



DANNIS

WOLIVER

KELLEY

Preparing clients
for tomorrow.



Lease-Leaseback Project Delivery Method

Manhattan Beach Unified School District
October 6, 2010

Presented By:
Samuel R. Santana
Dannis Woliver Kelley

DEDICATION

WISDOM

KNOW-HOW



Agenda

- Lease-Leaseback (LLB) project delivery method
 - How it works
 - Advantages and disadvantages
 - Legal and legislative issues
- Construction Management and LLB

DEDICATION

WISDOM

KNOW-HOW

Lease Leaseback: In Summary

- The Builder is selected by qualifications, not low bid.
- Builder provides a Guaranteed Maximum Price.
- Traditionally, included a significant financing component.
- Possible legal challenges (but none in recent years, and none ever upheld.)

DEDICATION

WISDOM

KNOW-HOW

History of LLB

- LLB is authorized under Ed.Code 17406.
 - A long-term, revenue-based financing vehicle for projects.
- Growing problems with claims and cost overruns on design-bid-build projects led districts to look for alternatives to the low bid model.
- LLB was “rediscovered” in the late 1990’s: qualifications-based selection rather than low bid.
- LLB widely used in recent years and growing in popularity.
- Legal and legislative challenges to LLB have failed.

DEDICATION

WISDOM

KNOW-HOW

Lease Leaseback vs. Traditional Construction

- Structurally, the relationship between the District and the Builder do not appear significantly different between the two methods.
- But, there are significant differences in process.

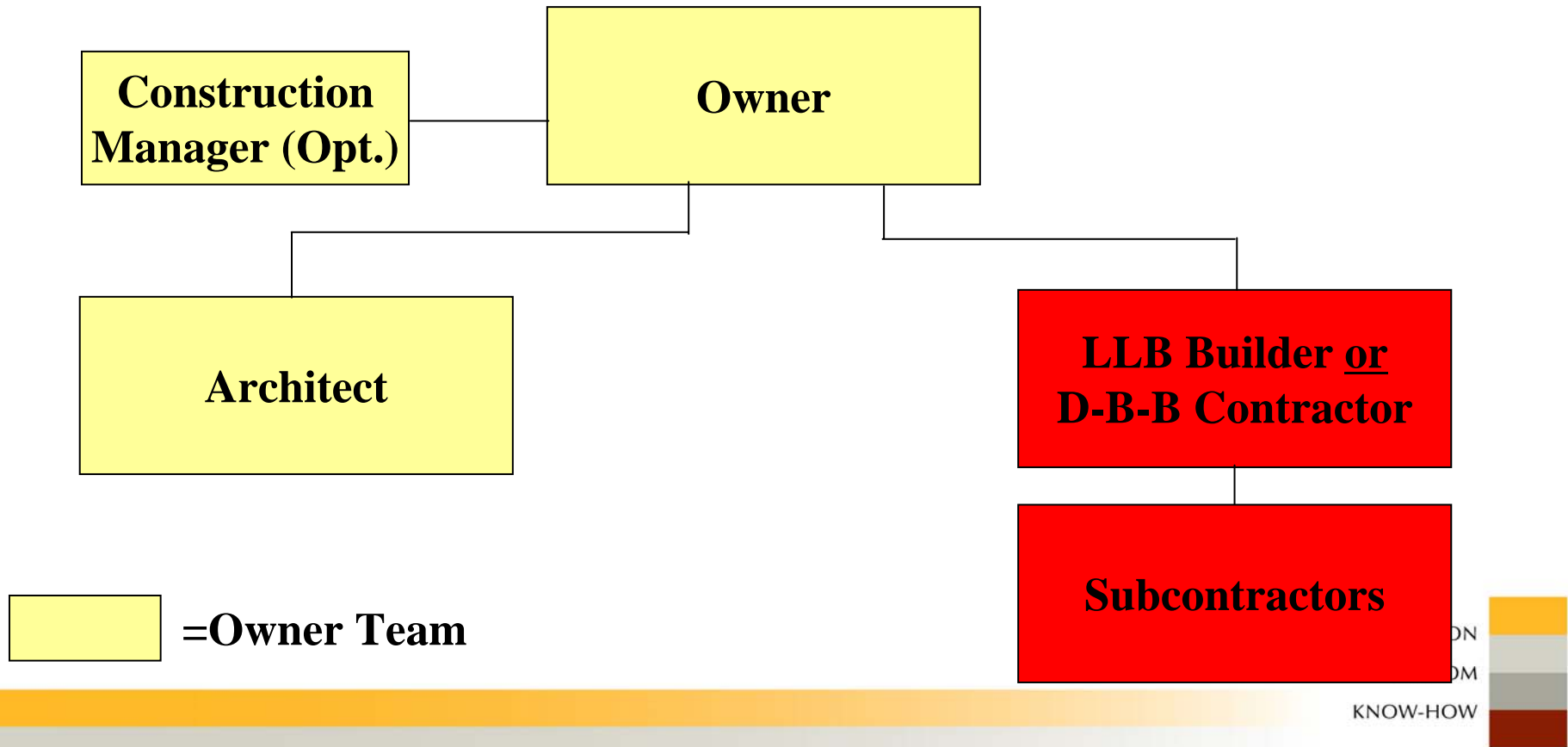
DEDICATION

WISDOM

KNOW-HOW



Structure Basically Is The Same



Process Comparison

- Design-Bid-Build:
 - Builder is selected by lowest bid.
 - Design is completed before it is provided to potential builders (bidders).
- Lease Leaseback:
 - Builder is selected based on qualifications.
 - Builder has early involvement with design.

