

**Board of Trustees Agenda Item**

**Board Meeting Date:** January 5, 2010

**Title of Item:**

HMC Agreement for Services and Change #1 for Flint Center Electrical Improvements

**Background and Analysis:**

Agreement for Services to perform design and construction administration services, including architectural design and electrical engineering services in the amount of \$30,000.

Change #1 is for additional architectural and electrical engineering services in the amount of \$3,800.

**Recommendation:** Ratification

Submitted by:	Andy Dunn, Vice Chancellor, Business Services
Additional contact name:	Charles Allen, Executive Director, Facilities & Operations
Is backup provided?	Yes

Foothill-DeAnza Community College District

**AGREEMENT FOR SERVICES**

This Agreement entered this 14th day of April, 2009, by and between the Foothill-De Anza Community College District, a community college district of the State of California, hereinafter called "District" and HMC Architects hereinafter called "Contractor."

WITNESSETH

WHEREAS, pursuant to Foothill-DeAnza Community College District Board Policy 3140 and Board of Trustees Resolutions, specified District employees have the duty to engage independent contractors to perform sundry services for the District, with or without the furnishing of material; and

WHEREAS, it is necessary and desirable that Contractor be engaged by District for the purpose of performing services hereinafter described:

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

1. Services to be performed by Contractor. In consideration of the payments hereinafter set forth, Contractor shall perform services for District in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A" attached hereto and by this reference made a part hereof. Contractor shall perform all the services described in Exhibit A for the sum not to exceed \$ 30,000.
2. Payments. In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A", District shall make payment to contractor in the manner specified in Exhibit "A".
3. Relationship of the Parties. It is understood that this is an Agreement by and between Independent Contractor(s) and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of Independent Contractor.
4. Non-Assignability. Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of District, and any attempted assignment without such prior written consent in violation of this Section automatically shall terminate this Agreement.
5. Contract Term. This Agreement shall be in effect from April, 14, 2009 through December 30, 2009 as specified in Exhibit "A". The District may terminate this contract at any time for any reason by providing 30 days notice to Contractor. Termination to be effective on the date specified in the notice. In the event of termination under this paragraph, Contractor shall be paid for all work provided to the date of termination.
6. Hold Harmless and Indemnification: To the fullest extent permitted by law, the contractor shall indemnify and save harmless the District, its officers, agents, employees and servants from all claims, suits or actions of every name, kind and description, brought for, or on account of (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, or (C) by reason of any failure to withhold and/or pay to the government income and/or employment taxes from earnings under this contract as made necessary by Section 530 of the Revenue Act of 1978, including but not limited to the concurrent active or passive negligence of the District, its officers, agents, employees or servants, resulting from the

**Foothill-DeAnza Community College District**

performance of any work required of contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which the District has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of the contractor to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778.4 of the California Civil Code.

Contractor's duty to defend shall be triggered by notice to contractor that District has been served with a summons or complaint which alleges facts falling within the scope of contractor's indemnity obligations.

7. Insurance. If applicable, insurance requirements are attached as Exhibit "I."

8. Non-Discrimination.

A. General. No person shall, on the grounds of race, color, national or ethnic origin, religious affiliation or non-affiliation, gender, marital status, sexual orientation, age, physical or mental disability, or political affiliation, be excluded from participation in, be denied the benefits, or be subjected to discrimination under this Agreement.

B. Employment. Contractor shall insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this Agreement. Contractor's personnel policies shall be made available to District upon request.

9. Substitutions: If particular people are identified in Exhibit "A" as working on this contract the Contractor will not assign others to work in their place without written permission from the District Purchasing Agent. Any substitution shall be with a person of commensurate experience and knowledge.

10. Sole Property of the District: Any system or documents developed, produced or provided under this contract shall become the sole property of the District. Notwithstanding any other provision herein, any intellectual property discovered or developed by contractor in the course of performing or otherwise as a result of its work hereunder shall be the sole property of the District.

11. Contract Renewal. This Agreement may be renewed for additional time periods as long as the original contract term plus the renewal periods does not exceed five years and provided that both parties sign the renewal, insurance coverage pursuant to paragraph 7 is the same as then customary in similar District Agreements, and the cost of the terms combined will not exceed (a) \$14,999.00 for public project services such as construction, reconstruction, erection, alteration, renovation, improvement, demolition, or repair work, including painting, repainting, or data cabling or (b) \$76,700.00 for routine maintenance, or other services not described in (a).


12. Expenditure Of Public Funds. Contractor agrees to comply with Government Code Section 8546.7 which provides that the contracting parties for any contract involving expenditure of public funds in excess of \$10,000.00 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract.

