

Board of Trustees Agenda Item

Board Meeting Date: October 1, 2012

Title of Item: Agreement for Design Professional Services with Lionakis Architects:
Demolition Services for FHDA Educational Center. (\$249,075)

Background and Analysis:

In January, 2012, the architectural firm of Lionakis was selected to provide planning, design and construction administration services for the Foothill – De Anza Educational Center at the former Onizuka Air Force Station, Measure C project #801.

An initial contract with Lionakis authorized them to proceed with pre-design services to gather and review background documents, to validate early project programming, and to generally become familiar with this complex project. Lionakis' full scope of services will be included in multiple agreements as the project progresses.

This agreement provides for Demolition Design Services. The scope of services includes demolition planning, preparation of contract documents for demolition, services during bidding and construction administration, as required for removal of existing buildings and site improvements at the former Onizuka Air Force Station, for a fee not to exceed \$249,075. At this time the estimated cost for demolition is approximately \$5,000,000.

Recommendation: Executive Director of Facilities, Operations and Construction Management Charles Allen recommends that the Board approve the Agreement for Professional Services with Lionakis

Submitted by:	Charles Allen x6150
Additional contact names:	Art Heinrich x6295
Is backup provided?	Yes

3/25/08

Foothill-DeAnza Community College District

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES Less than \$350,000
(short form)**

This agreement shall be used for professional services when the scope of services includes *pre-design, programming, special and conceptual studies, planning, and assessment work*. Pursuant to Civil Code section 2782.8 a design professional is defined as an architect, landscape architect, engineer, or land surveyor.

This Agreement entered this 2nd day of October, 2012, by and between the Foothill-De Anza Community College District, a community college district of the State of California, hereinafter called "District" and LIONAKIS hereinafter called "Design Professional."

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 contractors to perform sundry services for the District, with or without the furnishing of material; and

WHEREAS, it is necessary and desirable that a Design Professional 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 Design Professional. In consideration of the payments hereinafter set forth, Design Professional 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. Design Professional shall perform all the services described in Exhibit A for the sum not to exceed \$ 249,075.00.
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 Design Professional in the manner specified in Exhibit "A".
3. Relationship of the Parties. It is understood that this is an Agreement by and between 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 Design Professional.
4. Non-Assignability. Design Professional 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 October 2, 2012 through December 1, 2013 as specified in Exhibit "A". The District may terminate this contract at any time for any reason by providing 30 days notice to Design Professional. Termination to be effective on the date specified in the notice. In the event of termination under this paragraph, Design Professional shall be paid for all work provided to the date of termination.

*****Page 1 of 6

PROJECT # 801 DESIGN FIRM LIONAKIS

BRIEF DESCRIPTION OF TYPE OF SERVICE Educational Center Demolition Design Services

Foothill-DeAnza Community College District

6. Design Professional's Indemnity of District. To the fullest extent permitted by law, except to the extent caused in whole or in part by indemnitee, the Design Professional shall indemnify, defend and hold harmless the District and its employees, officers, Trustees, agents and representatives from any and all claims, demands, losses, responsibilities or liabilities for: (a) injury or death of Design Professional's or the Design Professional's Design Consultants' employees arising out of this Agreement; (b) injury or death of persons or damage to property, including the removal or replacement of any in-place work during or after Project Completion; or (c) other costs or charges, to the extent the liabilities, damages and losses are caused by willful misconduct, recklessness, or negligence, including concurrent negligence, of the Design Professional or Consultant of the Design Professional. The foregoing shall include without limitation, attorneys fees and costs incurred by the District, and shall survive the termination of this Agreement until any such claim, demand, loss, responsibility or liability covered by the provisions hereof is barred by the applicable Statute of Limitations.

This indemnity agreement shall not be construed to limit the enforceability of other contractual provisions between the District and the Design Professional requiring cooperation with the public agency regarding any claim by a construction Contractor.

It is the intent of the District that this indemnity agreement shall be in accordance with California Civil Code Section 2782.8 and shall be a Type II (comparative/proportionate) agreement and not a Type I agreement, which would otherwise shift all indemnity obligations to the Design Professional.

