

Board of Trustees Agenda Item

Board Meeting Date: 3/5/12

Title of Item: Celebrity Forum Contract Approval

Background and Analysis:

The Celebrity Forum Speaker Series has been a part of Foothill College for 44 years. The series is an important community event and draws thousands of people each year to the Flint Center. From its founding in 1968, the series has been completely self-supporting and has never used District or college funds for its operation, being financed solely through ticket sales. The series has always been a financial success for the District and has contributed valuable discretionary dollars to the colleges to support their strained budgets.

The Foothill College Celebrity Forum has secured December 5, 6, 7, 2012 for lectures by Bill Clinton through his representative at The Harry Walker Agency. The agreed upon fee for the three appearances is \$528,000.00. The fee is inclusive of all travel expenses. Half of this fee will be used as a deposit to lock in President Clinton's appearances and is due immediately. The remaining half will be due before his actual appearances in December.

This item is being submitted to the board for contract approval.

Recommendation: President Judy Miner recommends approval of the contract with The Harry Walker Agency

Submitted by:	Judy Miner
Additional contact names:	Dick Henning, Shirley Treanor
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 23rd day of January, 2012 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 \$81,000 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 The Harry Walker Agency Inc

Address 355 Lexington Avenue 21st Floor City New York Zip 10017

Business Phone (646)227-4900 Fax No _____ Home _____

Social Security Number _____ *Fed. Tax I.D. Number 13-3305553

*CONTRACTOR MUST PROVIDE W-9

Business License Number _____

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 Administrative Procedure 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 \$81,000) 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):

Celebrity Forum Guest Speaker: Bill Clinton - December 5, 6, 7, 2012.

B. Contractor Fee for Services: \$ 525,000.00

(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:
\$ 3,000.00

TOTAL COST OF THIS INDEPENDENT CONTRACT WILL NOT EXCEED \$ 528,000.00
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 1/23/2012 Contract Ending Date 6/30/2013

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:

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.

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. 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 combined single limit 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 combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable;
 4. Professional Liability insurance when applicable, 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.
- 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. Contractor shall not commence work under this Agreement until required insurance has been obtained.
- 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 3 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.

Arlene Goodberg obo 1/25/12
Contractor Date
The Harry Walker Agency Inc.

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.

Richard Hanning
Authorized College/District Requestor/Budgeter

Jan. 28, 2012
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.]