13. Confidentiality. In performing its duties hereunder the Contractor may from time to time gain incidental access to confidential information and records including student record information as defined by 20 USC section 1232g. The parties agree that such incidental access is not a provision or conveyance or disclosure to contractor of student record information in violation of section 1232g or of any similar state law. Contractor agrees that if in the performance of its duties it does obtain such access it shall refrain from any removal, use or disclosure to any third

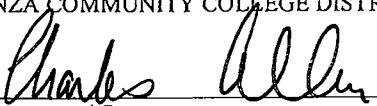
Foothill-DeAnza Community College District

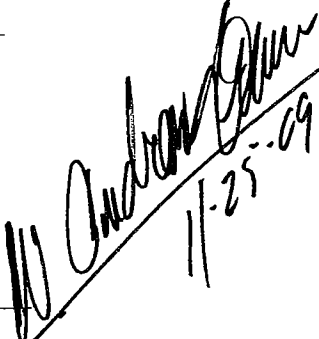
person of such information and records and shall take any and all necessary affirmative steps to maintain the confidentiality, and avoid such removal, use or disclosure, whether intentional or inadvertent, of such records and information.

14. Merger Clause. This Agreement, including Exhibit "A" attached hereto and incorporated herein by reference, constitutes the sole agreement of parties hereto and correctly states the rights, duties and obligations of each party as of the document's date. Any prior agreement, promises, negotiations or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the District Purchasing Agent. In the event of a conflict between the terms, conditions or specifications set forth herein and those in Exhibit "A" attached hereto, the terms, conditions or specifications set forth herein shall prevail.

  
Authorized Contractor Signature  
HMC Architects  
Contractor's Company Name  
95-2109939  
Contractor's Tax I.D. Number  
5.4.09  
Date

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

By   
Authorized signature and Date  
EXECUTIVE DIRECTOR, FACILITIES / OPERATIONS  
Title  
12345 EL MONTE ROAD  
Address  
LOS ALTOS HILLS, CA 94022

  
11-25-09

Date Approved By Board of Trustees

(Approval is required prior to commencement of services if total cost exceeds \$20,000.00 for professional services or the applicable bid threshold stated in Public Contract Code 20651 for other services.)

Foothill-DeAnza Community College District

EXHIBIT "A"

Contract between Foothill-DeAnza Community College District and HMC Architects  
\_\_\_\_\_, hereinafter called "Contractor".

- I. Detailed description of services to be performed and work product to be delivered to District by Contractor: (reference and attach additional pages, if necessary)

Perform design and construction administration services, including architectural design and electrical engineering services as follows:

Provide a detailed site survey to confirm logistics, routing, etc., as well as another in-depth site discussion with Mike Kelley to make sure we understand the specifics of the A/V system and power infrastructure required and confirm the scope identified in the documents provided to HMC by the District, dated October 1, 2008;  
Provide bid drawings and specifications (sheet format or outline, based on available standards);  
Attend up to three coordination meetings with Foothill College representative and electrical consultant in the course of the development of the design concepts and bid documents.;  
One (1) meeting with Foothill College representatives to review design prior to advertising for bids.;  
Provide final bid set;  
Construction administration services including responding to RFI's, submittals, etc.

Services listed above exclude all civil, structural, mechanical/plumbing engineering and landscape design services.

- II. Amount and Method of Payment: (indicate lump sum payment or rate of pay; also include a list of tasks which must be completed prior to each progress payment and show the timeline for progress payments, if applicable)

Progress payments in accordance with schedule of services

In any event, the total payment for services of contractor shall not exceed \$ 30,000 and District shall have the right to withhold payment if District determines that the quantity or quality of the work performed is unacceptable.

- III. Term of the contract: The term of this contract shall commence on the date specified in the first paragraph of this contract, and shall continue until December 30, 2 009.

Foothill-DeAnza Community College District

**Exhibit "I" Insurance Requirements**

**Contractor shall not commence work under this Agreement until required insurance has been approved in writing by District. Certificates of insurance, in form and with insurers acceptable to District (A M Best rating of A-VII or better or otherwise approved by District Risk Manager) shall be submitted to District Risk Management Department. Such certificate shall evidence all coverages and limits required by District in this Agreement and shall specify that insurers will give District thirty (30) days prior written notice of non-renewal or cancellation.**

**Contractor shall maintain in force, throughout the term of this Agreement, insurance as follows:**

1. Workers' Compensation (statutory limits) and Employers' Liability insurance with limits not less than \$1,000,000 each accident, \$1,000,000 employee and \$1,000,000 each disease, provided that contractor has employees as defined by the California Labor Code;
2. Commercial General Liability insurance, with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including coverages for contractual liability, personal injury, broadform property damage, independent contractors, products and completed operations;
3. Commercial Automobile Liability insurance, with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable;
4. Professional Liability insurance, with limits not less than \$1,000,000 each claim/annual aggregate, with respect to coverage for errors and omissions arising from professional services rendered under this Agreement, and with any deductible not to exceed \$25,000 each claim. Required only if the following blank is checked \_\_\_\_.

If any of the required insurance is written on a claims-made coverage form, such insurance shall be maintained for a period of three years following termination of this agreement. General and Automobile liability policies shall include as Additional Insureds, the District, its officers, agents, employees and servants, shall be primary to any other insurance or self-insurance available to the Additional Insureds and shall apply separately to each, except the inclusion of Additional Insureds shall not operate to increase the required limits of such insurance.

