truly is in the details.

The document provided to CVObserver details a preconstruction contract between West Contra Costa Unified School District and a Fresno-based contractor at the center of the Fresno Unified Insider Building scandal.

Aside from common construction contractors, the two deals also have another commonality: the individual responsible for managing the contracts at the school districts. Fresno Unified's preconstruction agreement for Gaston Middle School was handled by Lisa LeBlanc, the district's then-chief facilities officer.

In fact, [the leaked copy of the Gaston preconstruction agreement](#) was originally sent to LeBlanc.

Now, LeBlanc has a new job in Richmond, serving as a similar chief facilities officer for West Contra Costa Unified School District and was responsible for handling the preconstruction agreement for Pinole Valley High School.

The similarities between the two preconstruction deals end there. At the heart of the two documents are distinct differences over how the districts handled their legal and professional relationship with the contractor

Fresno Unified's preconstruction agreement, as reported by *The Fresno Bee*, had specific terms over pricing preconstruction services.

Compensation. In return for District's selection of Contractor to construct the Project, the Services rendered hereunder shall be performed at no cost to the District. However, should the District utilize another contractor to construct the Project, the District shall pay and Contractor shall receive as full compensation for all services contemplated and rendered hereunder, a total sum of Five Thousand Dollars (\$5,000.00).

[West Contra Costa Unified's contract](#) has completely different terms when it comes to pay and services:

Services. Consultant shall furnish to the District the services... incorporated herein by this reference ("Services" or "Work"). It is also hereby agreed that by providing these services, Consultant shall preclude itself from participating in the bidding, or any portion of the construction for the Pinole Valley High School New Campus Project.

Compensation. District agrees to pay Consultant for Services satisfactorily rendered pursuant to this Agreement on an hourly basis and a per-item basis, as applicable, and up to a maximum amount not-to-exceed Twenty-Four Thousand, Five Hundred dollars...

Where Fresno Unified's deal allowed the firm to eventually be named the contractor to build Gaston Middle School, West Contra Costa Unified did not.

The two deals also have another glaring difference over legal indemnification of the school district.

Here's some of the indemnification clause indemnifying Fresno Unified from liability:

c. Any loss...caused by any act, neglect, default or omission of the Builder, or any person, firm or corporation employed by the builder...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 on or off District property; but not for any loss, injury, death or damages caused by active and primary negligence of the District.

The Builder, at Builder's own expense...shall defend any and all claims, actions, suits, or other proceedings to the extent of the above described indemnification is the builder's responsibility that may be brought or instituted against the District...and shall pay any judgment that may be rendered against the district...as a result thereof.

Legalese aside, the Fresno Unified indemnification clause places the legal liability of construction on the back of the contractor, not the district. A key point is that the contractor would foot the bill for legal expenses.

West Contra Costa Unified has a different approach:

*To the furthest extent permitted by California law, Consultant shall defend, indemnify, and hold free and harmless the District...from all claims, demands, causes of action, costs, expenses, [and] liability...arising out of...the negligence, recklessness, errors or omissions, or willful misconduct of Consultant... **The District shall have the right to accept or reject any legal representation that Consultant proposes to defend the indemnified parties.***

Sources tell CVObserver that legal representation is now a huge issue given the status of Fresno Unified's lawsuit with Davis-Moreno Construction (a firm that lost out on the Gaston project) and the Federal investigation as both contractor and district officials are attempting to haggle over who legal costs under the contract.

All sources were left with a burning question: despite the fact that both contracts were negotiated by the same individuals – LeBlanc for the school districts and representatives for the Fresno contractor – why did the deals turn out so wildly different?

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