DEDICATION

WISDOM

KNOW-HOW

LLB Process

- District competitively selects Architect to design project.
- District competitively selects Builder.
- Builder works with District and Architect during project design.
- Architect completes design and gets DSA approval.
- Builder lines up trade contractors and develops Guaranteed Maximum Price.

DEDICATION

WISDOM

KNOW-HOW



LLB Process, ct.

- Board awards LLB contract.
- District completes validation action (recommended).
- Builder constructs the project for the negotiated Guaranteed Maximum Price.

DEDICATION

WISDOM

KNOW-HOW



The 3 Contracts

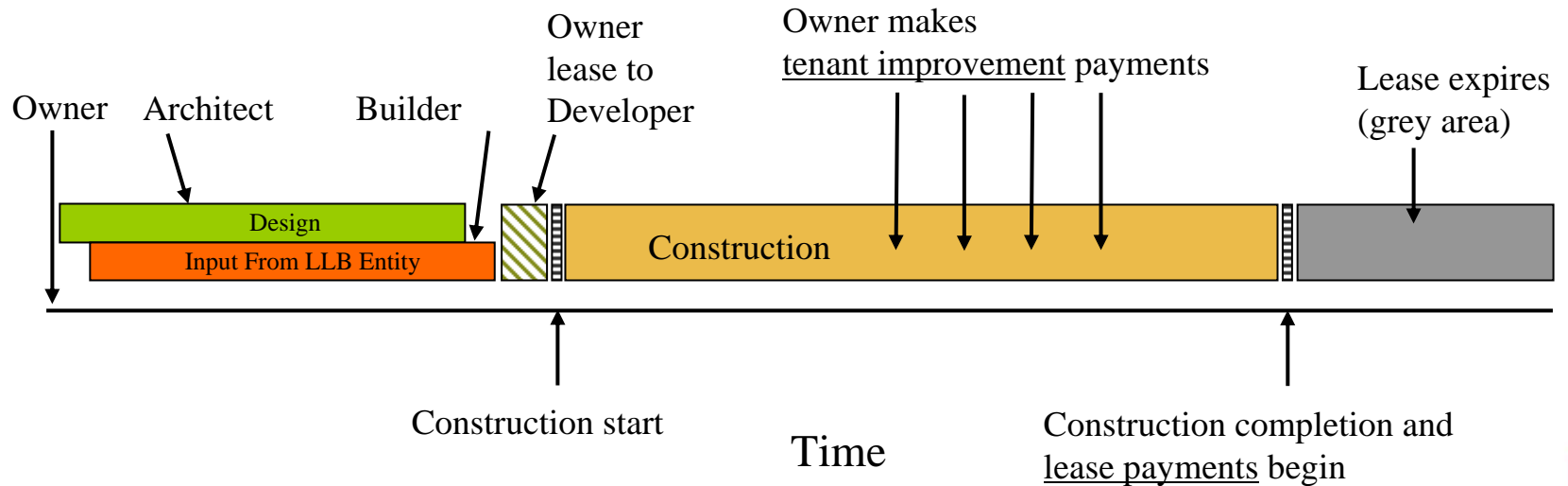
- Preliminary Services Agreement:
 - Builder acts as a pre-construction consultant.
- Site Lease:
 - District leases the site to Builder.
 - Terminates when Facilities Lease terminates.
- Facilities Lease:
 - Builder constructs facility per Plans and Specs.
 - Builder leases the facility back to the District.
 - Builder transfers title of the facility to the District upon final payment.

DEDICATION

WISDOM

KNOW-HOW

Lease Leaseback Timeline



Payments

- During Construction
 - Traditional structure: financing in place to fund interim payments
 - Option: tenant improvement payments, somewhat analogous to progress payments
- After Construction
 - Final lease payment(s)
 - If there is no significant financing, analogous to post-completion final payment(s), including stop notice requirements

DEDICATION

WISDOM

KNOW-HOW

Minimizing Risk

- Recommend a Validation Action once Board approves a LLB contract.
 - Inexpensive
 - Protects schedule
- Strong selection process to get best Builder.
- Closely monitor:
 - Cost vs. estimates
 - Change orders, use of contingency etc.
 - Final cost

DEDICATION

WISDOM

KNOW-HOW



Advantages

- Select Builder by qualifications, not low bid.
- Historically, fewer claims and disputes because Builder has had early involvement in design.
- Guaranteed Maximum Price and schedule control.

DEDICATION

WISDOM

KNOW-HOW

Disadvantages

- In many cases, cost of LLB projects is higher.
- LLB does not automatically bar change orders or claims (although less likely due to Builder's involvement with design), particularly:
 - Site conditions
 - Owner changes ("Scope creep")

DEDICATION

WISDOM

KNOW-HOW

Criticisms of Lease Leaseback

- Two attempts to legislate LLB limitations in 2005 (both vetoed):
 - Would have created process overlay similar to design-build statute
- Concerns about LLB:
 - General preference for bid-based selection
 - Cost vs. projects put out to public bid

DEDICATION

WISDOM

KNOW-HOW



DANNIS

WOLIVER

KELLEY

Preparing clients
for tomorrow.



SAN FRANCISCO

71 Stevenson Street, 19th Floor
San Francisco, CA 94105
TEL 415.543.4111
FAX 415.543.4384

LONG BEACH

301 East Ocean Boulevard, Suite 1750
Long Beach, CA 90802
TEL 562.366.8500
FAX 562.366.8505

SAN DIEGO

750 B Street, Suite 2310
San Diego, CA 92101
TEL 619.595.0202
FAX 619.702.6202

Thank you!

Samuel R. Santana
ssantana@DWKesq.com
(562) 366-8500

DEDICATION



WISDOM



KNOW-HOW