Maintenance of the required insurance is a material condition of this Agreement and failure to maintain such insurance may, at the District's option, result in a declaration of material breach and suspension of Contractor's further work under this Agreement.



April 7, 2009

Mr. Frank Nunez  
Director, Faculties and Operations  
Foothill De Anza Community College District  
12345 El Monte Road  
Los Altos, CA 94022

Regarding: Foothill De Anza Community College District  
Flint Center Electrical Improvements  
HMC #3449006-000

Subject: Proposal/Agreement for Architectural and Electrical Engineering  
Services

Dear Frank:

HMC Architects is pleased to present this proposal to the Foothill De Anza Community College District to perform Design and Construction Administration Services, including Architectural Design and Electrical Engineering Services as follows:

**Scope of Work:**

- Provide a detailed site survey to confirm logistics, routing, etc., as well as another in-depth site discussion with Mike Kelley to make sure we understand the specifics of the A/V system and power infrastructure required and confirm the scope identified in the documents provided to HMC by the District, dated October 1, 2008.
- Provide Bid Drawings and specifications (sheet format or outline, based on available standards).
- Attend up to three coordination meetings with Foothill College Representatives and Electrical Consultant in the course of the development of the design concepts and bid documents.
- One (1) meeting with Foothill College Representatives to review design prior to advertising for bids.
- Provide final bid set.
- Construction Administration Services including responding to RFI's, Submittals, etc.

**Assumptions / Exclusions:**

- Service listed above exclude all Civil, Structural, Mechanical/Plumbing Engineering and Landscape Design Services.

Mr. Frank Nunez  
Director, of Facilities and Operations  
Foothill – DeAnza Community College District  
Re: Proposal/Agreement for Flint Center Electrical Improvements  
April 7, 2009  
Page 2

**Compensation:**

Schematic Design through Bidding shall be a fixed fee of Twenty-four Thousand Dollars (\$24,000).

The balance of the fee for Construction Administration shall be on an hourly basis not-to-exceed Six Thousand Dollars (\$6,000), without prior written approval per Attachment "A" HMC Hourly Rate Schedule.

**Other Terms and Conditions of This Proposal / Agreement:**


Reference Attachment "B" of this Proposal / Agreement.

**Authorization/Agreement to Proceed:**

HMC ARCHITECTS is hereby requested and authorized by Foothill De Anza Community College District to provide Architectural / Engineering Services as described above. All the foregoing is agreed to and authorized by:

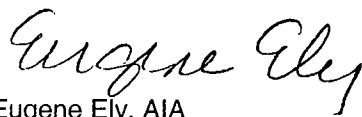
**Foothill De Anza CCD:**

**HMC Architects:**

_____		<u>4.8.09</u>
Date	Lee Salin, AIA COO License #C-20623	Date

Please review this Proposal / Agreement and if it meets with your approval, please sign and return one (1) original to my attention. Please call if you have any questions. We look forward to continuing our good working relationship and to a successful project.

Sincerely,

  
Eugene Ely, AIA  
Principal-in-Charge

Attachment "A" – HMC Hourly Rate Schedule  
Attachment "B" – Other Terms and Conditions

cc: K. Rubio, L. Eloff (HMC)  
File: CN AOA 2/C&L

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## **ATTACHMENT "B"**

### **OTHER TERMS AND CONDITIONS**

#### **Retainer**

An initial payment of zero (-0-) shall be made upon execution of this Agreement and credited to the fee earned at final payment.

#### **Invoicing**

The Architect shall invoice its time and reimbursable expenses monthly, and invoices are due and payable upon receipt. Amounts unpaid thirty (30) days after the receipt of the invoice will be subject to a service charge of eighteen percent (18%) per annum, pursuant to Civil Code §3320. Should the Owner fail to pay current invoices for more than sixty (60) days, the Architect may stop work on the Project until payment is received or terminate this Agreement with the Owner. The Architect shall not be held liable for any damages or losses that may result from such suspension or termination of services according to the provisions set forth in this proposal.

The Owner agrees to return disputed invoices within fifteen (15) days of that invoice with a clear description of the nature of the dispute.

#### **Legal Costs**

In the event that legal proceedings between the parties are necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of its litigation costs and expenses, including reasonable attorney's fees.

#### **Project Suspension/Resumption**

If the Project is suspended by the Owner for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services. If the project is suspended by the Owner for more than ninety (90) consecutive days, the Architect may terminate the Agreement, by giving not less than seven (7) days written notice.

#### **Termination**

Either the Owner or Architect may, for any reason, terminate this Agreement upon not less than seven (7) days written notice to the other party. In the event of termination, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due. Termination Expenses are in addition to compensation for Basic and Additional Services and shall be computed as five percent (5%) of the Basic Services and Additional Service Fees.