Design Professional Reimbursement of the District's Attorneys Fees and Indemnity Payment. The Design Professional shall immediately tender demand(s) for indemnity made by the District to its insurance carrier for a determination within 30 days from the date of tender. The insurance company shall be required to agree to a rough approximation of potential liability of the Design Professional, and agree to reimburse the District for its defense fees incurred in proportion to that approximation. At the conclusion of the underlying matter or claim for which indemnity is sought (through voluntary settlement, arbitration award, or court judgment), the Design Professional shall within 30 days reimburse the District for all settlement monies paid. Should the Design Professional and/or its insurance company fail or refuse to proportionally reimburse the District for: (a) its attorneys fees; or (b) indemnity paid, then either matter shall be submitted to binding arbitration for determination within 60 days, after failure or refusal to make payment to the District.

Design Professional Bound to Arbitration by Other Claims. In the event of any claim, arbitration demand filed on behalf of the prime Design Professional or any Design Professional sub-consultants in which design deficiencies or errors, or Design Professional contract administration deficiencies are alleged as a basis for said claim, Design Professional agrees to participate as a party in any such arbitration or state court litigation, and shall further be bound as a party to any arbitration set forth or required under California Public Contract Code § 20104, et seq.

District's Indemnity of Design Professional. The District shall indemnify and hold harmless the Design Professional, its employees and consultants from all claims arising of bodily injury (including death) and physical damage (other than to the Project itself and property covered by insurance), but only to the extent that they arise out of the willful acts, omissions or other conduct of the District, and/or the sole negligence of the District.

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.

*****Page 2 of 6

PROJECT # 801 DESIGN FIRM LIONAKIS

BRIEF DESCRIPTION OF TYPE OF SERVICE Educational Center Demolition Design Services

Foothill-DeAnza Community College District

B. Employment. Design Professional 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. Design Professional'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 Design Professional 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 Design Professional 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, provided that both parties sign the renewal, insurance coverage pursuant to paragraph 7 is still in effect, and the cost of the terms combined will not exceed (a) \$350,000.00.

12. **Expenditure Of Public Funds.** Design Professional 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 Design Professional may from time to time gain incidental access to confidential information and records including student record information as defined by 20 USC section 1232(g). The parties agree that such incidental access is not a provision or conveyance or disclosure to Design Professional of student record information in violation of section 1232(g) or of any similar state law. Design Professional 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.

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.

*****Page 3 of 6

PROJECT # 801 DESIGN FIRM LIONAKIS

BREIF DESCRIPTION OF TYPE OF SERVICE Educational Center Demolition Design Services

Foothill-DeAnza Community College District

Authorized Design Professional Signature

Date

Print Name

Lionkis

Design Professional's Company Name

Design Professional's Tax I.D. Number

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

By _____

Authorized signature and Date

Charles Allen, Executive Director

Title

12345 El Monte Road

Address

Los Altos Hills, California 94022

October 1, 2012

Date Approved By Board of Trustees

(Board approval is required prior to commencement of services if total cost exceeds \$20,000.00.)

*****Page 4 of 6

PROJECT # 801 DESIGN FIRM LIONAKIS

BREIF DESCRIPTION OF TYPE OF SERVICE Educational Center Demolition Design Services

Foothill-DeAnza Community College District

EXHIBIT "A"

Contract between Foothill-DeAnza Community College District and LIONAKIS

_____, hereinafter called "Design Professional".

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

See attached Exhibit "B"

- 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 Exhibit "B"

Send invoices to:
Attn: Susan Moore
GilbaneMAAS
12345 El Monte Rd.
Los Altos Hills, CA 94022

In any event, the total payment for services of Design Professional shall not exceed \$249,075.00 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 1, 2013.

*****Page 5 of 6

PROJECT # 801 DESIGN FIRM LIONAKIS

BREIF DESCRIPTION OF TYPE OF SERVICE Educational Center Demolition Design Services

Agreement for Design Professional Services

Rev. 10/01/08

Foothill-DeAnza Community College District

Exhibit "T" 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 ~~\$50,000~~ each claim.

\$200,000 APL

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.

*****Page 6 of 6

PROJECT # 801 DESIGN FIRM LIONAKIS

BREIF DESCRIPTION OF TYPE OF SERVICE Educational Center Demolition Design Services

EXHIBIT “B” TO AGREEMENT FOR DESIGN PROFESSIONAL SERVICES SCOPE OF SERVICES & PAYMENT

GENERAL

This Agreement provides for Demolition Design Services by the Design Professional for preparation of demolition documents and related bidding and construction administration services.

The Design Professional shall be hereinafter referred to as “Lionakis.”

