

**Board of Trustees Agenda Item**

**Board Meeting Date:** January 10, 2011

**Title of Item:**

Project #801: Property Acquisition and Development Consultant Related to the Foothill College Education Center.

**Background and Analysis:**

At the December 6, 2010 Board meeting, the Executive Director of Facilities was authorized to enter into negotiations with the consulting firm of Public Private Ventures (PPV) for property acquisition and development consulting services

Attached is a copy of the negotiated agreement for services. The scope of services are detailed in the attached agreement, appendix A, and are summarized as follows:

- Task 1: Preliminary Needs Assessment
- Task 2: Outreach
- Task 3: Identification and Evaluation of Options and Opportunities
- Task 4: Recommendation and Implementation Plan

The negotiated price for these services is a not to exceed amount of \$132,000. Funding is available from Measure C, Project #801-CS.

Upon completion of the above tasks, and subject to additional Board review and authorization, additional services may be required from PPV to assist the District with solicitation and evaluation of proposals from interested parties to provide property and/or facilities to meet the needs of the Education Center.

**Recommendation: Approval of the attach contract for services.**

Charles Allen, Executive Director of Facilities, Operation and Construction Management recommends approval.

Submitted by:	Charles Allen
Additional contact names:	Kevin McElroy, ext 6201 and Judy Miner, ext 7201
Is backup provided?	Yes

**Foothill-DeAnza Community College District**

**AGREEMENT FOR SERVICES**

This Agreement entered this 11th day of January, 2011, by and between the Foothill-De Anza Community College District, a community college district of the State of California, hereinafter called "District" and Public Private Ventures (PPV) 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 \$ 132,000.
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 January 11, 2011 through Dec 31, 2011 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 amount, including reasonable attorneys' fees, incurred by the District, its officers, agents, employees or servants, including or (C) by reason of any failure to perform or pay to the government, 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 ~~contractor's~~ See Attachment B; Addendum to Services Agreement.

**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~~

**See Attachment B; Addendum to Services Agreement.**

The district 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.

See Attachment B; addendum to Services Agreement

Authorized Contractor Signature	Date
Contractor's Company Name	
Contractor's Tax I.D. Number	

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

By \_\_\_\_\_  
Authorized signature and Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_

\_\_\_\_\_  
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 Public Private Ventures (PPV)

\_\_\_\_\_, 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)

**See attached Scope of 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)

**See attached Fee Schedule**

In any event, the total payment for services of contractor shall not exceed \$ 132,000 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 31, 2011.

**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.

## **ATTACHMENT A** **SCOPE OF SERVICES**

### **Situation Assessment**

- The District wishes to acquire land and/or facilities to serve as a permanent home for its education center.
- The District has allocated Measure C Bond Dollars for acquisition and development of the center.

### **Assumptions and approach**

The work program described below is a phased program, each phase being authorized by the District on the basis of the prior phase work. The benchmark for each phase is an affirmative finding by the District, and authorization to proceed with the following phase.

PPV work products are provided on a continuous basis, and are typically delivered by email, in specific working memoranda and monthly progress reports. Appropriate graphic and written materials are prepared as needed. Typically PPV avoids preparation of major project reports, as they become obsolete upon publication. At appropriate times, PPV will prepare presentation materials for board and public information purposes.

### **Phase 1: Preliminary Assessment and Strategy (3 – 6 months)**

The initial phase of work involves several major work efforts:

- Task 1: Preliminary needs assessment
- Task 2: Outreach
- Task 3: Identification and evaluation of options and opportunities
- Task 4: Recommendation & Implementation plan

Tasks 1 – 4 will be pursued concurrently, and will form the basis for further effort if authorized.

It is assumed that following Phase 1, as described below, the District will formally solicit offers from interested parties, as described in Phase 2, below.

#### Task 1: Preliminary Statement of Need

As a basis for undertaking the staged acquisition process as described below, the District, with PPV involvement, will prepare a brief (1 – 2 page) Statement of Need which will be a basis for defining program, facility and land requirements for the new Education Center. This document is not meant to be an official planning document, which will be developed once a site has been identified.

The Statement of Need will address the following general areas based on the best available information.

- Preliminary 5 year and long-term enrollment projections, based on readily available data. (inputs from District Institutional Research).
- Education programs and areas of emphasis, (e.g. career technical education, basic skills in math and english, etc.)
- Partnership potentials and collaboration
- Estimated facility needs, (e.g. types of space, gross floor area, parking, etc)
- Property requirements, (.g. area, access, security, etc.)
- Project funding sources, (i.e. land, infrastructure, buildings, soft costs)

PPV would participate in the development of this document to insure that the document will be effective in marketing the acquisition opportunity. The product of this effort should provide a “project description” for the Phase 2 RFQ/RFP process. See Phase 2, below.

#### Task 2: Outreach

This effort will seek to inform property owners, developers, area businesses, community and economic development organizations, and municipalities of the District’s intent to acquire and develop a new education center, and to solicit preliminary indications of interest and ideas for meeting the District’s needs.

Within the search area, several properties may be obvious candidates for further analysis, while others will only emerge by way of a public solicitation process as described below. PPV will evaluate the known sites, and will discuss possible options with area developers, real estate professionals, identified public officials and other interested parties.