#### **Owner's Responsibility**

The Owner shall provide full information, including a program which sets forth the Owner's objectives, schedule, constraints, and budget, with reasonable contingencies and criteria. The Owner shall also furnish any reports, tests, surveys, permits, inspection or other documentation of information or consultants reasonably requested by the Architect. All of foregoing shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

#### **Architect of Record**

Should the Project proceed beyond the phases of services in this Agreement, the Owner shall designate HMC as the Architect of Record for the Project and will enter into a mutually agreeable Owner/Architect Contract for the remaining phases of services to complete the Project.

#### **Ownership of Documents**

The Owner acknowledges that the Architect's Drawings, Specifications, and other documents are instruments of professional services. Nevertheless, the Drawings, Specifications, and other documents prepared under this Agreement shall become the property of the Owner upon completion of this Project and upon payment of all amounts due the Architect. The Architect, however, shall be deemed the author of these documents and shall retain all common law, statutory, and other reserved rights, including the copyright. Should the Owner or any other person, firm or legal entity use, reuse or modify the Architects' Drawings, Specifications or other documents prepared under this Agreement, for other than the Owner's use and occupancy of the completed Project, the Owner agrees to indemnify, defend, and hold the Architect harmless from and against any and all claims, liabilities, suits, demands, losses, costs, and expenses, including reasonable attorneys' fees and all legal expenses and fees incurred on appeal, and all interest thereon, accruing or resulting to any and all persons, firms or any other legal entity, on account of firms, or any other legal entity, on account of any damage or loss to property or person, including death arising out of such use, reuse or modification of the Architect's Drawings, Specifications, and other documents, except where the Architect is found to be solely liable for such damages or losses by a court or forum of competent jurisdiction.

### **Electronic Files**

The Architect is not obligated to provide documents in electronic formats to Owner at any stage of the project's development. When requested by Owner, and at the sole discretion of the Architect, the Architect may transfer documents in electronic file formats to the Owner. The creation of the computer files shall be considered an additional service and the Architect shall be compensated on an hourly basis. By accepting these files/disks and the above stipulations, the Owner agrees to indemnify the Architect, its agents and all consultants against all claims, resulting from the use of these files and the information they contain, by the Owner or their own Consultants, Contractor, Subcontractors, suppliers and all others who receive these files or data. In no event shall the Architect be liable for any loss or profit or any consequential damages as a result of the Clients use or reuse of the electronic files. Owner understands and agrees the Architect relies on various forms of data transmission by an uninterrupted delivery of electrical and telephone service as a means of conducting Architect's business, including the Internet, and that the Internet may be used for intentional and malicious purposes, including transmission of electronic applications commonly referred to as computer "viruses" or "worms". While the Architect endeavors to eliminate the propagation of such applications through its systems and network, the Architect has no control over the actions of third party internet service providers or users of the Internet or similar systems. Consequently, the Owner agrees to waive all claims against the Architect for the propagation of virus applications that may cause damage of any kind to the Owner unless the Architect was the creator of the virus.

### **Indemnification**

The Architect agrees, to the fullest extent permitted by law, to indemnify and hold the Owner harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) made against the Owner that are ultimately determined by the Court to be caused by and only to the extent of the Architect's negligent acts, errors or omissions in the performance of professional services under this Agreement and the Architect's Consultants or anyone for whom the Architect is legally liable.

The Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the Owner's negligent acts, errors or omissions and those of the Owner's contractors, subcontractors, agents, or consultants for anyone for whom the Owner is legally liable, and arising from the Project that is the subject of this Proposal. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of Architect and Owner, they shall be borne by each party in proportion to its negligence. The Architect is not obligated to indemnify the Owner in any manner whatsoever for the Owner's own negligence.

## **Limitation of Liability**

In recognition of the relative risks and benefits of the project to both the Owner and the Architect, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the Architect and his or her subconsultants to the Owner and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of the Architect and his or her subconsultants to all those named shall not exceed the Architect's total fee for services rendered on this project. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

## **Insurance**

During the term of this Agreement, the Architect agrees to provide evidence of insurance coverage of five million dollars (\$5M). In addition, the Architect agrees to attempt to maintain continuous professional liability coverage for the period of design and construction of this project if such coverage is reasonably available at commercially affordable premiums. The Architect further agrees that the applicable subconsultants will be required to maintain a minimum of one million dollars (\$1,000,000) Errors and Omissions coverage. For the purposes of this Agreement "reasonably available" and commercially affordable" shall mean that more than half the Architect's practicing in this state in this discipline are able to obtain such coverage. Nothing contained in the Agreement or otherwise is intended to create a fiduciary relationship between the parties.

## **Mediation**

In an effort to resolve any conflicts that arise during the design or construction of the Project or following the completion of the Project, the Owner and the Architect agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

The Owner and the Architect further agree to include a similar mediation provision in all agreements with independent contractors and consultant retained for the Project and require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

## **Assignment**

Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.

