

FORT BEND COUNTY FY 2009
COMMISSIONERS COURT AGENDA REQUEST FORM

Return Completed Form by E-Mail to: Agenda Coordinator, County Judge's Office

| | | | |
|--------------------|------------|---------------|-----------------|
| Date Submitted: | 09/15/2009 | Submitted By: | Mary Reveles |
| Court Agenda Date: | 09/22/2009 | Department: | County Attorney |
| | | Phone Number: | 341-4554 |

SUMMARY OF ITEM:

Precinct 2 Commissioner:

Take all appropriate action on the Agreement between Fort Bend County and Architect for Life for professional Leadership in Energy and Environmental Design (LEED) Third Party Administrator and Commissioning Consulting services for the proposed senior center located Precinct 2.

RENEWAL AGREEMENT/APPOINTMENT YES NO

REVIEWED BY COUNTY ATTORNEY'S OFFICE: YES NO

List Supporting Documents Attached: Agreement

| | | | | |
|---------------------------------------|---------------------------|------------------------------|---|------------------------------|
| FINANCIAL SUMMARY: | BUDGETED ITEM: | YES <input type="checkbox"/> | NO <input type="checkbox"/> | N/A <input type="checkbox"/> |
| FUNDNG SOURCE: | Accounting Unit: | Account Number: | COUNTY JUDGE RECEIVED SEP 15 2009 | |
| | Activity (If Applicable): | | | |
| DESCRIPTION OF LAWSOM ACCOUNT: | | | | |

Instructions to submit Agenda Request Form:

- Completely fill out agenda form: incomplete forms will not be processed.
- Agenda Request Forms should be submitted by e-mail, fax, or inter-office mail, and all back-up information must be provided by Wednesday at 2:00 p.m. to all those listed below.
- All original back-up must be received in the County Judge's Office by 2:00 p.m. on Wednesday.

DISTRIBUTION:

Original Form Submitted with back up to County Judge's Office (✓ when completed)

If by E-Mail to ospindon@co.fort-bend.tx.us If by Fax to (281) 341-8609

Distribute copies with back-up to all listed below. If by fax, send to numbers below:

| | |
|---|---|
| <input checked="" type="checkbox"/> Auditor (281-341-3774) | <input checked="" type="checkbox"/> Comm. Pct. 1 (281-342-0587) |
| <input checked="" type="checkbox"/> Budget Officer (281-344-3954) | <input checked="" type="checkbox"/> Comm. Pct. 2 (281-403-8009) |
| <input type="checkbox"/> Facilities/Planning (281-633-7022) | <input checked="" type="checkbox"/> Comm. Pct. 3 (281-242-9060) |
| <input type="checkbox"/> