

Board of Trustees Agenda Item

Board Meeting Date: December 6, 2010

Title of Item:

Contract with HMC Architects to develop an updated De Anza College Facilities Master Plan

Background and Analysis:

The 1999 FHDA Educational and Facilities Master Plan for Foothill College and De Anza College was based on the need to meet the enrollment, pedagogical and social needs of the campus community. The plan provided the direction for the bond projects made possible by the Measure E construction bond.

The college's 2007 update of the Facilities Master Plan was driven by the desire to fulfill the unmet needs of the 1999 Educational and Facilities Master Plan, address the demands of future growth using Measure C construction bond funding, respond to the analyses of instructional and student support program needs and address the expectations of a technologically savvy student community.

In Spring 2010 the college updated its Educational Master Plan "'Where We've Been, Where We're Going: De Anza College Educational Master Plan 2010-2015". The new plan is based on nearly five years of planning activities that began in September 2005 and resulted in various updates including a new mission statement and the development of four Institutional Initiatives. During this period there have also been ongoing discussions of environmental sustainability as well as the importance of physical space to our students.

In view of the college's updated 2010 Educational Master Plan, the 2007 Facilities Master Plan will be reviewed and modified to address the needs identified and to strengthen support for instruction, student support programs and student life.

In tandem, these two documents will capture current planning activities as well as highlight new proposals aimed at guiding the college over the next five years.

The college requests approval of the HMC Architects contract to develop and deliver the college's updated Facilities Master Plan. HMC Architects will provide professional planning services as outlined in the attached documents for a fixed fee of \$75,000 plus an estimated \$7,500 for reimbursable expenses.

Recommendation:

De Anza President Brian Murphy recommends approval

Submitted by:	Brian Murphy, President, ext 8705
Additional contact names:	Letha Jeanpierre, VP Finance & Educational Resources, ext 8976
Is backup provided?	Yes

Foothill - De Anza Community College District

INDEPENDENT CONTRACTOR AGREEMENT

De Anza College ☒ Foothill College ☐ District Office ☐ District PO No: _____

This Agreement entered into this 6 day of December, 2010 is made between the Foothill-De Anza Community College District, hereinafter referred to as the "DISTRICT", and the following named independent contractor; hereinafter referred to as the "CONTRACTOR", based upon Board Policies BP 3140, BP3143, AP 3140, and AP3143 and the following legal citations:

- A. Government Code Section 53060 authorizes the engagement of persons to perform special services as independent contractors; and
- B. Public Contract Code 20651 requires advertised sealed bids for public projects of \$15,000 or more and most other services of \$69,000 or more. If sealed bids are required, this form of agreement cannot be used;
- C. Government Code Section 8546.7 provides that the contracting parties for any contract involving expenditure of public funds in excess of \$10,000 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract.
- D. The public interest, convenience, necessity and general welfare will be served by this Agreement.

If this agreement has a total cost that exceeds \$20,000, it is not valid and services shall not commence unless and until the Board of Trustees grants approval. **Do not use this form for public project contracts of \$15,000 or more.**

1. CONTRACTOR INFORMATION:

Contractor's Name HMC Architects
Address 1570 The Alameda, Suite 330 City San Jose Zip 95126
Business Phone (408) 977-9160 Fax No (408) 977-9170 Home N/A
Social Security Number N/A *Fed. Tax I.D. Number 95-2109939
Business License Number 1466521210 *CONTRACTOR MUST PROVIDE W-9

Are you a current or former employee of the DISTRICT? Yes ☐ No ☒

If yes, date last worked _____

If yes, specify last work location _____

Work Assignment _____

Are you related to any employee(s) in the DISTRICT? Yes ☐ No ☒

If yes, please identify the individual(s) _____

2. CONTRACTOR SELECTION PROCESS:

Describe how you selected this contractor and why this contractor is the best source for these services. Board Policy 3140 requires at least three written competitive quotations for public projects greater than \$1000 and other purchases greater than \$10,000. If you did not obtain competitive quotes, provide justification. Advertised competitive bidding by District Purchasing Services is legally mandated for most services in excess of the bid threshold (currently \$69,000) and for all public projects of \$15,000 or more pursuant to Public Contract Code 20651.

3. CONTRACTOR SERVICES, FEE, AND CONTRACT STARTING AND ENDING DATES:

A. Description of services and deliverables to be provided by contractor (refer to and attach contractor's signed proposal or quotation if possible):

Refer to HMC Proposal dated August 18, 2010

B. Contractor Fee for Services: \$ 75,000

(Indicate a fixed fee to be paid for all of the described services or indicate hourly or other periodic billing rate(s) plus a maximum total dollar cost, i.e. the "not to exceed" amount, to be paid to the contractor. If travel or other expenses will be reimbursed they should conform to Board Policy AP3152.)