## **Hazardous Materials**

It is acknowledged by both parties that the Architect's scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event the Architect or any other party encounters asbestos or hazardous or toxic materials or toxic mold at the jobsite, or should it become known in any way that such materials at the jobsite, or any adjacent areas that may affect the performance of the Architect's services, the Architect may, at the Architect's option and without liability for consequential or any other damages, suspend performance of services on the project until the Owner retains appropriate specialist consultant(s) or contractor(s) to identify, abate, and/or remove the asbestos or hazardous or toxic materials, and warrant the jobsite is in full compliance with the applicable laws and regulations.

## **Consequential Damages**

The Architect and the Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination.

### **Third Party Contracts**

The Owner shall, upon request of the Architect, supply a copy of the executed Agreement with the Owner's Construction Manager or Project Management Firm, relating to services provided under this Agreement.

**ATTACHMENT "A"**  
**HMC RATE SCHEDULE**

**Standard Hourly Rate Schedule by Professional Category**  
(Not all categories need apply to this contract)

	Hourly Rates
Principal In Charge	\$ 235.00
Managing Principal	\$ 235.00
Senior Healthcare Planner	\$ 235.00
Design Director	\$ 235.00
Educational Services	\$ 205.00
Senior Construction Administrator	\$ 200.00
Senior Project Manager/Senior Project Architect	\$ 190.00
Senior Technical Manager	\$ 190.00
Healthcare Planner	\$ 185.00
Cost Estimator	\$ 175.00
Director of Interior Design	\$ 175.00
Project Manager/Project Architect	\$ 170.00
Technical Manager	\$ 170.00
Sr. Project Designer	\$ 170.00
Project Designer	\$ 150.00
Sustainable Design	\$ 150.00
Project Leader	\$ 140.00
Technical Leader	\$ 140.00
Technical Services/QA Plan Reviewer/Spec Writer	\$ 140.00
Labor Compliance	\$ 140.00
Senior Interior Designer/Senior Interior Project Designer	\$ 135.00
Architectural Model Builder	\$ 135.00
Construction Administrator	\$ 130.00
Project Coordinator	\$ 125.00
Design Leader	\$ 125.00
Interior Designer/Interior Project Designer	\$ 125.00
Senior Drafter	\$ 115.00
Designer II	\$ 115.00
Junior Designer	\$ 110.00
Intermediate Drafter	\$ 110.00
Visualization Arts Coordinator	\$ 110.00
Finisher/Photographer	\$ 105.00
Graphics Designer	\$ 100.00
Computer Services	\$ 100.00
Interior Design/Project Leader	\$ 100.00
Drafter	\$ 100.00
Designer	\$ 90.00
DSA Coordinator	\$ 90.00
Construction Administration Support	\$ 80.00
Contract Administrator	\$ 80.00
Interior Design Coordinator	\$ 75.00
Admin Support	\$ 75.00

These are the current hourly rates effective March 1, 2009 through February 28, 2010 and are subject to change one time annually effective March 1st

**Foothill-DeAnza Community College District Change No. 1**  
**To Agreement/Purchase Order No.**

**CHANGE NO. 1 TO AGREEMENT FOR SERVICES**

The Agreement is changed only as described herein. All other terms, conditions, and prices remain unchanged. This Change to the Agreement is entered this 14 day of April, 20 09, by and between the District, a community college district of the State of California, hereinafter called "District" and HMC Architects hereinafter called "Contractor."

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

1. Services to be performed by Contractor. In consideration of the payments hereinafter set forth, Contractor shall perform services for District in accordance with the terms, conditions and specifications set forth in the original Agreement and in the revised Exhibit "A" which is attached hereto and by this reference made a part hereof.
2. Payments. In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in revised Exhibit "A", District shall make payment to contractor in the manner specified in revised Exhibit "A".
3. Contract Term. This Agreement shall be in effect only as specified in the revised Exhibit "A". The District may terminate this contract at any time for any reason by providing 30 days notice to Contractor. Termination to be effective on the date specified in the notice. In the event of termination under this paragraph, Contractor shall be paid for all work provided to the date of termination.
4. Other changes. (indicate "none" or describe applicable changes in detail)

**Foothill-DeAnza Community College District Change No. 1**  
**To Agreement/Purchase Order No.**

**Revised EXHIBIT "A"**

Contract between Foothill-DeAnza Community College District and

hereinafter called "Contractor".

- I. Detailed description of the change in services to be performed or work product to be delivered to District by Contractor: (reference and attach additional pages, if necessary)

Additional architectural and electrical engineering services. Scope of work as follows:

Install new active power conditioner in conjunction with existing 75kVA technical power transformer SVC T1 to mitigate harmonic effects in the system.

\* Rewire circuits serving amplifier racks in panels SC1A and SC1B to have dedicated neutral and ground conductors.

Replace a total of six (6) stairwell light fixtures.

\* Install two (2) 400-amp 3-pole Cam loc connectors on tech power sub panel.

\* Demolish old sound system above main seating area.