DESCRIPTION OF PROJECT

The District will be taking ownership of a portion of the former Onizuka Air Station located in Sunnyvale CA. The District intends on constructing a new Educational Center on this site to replace the existing Center located at the Cubberley Community Center on Middlefield Rd. in Palo Alto, CA. The existing site is covered with military grade buildings, parking garages and a power plant. These existing buildings extend beyond the proposed boundaries for the District’s parcel and will require coordination with the adjacent property owners. Few drawings have been found to provide technical information to salvage the buildings. The intent is to remove the buildings down to below grade, including most utilities, and to prepare the site for new construction. One parking structure may remain, pending an analysis to be performed under a separate agreement.

The District has secured the services of a contractor (Contractor) under a Lease-Leaseback contracting method to perform preconstruction services related to demolition, and to complete the actual work of the demolition.

SERVICES

Lionakis shall provide the following services:

Demolition Research

1. Tour the site of existing buildings with the District, College representatives and the Contractor to determine what items should be salvaged for reuse and the best methods for removal and storage of those materials.
2. Arrange to photograph the wall murals in the different buildings that may have significance to the College and future plans within the new buildings.
3. Meet with the City of Sunnyvale and the U.S. Veterans Administration and the District to discuss and settle on the extent of demolition and lines of demarcation for those buildings that extend over the new property lines. Discuss use of both sites and methods of reimbursement for their portion of the work.
4. Meet with the City to determine specific requirements for demolition and interface with public space.
5. Meet with District’s consultant on hazardous materials and coordinate their demolition requirements with the general demolition requirements.
6. Meet and discuss the requirements of the District’s geotechnical engineer for preparation of the site for future construction.
7. After meeting with the District, College and Contractor, determine what the specific requirements will be for salvage and recycling of other existing materials, and determine the specific goals for sustainability for this project to determine if the demolition can support or enhance any of these goals.
8. Meet with the Lease-Leaseback Contractor on best methods for demolition, schedule and phasing as needed.
9. Research the location of all utilities and meet with the appropriate utility provider to determine best location and method for shutting down the service and removing unwanted lines.

Demolition Drawings

1. Prepare demolition drawings and specifications that delineate the scope of demolition, directions for salvage, temporary facilities and recycling expectations. Confirm contents of drawings with direct site observations.
2. Prepare construction documents in compliance with applicable laws, codes, rules, regulations, ordinances and standards applicable to the project.
3. Coordinate with utility companies the methods for shutting down utilities and capping or removing service lines.
4. Prepare a Stormwater Pollution Prevention Plan covering the limits of the demolition plan and submit it to the state for inclusion in the state SWPPP database.
5. Prepare a Stormwater Management Plan for the land disturbed by this plan.
6. Prepare a progress set of demolition documents, at a stage agreed upon between Lionakis, the Contractor and the District, for review by the Contractor and the District.
7. Meet with the District and the Contractor to review the progress demolition documents. Track all comments received from the Contractor, the District, or others, record resolution of all comments, and make revisions as necessary to respond to the comments.
8. Submit final demolition documents to the Contractor and District for a final review before bidding, and make revisions as necessary, respond to comments, and make revisions approved by the District.
9. Review the Construction Provisions, Supplemental Provisions, Division 1 specifications, and other bidding documents provided by the District, prepare the demolition documents to coordinate with those documents, and include the documents in a coordinated document set provided to the Contractor for bidding.
10. Incorporate hazardous materials documents provided by the District into the bid set. Lionakis shall not be responsible for the technical contents of such documents provided by the District.
11. Submit final demolition documents to the adjacent property owners (City of Sunnyvale and the US Veterans Administration) to confirm that they approve with the scope identified.
12. Submittal of Drawings to the Division of the State Architect is not required for demolition of buildings. Structural pad preparation is subject to DSA review. Lionakis shall give direction to the Contractor that comply with DSA requirements that can be confirmed in the new construction phase of the work.

Bidding Support

1. Assist the District and the Contractor during the bidding phase by responding to questions from the bidders, preparing any addenda needed, attending a pre-bid walk through and, if requested by the District, reviewing subcontractor bids with the District and Contractor.

Demolition Support

1. During the salvage, recycling and demolition of the existing facilities respond to Requests for Information and questions from the Contractor and its subcontractors.
2. Review product submittals from the Contractor and its subcontractors.
3. Visit the site at regular intervals (every two weeks on average) to review progress of the work.
4. Review pay requests from the Contractor on a monthly basis.
5. Respond to and prepare any change orders for the district.
6. The duration of demolition is anticipated to be 4.5 to 5 months.

Additional Services

1. Preparation of Record Drawings from As-built drawings provided by the Contractor, or additional survey information by Lionakis' civil engineer may be provided by Lionakis as an additional service if authorized by the District.

2. Attendance of meetings with the community for engagement or endorsement of the project, above those listed above, may be authorized by the District as an additional service. Community members may be invited to attend one or more of the meetings described above.
3. Services of a photographer to document existing murals will be authorized as an additional service, pending resolution of the required scope of services.

CLARIFICATIONS

4. The proposed Consultants for this scope of work will be as follows;

a. Architecture	Lionakis
b. Structural Engineering	Lionakis
c. Civil Engineering	BKF
d. Electrical Engineering	Integral Group
5. All buildings and support facilities other than the North Parking Structure (Building 1031) are intended to be demolished and removed from the site. If after analysis by the parking consultant the parking garage is determined to be not salvageable this building will also be included in the demolition plan.
6. There are existing murals painted on the walls in several different buildings on the site. Select a photographer and coordinate the work of the photographer to document existing painted murals at a very high quality, allowing reproduction in the new facility. The photographer's services will be completed as an additional service to this Agreement.
7. Services for developing the strategies for LEED certification will be provided under a separate agreement; however services of tracking and oversight of the LEED points that pertain to this demolition activities is included in this scope of work.
8. Lionakis will make available to the District and Contractor any photographs taken of the project in design or construction. Special trips for the express purpose of photographing are not included.
9. Following is the list of meetings with the College/District/Contractor that are included in the base fee:

a. Demolition Research	Up to Seven (7) meetings
b. Demolition Drawings	Up to Five (5) meetings,
c. Demolition Bidding	Up to two (2) meetings
d. Demolition Support	Up to Eight (8) meetings
e. Governing Board	one (1) meeting

DISTRICT RESPONSIBILITIES

1. A hazardous material survey and remediation plan, and hazardous material abatement documents will be provided by a separate consultant to the District.
2. Surveys and legal description, geotechnical investigations and report, construction inspection and testing, and field engineering will be provided by the District or its Contractor.

DELIVERABLES (INCLUSIVE OF ALL CONSULTANTS)

Demolition Documentation

1. Prepare meeting minutes for all meetings held in the design process and distribute the minutes to all attending parties through email distribution.
2. Provide the District with copies of any report generated as a result of research.

3. Provide the Contractor and the District each with one complete set of progress review documents and completed demolition documents suitable for bidding: One printed copy and one electronic copy in .pdf format in a medium agreed upon between the parties.

Bid and Award

1. Provide original printed and .pdf format copies of all addenda prepared for this phase of the project.

Construction Administration

1. Provide printed and .pdf format copies of documents prepared by Lionakis, which may include copies of RFIs and change orders.

SCHEDULE

1. A progress set of the demolition documents shall be complete within 120 calendar days from the notice to proceed, for review by the District and Contractor.
2. The District and Contractor will return review comments within 21 calendar days of receipt of the progress set of documents.
3. Completed demolition documents suitable for bidding shall be complete within 21 calendar days of receipt of documents from the District and the Contractor, or within a duration agreed between the District and the Architect.

COMPENSATION

The fee for the professional services described above shall be a fixed fee. An allowance for direct expenses, as described below, has been included in that fixed fee. An allowance for reimbursable costs, to be paid on a time-and-expenses basis is included in the total fee, as described below.

Demolition Design Services: \$244,075.00 fixed fee, including direct expenses

Reimbursable Expenses: \$ 5,000.00 time-and-expenses, not to exceed

TOTAL CONTRACT AMOUNT: \$249,075.00 not to exceed

1. Direct Expenses: Included in the fixed fee for Demolition Design Services are miscellaneous costs incurred in the interest of the project as direct expenses such as: local mileage and travel expenses, reproduction of documents for Lionakis' use, telephone and delivery charges.
2. Reimbursable Expenses: These charges include expenses incurred by Lionakis which are directly related to the project such as: document reproductions, drawings and plots for owner, agency or Contractor's use, and expenses for travel beyond 100 miles at the request of the District. Reimbursable Expenses may be billed at 1.10 times actual cost to Lionakis.

END OF EXHIBIT “B”