Initial meetings will be held with City officials to inform them of the District's process, and to solicit initial ideas, suggested locations, possible integration into the City's economic, community development and/or redevelopment program efforts.

PPV will work closely with the District's community relations team to identify key stakeholders and community leadership and to coordinate public relations relative to the property acquisition program. PPV, with District involvement, will prepare and submit an Outreach Plan to the District which will be the basis for future outreach activities in the acquisition process.

Task 3: Identification of options and ideas.

PPV will identify and evaluate specific and conceptual options, in terms of:

- specific site opportunities,
- short and long term enrollment scenarios
- acquisition and facility development options, including:
  - purchase,
  - purchase with related development,
  - joint and shared use
  - partnerships & joint ventures
  - design-build
- Preliminary CEQA considerations
- Preliminary CPEC considerations

This initial effort will seek to array the available options and to assess the relative benefits, (e.g. value & cost, future development opportunity, potential value capture, education program relationships, etc), risks, (e.g. level of complexity, potential controversy, potential fatal flaw factors, etc.) and other significant factors. PPV, with District involvement, will prepare and submit a plan to the District which will identify options for future activities in the acquisition process.

Task 4: Recommended plan of action

A recommended plan of action will be prepared and submitted to the District to establish a framework for further planning and acquisition efforts as Phase 2, Project Plan. The plan will address the following:

- Preferred project description and acquisition scenarios
- Phase 2 and Phase 3 work programs
- Master schedule and timetable
- Draft Request for Qualifications & Statement of Interest materials

The District will authorize Phase 2, based on deliberations on the recommended plan of action.

### **Phase 2: Solicitation of Offers (timeframe to be determined)**

The process of soliciting offers and proposals will be undertaken in a formal and structured process seeking to invite proposals to provide property and/or facilities and other related components, (e.g. partnerships, supplemental funding, etc). The process will be undertaken in two phases:

- Phase 1: Request for Qualifications and Statement of Interest. (RFQ/I).
- Phase 2: Request for Proposals (RFP)

The District authorization for Phase 3 will depend upon on the results of Phase 2 Solicitation of Offers.

### **Phase 3: Selection Process (timeframe to be determined)**

#### **Task 1: Exclusive Negotiations**

PPV will assist in preparing documents for entering exclusive negotiations with the preferred offer for the purpose of negotiating and documenting the purchase/donation agreements required to secure the real estate assets.

PPV will manage negotiations and discussions with the selected offeror to document all conditions of sale, partnership or other arrangement as proposed. This effort will require legal services with specific real estate experience in the college property acquisition process. Typically, this results in a detailed term sheet that becomes the basis for the necessary legal purchase & sale documentation.

By entering into exclusive negotiations, the District and offeror, commit to entering binding agreements that provide the District with durable fee title and/or development rights.

#### Task 2: CEQA process (optional)

Based on recent CEQA Tara Case law, it may be necessary to perform environmental impact analysis and certification prior to acquisition of new property. This case law is currently evolving, and will be carefully monitored to enable the District to pursue the most expeditious course.

The District authorization for Phase 4 will depend upon on the results of Phase 3 Selection Process.

### **Phase 4: Transaction Management: Purchase Agreement to Close of Escrow (timeframe to be determined)**

PPV will serve as the District's program manager and owner's representative to manage day-to-day activities and support District staff to negotiate and document the necessary legal agreements related to property acquisition.

#### Performance of Due Diligence

PPV will assist with services necessary to comply with the due diligence to evaluate the suitability and feasibility of the property for community college use.

#### Chancellor's Office and CPEC Approval Process

PPV, working with the District staff and consultants, would assist in preparation of the formal Letter of Intent to acquire property for new campus and/or centers consistent with Chancellor's Office guidelines as set forth in Part E of the Facilities Planning Manual, Chapter 10, Site Acquisition for New College and Center Development. This application sets forth the rationale for the proposed acquisition and includes at a minimum the following information:

- Location of the proposed campus/center(s)
- Preliminary five year enrollment projections
- Five year capital construction plan
- Prioritization of proposed campuses
- Time schedule

- Ten year capital outlay budget
- Trustee resolution
- Area maps

## **Fee Schedule**

### **Hourly fees**

College will pay for the services of PPV representatives at the hourly rates as set forth below:

- Principals \$190/hr.
- Senior Associates \$150/hr.
- Associates \$100-120/hr.
- Technician/Clerical \$40-60/hr.

PPV hourly rates may be increased at the first anniversary of this agreement, but in no case will the increase exceed 5% of the current rate.

Approved subcontractors will be invoiced at cost.

PPV will bill college for any fees provided for in this Agreement and incurred during a particular month at the end of each such month.

November, 2010

**Attachment B: Addendum to Services Agreement**

Delete Para 6 on page 1 of 5 and substitute the following Revised Para 6:

6. Hold Harmless and Indemnification: To the fullest extent permitted by law, and in proportion to its liability, 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, it's officers, agents, employees or servants, resulting from the 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 will full 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 of the California Civil Code.

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

The provisions of this indemnification clause shall apply also to the District as indemnitor of the Contractor. Attorney's fees and costs incurred by either party to this Agreement must be reasonable and incurred in good faith.