Will contractor also be reimbursed for expenses? YES ☒ or NO ☐ If yes, state maximum reimbursement amount to be paid in addition to contract fee shown above:
\$ 7,500

TOTAL COST OF THIS INDEPENDENT CONTRACT WILL NOT EXCEED \$ 82,500.00
INCLUDING CONTRACTOR TRAVEL OR OTHER EXPENSE REIMBURSEMENTS. [Total cannot exceed \$14,999 for public projects. Board approval required prior to commencement of other services if the total cost exceeds \$20,000.]

C. Contract Starting Date Dec. 7, 2010 Contract Ending Date June 30, 2011


Note: It is not permissible to split the contracted services into two or more contracts within one fiscal year for the purpose of avoiding the requirement for Board of Trustees approval.

4. DISTRICT OBLIGATIONS OTHER THAN PAYMENT, IF ANY:

None

5. PAYMENT TERMS: Unless other payment terms are specified in this section, payment terms are Net 30 days computed either from the date of delivery and acceptance of the contract services or from the date of receipt of correct and proper invoices prepared in accordance with the terms of the contract, ~~whichever date is later.~~


Refer to Attachment A of HMC Proposal Dated August 18, 2010

 HMC
District

6. STANDARD TERMS AND CONDITIONS:

- A. CONTRACTOR is solely responsible for the content and sequence of the work. DISTRICT will not provide any training or instruction to CONTRACTOR or its employees.
- B. 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 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.
- C. CONTRACTOR shall indemnify, defend and hold the DISTRICT, its Board of Trustees, officers, agents and employees harmless from any and all claims, damages, losses, causes of action and demands, including reasonable attorney's fees and costs, incurred in connection with or in any manner arising out of CONTRACTOR'S performance of the work contemplated by this Agreement. Acceptance of this Agreement constitutes that the CONTRACTOR is not covered under the DISTRICT'S general liability insurance, employee benefits or worker's compensation. It further establishes that the CONTRACTOR shall be fully responsible for such coverage. *negligent HMC District*
- D. The CONTRACTOR shall assume all expenses incurred in connection with the performance of this contract and the DISTRICT shall not be responsible for payment of any other expenses. The payment terms specified in Paragraph 4 above, unless otherwise indicated and agreed to in writing by the CONTRACTOR and the DISTRICT, shall be the only obligation of the DISTRICT. While engaged in carrying out and complying with any of the terms and conditions of this Agreement, CONTRACTOR is not entitled to any right or privilege applicable to an officer or employee of the DISTRICT or of the State of California.
- E. Any system or documents developed, produced or provided under this contract, including any intellectual property discovered or developed by contractor in the course of performing or otherwise as a result of its work, shall become the sole property of the District unless explicitly stated otherwise in this contract
- F. Payments to the CONTRACTOR pursuant to this Agreement will be reported to Federal and State taxing authorities as required. DISTRICT will not withhold any sums from compensation payable to CONTRACTOR. CONTRACTOR is independently responsible for the payment of all applicable taxes. An IRS form 1099 will be provided to the CONTRACTOR at the end of the calendar year.
- G. Payment Of Prevailing Wages: Except for projects of \$1000 or less, if CONTRACTOR provides public project services such as carpet laying or building construction, alteration, demolition or repair CONTRACTOR shall pay all workers on the District project the prevailing wage pursuant to the California Labor Code, Sections 1770 through 1777.7. A copy of the prevailing wage rate determination available online at www.dir.ca.gov/dlsr/statistics_research.html. The determination is issued by the California Department of Industrial Relations.
- H. This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations of warranties, expressed or implied, not specified in this Agreement. This Agreement applies only to the current proposal as attached. Modification or termination of this contract requires mutual agreement by both parties.
- I. Upon mutual agreement in writing or the parties hereto, this Agreement may be terminated at any time for any reason.
- J. The parties to the Agreement, under penalty of perjury, hereby certify that all of the above items and attachments are to the best of their knowledge true and correct statements.


AGREEMENT OF CONTRACTOR: I agree to perform the services described above for the payment indicated. I understand that while performing contract services I am not an employee of the Foothill-De Anza Community College District because I follow an independent trade or profession, and will not be subject to control and direction as to the details and means for accomplishing the anticipated result of my service.


Contractor Lee Salin, AIA Principal

11.10.10
Date

APPROVED:

This document certifies that I and my assigns have reviewed the appropriate legal and procedural guidelines pertinent to determination of independent contractor status, including IRS Revenue Ruling 87-41, have analyzed their application to the position described on the accompanying documents, and have concluded that the hiring of the subject individual to perform the functions described does indeed constitute correct and legal independent contractor status.


Authorized College/District Requestor/Budgeter

11/12/10
Date

College/District Employee with Authority to Sign Contract

Date

Date Approved by Board of Trustees.

[Required prior to commencement of services if the total cost exceeds \$20,000.]