Note: Items indicated with an (\*) are items which were previously added to the scope of work in a document titled, "Cyc Light and Electrical Upgrade 2008 rev 4" and provided on 5/27/09. The design for these items was incorporated into the documents at that time. Subsequently, on 8/31/09, these items were deleted from the scope of work but their design was completed within the documents.

- II. Amount and Method of Payment: (indicate the additional fee for increased scope of work or the deductive amount for decreased scope of work)

ORIGINAL AGREEMENT AMOUNT\$ 30,000

PLUS OR MINUS AMOUNT OF ALL PREVIOUS CHANGE NO. \$ 0

PLUS OR MINUS AMOUNT FOR THIS CHANGE NO. \$ 3,800

NEW TOTAL AGREEMENT AMOUNT\$ 33,800

**Foothill-DeAnza Community College District Change No. <sup>1</sup>**  
**To Agreement/Purchase Order No. \_\_\_\_\_**

In any event, the total payment for services of contractor shall not exceed \$ 33,800  
and District shall have the right to withhold payment if District determines that the quantity or  
quality of the work performed is unacceptable.

III. Term of the contract: The term of this contract shall commence on the date specified in the first  
paragraph of this contract, and shall continue until December 30 20 09.

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor's Company Name

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

By \_\_\_\_\_

Title: VICE CHANCELLOR, BUSINESS SERVICES

This contract is not valid until signed by both parties above.

\_\_\_\_\_  
Date Approved by Board of Trustees if the total cost including change exceeds \$20,00.





September 15, 2009  
(Supersedes Previous Letter Dated August 26, 2009)

Mr. Frank Nunez  
Director, Faculties and Operations  
Foothill De Anza Community College District  
12345 El Monte Road  
Los Altos, CA 94022

Regarding: Foothill De Anza Community College District  
Flint Center Electrical Improvements  
HMC #3449006-000

Subject: Proposal / Agreement for Additional Architectural and Electrical  
Engineering Services

Dear Frank:

HMC Architects is pleased to present this proposal to the Foothill De Anza Community College District to perform Additional Architectural and Electrical Engineering Services as follows:

**Scope of Work:**

- Install new active power conditioner in conjunction with existing 75 kVA technical power transformer SVC TI to mitigate harmonic effects in the system.
- \* Rewire circuits serving amplifier racks in panels SC1A and SC1B to have dedicated neutral and ground conductors.
- Replace a total of six (6) stairwell light fixtures.
- \* Install two (2) 400-amp 3-pole Cam loc connectors on tech power sub panel.
- \* Demolish old sound system above main seating area.

Note: Items indicated with an (\*) are items which were previously added to the scope of work by Mike Kelley in a document titled, "Cyc Light and Electrical Upgrade 2008 rev 4" and provided on 5/27/09. The design for these items was incorporated into the documents at that time. Subsequently, on 8/31/09, these items were deleted from the scope of work but their design was completed within the documents.

**Assumptions / Exclusions:**

- Service listed above exclude all Structural, Civil, Mechanical/Plumbing Engineering and Landscape Design Services.

Mr. Frank Nunez  
Director, of Facilities and Operations  
Flinet Center Electrical Improvements September 15, 2009  
(Supersedes Previous Letter Dated August 26, 2009)  
Page 2

**Compensation:**

Fee for the additional scope of work listed above shall be a fixed fee of Three Thousand, Eight Hundred Dollars (\$3,800).

### Additional Services:


If Additional Services are required beyond the original Scope of Work, HMC will bill on an hourly basis per Attachment "A", HMC Rate Schedule attached in the Proposal / Agreement.


**Other Terms and Conditions of This Proposal / Agreement:**

Reference Attachment "B" of this Proposal / Agreement.

**Authorization / Agreement to Proceed:**

HMC ARCHITECTS is hereby requested and authorized by Foothill De Anza Community College District to provide Architectural / Engineering Services as described above. All the foregoing is agreed to and authorized by:

**Foothill De Anza CCD:**  
  
 Date 12/15/09

**HMC Architects:**  
  
 Date 9.15.09  
 Lee Salin, ATA  
 COO  
 License #C-20623

Please review this Additional Service Proposal / Agreement and if it meets with your approval, please sign all 3 and return two (2) originals to my attention. Contact Alex Seefeldt or myself if you have any questions. We look forward to continuing our good working relationship and to a successful project.