August 18, 2010

Ms. Donna Jones –Dulin
Vice President Finance & Educational Resources
DeAnza College
21250 Stevens Creek Blvd.
Cupertino, CA 95014

Re: Proposal/Agreement for Facilities Master Planning Services
Foothill DeAnza Community College District – DeAnza College
HMC# 5012004-000



Dear Donna:

We are pleased to present our Proposal/Agreement for providing Professional Planning Services to the Foothill DeAnza Community College District for the development of the DeAnza College Facilities Master Plan. We understand that the Educational Plan has been completed for DeAnza College and you would like our assistance in translating the educational program requirements into a Facilities Master Plan. Based on our discussion, we have outlined a scope of work to address your needs.

A. Scope of Work:

Our proposed scope of work consists of three (3) phases which, in turn, provide a logical sequence for developing our collective understanding of the College's educational program needs, the site and facility physical features, and an innovative range of planning concepts to develop into a final Facilities Master Plan.

The three (3) phases include:

1. Educational Plan Quantification
2. Analysis and Option Development
3. Solution Development and Documentation

The tasks associated with each phase of the work plan are outlined in the following summary.

1. Educational Plan Quantification

- Review educational master plan
- Meet with district to discuss facilities master plan needs
- Develop master plan space program for facilities planning
- **COMMITTEE MEETING #1**
 - Review process and timeline
 - Review master plan space program
 - Establish facilities planning priorities

2. Analysis and Option Development

- Develop current base campus plan
- Visit sites and meet with key personnel
- Analyze existing sites and facilities – identify key planning issues
- Develop analysis graphics
- Develop planning options

- **COMMITTEE MEETING #2**
 - Review and validate analysis
 - Review and evaluate planning options
 - Revise planning options
 - **COMMITTEE MEETING #3**
 - Review developed options
 - Select 'preferred option'
- 3. Solution Development and Documentation**
- Develop facilities master plan recommendations
 - Coordinate document format with Foothill College and District
 - Prepare draft report
 - **COMMITTEE MEETING #4**
 - Review recommendations
 - Review draft report
 - Colleges/District reviews of draft report
 - Final document preparation
 - **Board Presentation**

B. Deliverables:

The following deliverables are included as part of the proposed scope of work:

- DeAnza College Facilities Master Plan
 - Print – Twenty (20) bound copies
 - Electronic pdf files for website posting
- Meeting Handouts
 - 8 ½x11 or 11x17 handouts
 - Electronic pdf files for website posting

C. Client Responsibilities:

For an efficient and successful process, the client is expected to contribute the following:

INFORMATION:

- Architectural site and floor plans of current projects (CAD)
- Educational planning data for facilities planning
- Access to FUSION

PLANNING PROCESS:

- Identification of college liaison person for scheduling and coordinating of meetings between HMC, the college, and the District

D. Schedule:

HMC understands that the District would like to complete the scope of work outlined above by winter or early spring. We propose to partner with you to meet an agreed upon timeline and develop the materials described above.

Ms. Donna Jones-Dulin
DeAnza College
August 18, 2010
Page 3 of 3

E. Compensation:

HMC ARCHITECTS will provide services outlined above for a Fixed Fee of Seventy-Five Thousand Dollars (\$75,000).

The proposed scope of work and related fee outlined above excludes landscape and engineering services.

F. Reimbursable Expenses:

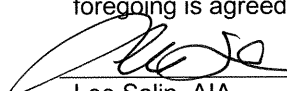
Reimbursable out of pocket costs related to Owner requested printing, plotting, and other expenses are in addition to compensation for the services described above. Expense of transportation in connection with authorized out-of-town travel, including mileage. These expenses shall be billed by the Architect to the Owner at one and fifteen one hundredths (1.15) times the expense incurred by the Architect. We recommend a budget allowance of Seven Thousand, Five Hundred Dollars (\$7,500).

G. Other Terms and Conditions of This Proposal/Agreement:

Reference Attachment "A" of this Proposal/Agreement.

H. Authorization/Agreement to Proceed:


HMC ARCHITECTS is hereby requested and authorized by Foothill DeAnza Community College District to provide Professional Planning Services as described above. All the foregoing is agreed to and authorized by:



Lee Salin, AIA
Managing Principal
License #C-20623

11.10.10

Date



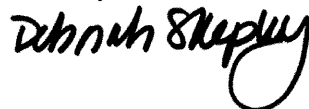
V P Fawcett
Ed Resource

11/12/10

Date

If this Proposal/Agreement accurately reflects the scope of services we have discussed, please sign and return one (1) original to my attention. We are pleased to have the opportunity to provide our services to the Foothill DeAnza Community College District, and it is an honor to be part of your team.

Sincerely,



Deborah Shepley, AIA, LEED AP
Principal, Community College Practice Leader
MO License #006183
DS:le

cc: Lynete Eloff, Dale Krahn (HMC)
File- CN-AOA

ATTACHMENT "A"

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 services 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 negligence, recklessness or willful misconduct 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 negligence, recklessness or willful misconduct 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.