Sincerely,

Eugene Ely

Eugene Ely, AIA  
Principal-in-Charge

Attachment "A" – HMC Hourly Rate Schedule  
Attachment "B" – Other Terms and Conditions

cc: K. Rubio, L. Eloff (HMC)  
File: CN AOA 2/C&L

**ATTACHMENT "A"**  
**HMC RATE SCHEDULE**  
Standard Hourly Rate Schedule by Professional Category  
(Not all categories need apply to this contract)

	Hourly Rates
Principal In Charge	\$ 235.00
Managing Principal	\$ 235.00
Senior Project Manager/Senior Project Architect	\$ 190.00
Senior Technical Manager	\$ 190.00
Project Manager/Project Architect	\$ 170.00
Technical Manager	\$ 170.00
Technical Leader	\$ 140.00
Project Leader	\$ 140.00
Project Coordinator	\$ 125.00
Intermediate Drafter	\$ 110.00
Drafter	\$ 100.00
DSA Coordinator	\$ 90.00
<i>Senior Construction Administrator</i>	\$ 200.00
<i>Construction Administrator</i>	\$ 130.00
<i>Construction Administration Support</i>	\$ 80.00
Chief Estimator	\$ 200.00
Senior Estimator	\$ 180.00
Estimator	\$ 150.00
<i>Senior Specifications Writer</i>	\$ 190.00
<i>Specifications Writer</i>	\$ 170.00
<i>Specifications Technician</i>	\$ 140.00
<i>Specifications Coordinator</i>	\$ 125.00

	Hourly Rates
<i>Design Director</i>	\$ 235.00
<i>Sr. Project Designer</i>	\$ 170.00
<i>Project Designer</i>	\$ 150.00
<i>Design Leader</i>	\$ 125.00
<i>Designer II</i>	\$ 115.00
<i>Designer/Student Intern</i>	\$ 90.00
Director of Interior Design	\$ 180.00
Senior Interior Project Designer	\$ 175.00
Interior Project Designer	\$ 170.00
Senior Interior Designer	\$ 135.00
Interior Designer	\$ 125.00
Interior Design Leader	\$ 100.00
Interior Design Coordinator	\$ 75.00
<i>Senior Sustainable Design Manager</i>	\$ 190.00
<i>Sustainable Design Manager</i>	\$ 170.00
<i>Sustainable Design Leader</i>	\$ 140.00
<i>Sustainable Design Coordinator</i>	\$ 125.00
Senior Education Facilities Planner	\$ 235.00
Education Facilities Planner	\$ 150.00
Education Facilities Planning Coordinator	\$ 100.00
Education Facilities Planning Leader	\$ 90.00
<i>Labor Compliance</i>	\$ 140.00
<i>Architectural Model Builder</i>	\$ 135.00
<i>Visualization Arts Coordinator</i>	\$ 110.00
<i>Finisher/Photographer</i>	\$ 105.00
<i>Graphics Designer</i>	\$ 100.00
<i>Computer Services</i>	\$ 100.00
<i>Contract Administrator</i>	\$ 80.00
<i>Admin Support</i>	\$ 75.00

These are the current hourly rates effective March 1, 2009 through February 28, 2010 and are subject to change one time annually effective March 1st

## **ATTACHMENT "B"**

### **OTHER TERMS AND CONDITIONS**

#### **Retainer**

An initial payment of zero (-0-) shall be made upon execution of this Agreement and credited to the fee earned at final payment.

#### **Invoicing**

The Architect shall invoice its time and reimbursable expenses monthly, and invoices are due and payable upon receipt. Amounts unpaid thirty (30) days after the receipt of the invoice will be subject to a service charge of eighteen percent (18%) per annum, pursuant to Civil Code §3320. Should the Owner fail to pay current invoices for more than sixty (60) days, the Architect may stop work on the Project until payment is received or terminate this Agreement with the Owner. The Architect shall not be held liable for any damages or losses that may result from such suspension or termination of services according to the provisions set forth in this proposal.

The Owner agrees to return disputed invoices within fifteen (15) days of that invoice with a clear description of the nature of the dispute.

#### **Legal Costs**

In the event that legal proceedings between the parties are necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of its litigation costs and expenses, including reasonable attorney's fees.

#### **Project Suspension/Resumption**

If the Project is suspended by the Owner for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services. If the project is suspended by the Owner for more than ninety (90) consecutive days, the Architect may terminate the Agreement, by giving not less than seven (7) days written notice.

#### **Termination**

Either the Owner or Architect may, for any reason, terminate this Agreement upon not less than seven (7) days written notice to the other party. In the event of termination, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due. Termination Expenses are in addition to compensation for Basic and Additional Services and shall be computed as five percent (5%) of the Basic Services and Additional Service Fees.

#### **Owner's Responsibility**

The Owner shall provide full information, including a program which sets forth the Owner's objectives, schedule, constraints, and budget, with reasonable contingencies and criteria. The Owner shall also furnish any reports, tests, surveys, permits, inspection or other documentation of information or consultants reasonably requested by the Architect. All of foregoing shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

#### **Architect of Record**

Should the Project proceed beyond the phases of services in this Agreement, the Owner shall designate HMC as the Architect of Record for the Project and will enter into a mutually agreeable Owner/Architect Contract for the remaining phases of services to complete the Project.

#### **Ownership of Documents**

The Owner acknowledges that the Architect's Drawings, Specifications, and other documents are instruments of professional services. Nevertheless, the Drawings, Specifications, and other documents prepared under this Agreement shall become the property of the Owner upon completion of this Project and upon payment of all amounts due the Architect. The Architect, however, shall be deemed the author of these documents and shall retain all common law, statutory, and other reserved rights, including the copyright. Should the Owner or any other person, firm or legal entity use, reuse or modify the Architects' Drawings, Specifications or other documents prepared under this Agreement, for other than the Owner's use and occupancy of the completed Project, the Owner agrees to indemnify, defend, and hold the Architect harmless from and against any and all claims, liabilities, suits, demands, losses, costs, and expenses, including reasonable attorneys' fees and all legal expenses and fees incurred on appeal, and all interest thereon, accruing or resulting to any and all persons, firms or any other legal entity, on account of firms, or any other legal entity, on account of any damage or loss to property or person, including death arising out of such use, reuse or modification of the Architect's Drawings, Specifications, and other documents, except where the Architect is found to be solely liable for such damages or losses by a court or forum of competent jurisdiction.

### **Electronic Files**

The Architect is not obligated to provide documents in electronic formats to Owner at any stage of the project's development. When requested by Owner, and at the sole discretion of the Architect, the Architect may transfer documents in electronic file formats to the Owner. The creation of the computer files shall be considered an additional service and the Architect shall be compensated on an hourly basis. By accepting these files/disks and the above stipulations, the Owner agrees to indemnify the Architect, its agents and all consultants against all claims, resulting from the use of these files and the information they contain, by the Owner or their own Consultants, Contractor, Subcontractors, suppliers and all others who receive these files or data. In no event shall the Architect be liable for any loss or profit or any consequential damages as a result of the Clients use or reuse of the electronic files. Owner understands and agrees the Architect relies on various forms of data transmission by an uninterrupted delivery of electrical and telephone service as a means of conducting Architect's business, including the Internet, and that the Internet may be used for intentional and malicious purposes, including transmission of electronic applications commonly referred to as computer "viruses" or "worms". While the Architect endeavors to eliminate the propagation of such applications through its systems and network, the Architect has no control over the actions of third party internet service providers or users of the Internet or similar systems. Consequently, the Owner agrees to waive all claims against the Architect for the propagation of virus applications that may cause damage of any kind to the Owner unless the Architect was the creator of the virus.

### **Indemnification**

The Architect agrees, to the fullest extent permitted by law, to indemnify and hold the Owner harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) made against the Owner that are ultimately determined by the Court to be caused by and only to the extent of the Architect's negligent acts, errors or omissions in the performance of professional services under this Agreement and the Architect's Consultants or anyone for whom the Architect is legally liable.

The Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the Owner's negligent acts, errors or omissions and those of the Owner's contractors, subcontractors, agents, or consultants for anyone for whom the Owner is legally liable, and arising from the Project that is the subject of this Proposal. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of Architect and Owner, they shall be borne by each party in proportion to its negligence. The Architect is not obligated to indemnify the Owner in any manner whatsoever for the Owner's own negligence.

## **Limitation of Liability**

In recognition of the relative risks and benefits of the project to both the Owner and the Architect, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the Architect and his or her subconsultants to the Owner and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of the Architect and his or her subconsultants to all those named shall not exceed the Architect's total fee for services rendered on this project. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

## **Insurance**

During the term of this Agreement, the Architect agrees to provide evidence of insurance coverage of five million dollars (\$5M). In addition, the Architect agrees to attempt to maintain continuous professional liability coverage for the period of design and construction of this project if such coverage is reasonably available at commercially affordable premiums. The Architect further agrees that the applicable subconsultants will be required to maintain a minimum of one million dollars (\$1,000,000) Errors and Omissions coverage. For the purposes of this Agreement "reasonably available" and commercially affordable" shall mean that more than half the Architect's practicing in this state in this discipline are able to obtain such coverage. Nothing contained in the Agreement or otherwise is intended to create a fiduciary relationship between the parties.

## **Mediation**

In an effort to resolve any conflicts that arise during the design or construction of the Project or following the completion of the Project, the Owner and the Architect agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

The Owner and the Architect further agree to include a similar mediation provision in all agreements with independent contractors and consultant retained for the Project and require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

## **Assignment**

Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.

## **Hazardous Materials**

It is acknowledged by both parties that the Architect's scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event the Architect or any other party encounters asbestos or hazardous or toxic materials or toxic mold at the jobsite, or should it become known in any way that such materials at the jobsite, or any adjacent areas that may affect the performance of the Architect's services, the Architect may, at the Architect's option and without liability for consequential or any other damages, suspend performance of services on the project until the Owner retains appropriate specialist consultant(s) or contractor(s) to identify, abate, and/or remove the asbestos or hazardous or toxic materials, and warrant the jobsite is in full compliance with the applicable laws and regulations.

## **Consequential Damages**

The Architect and the Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination.

### **Third Party Contracts**

The Owner shall, upon request of the Architect, supply a copy of the executed Agreement with the Owner's Construction Manager or Project Management Firm, relating to services provided under this Agreement.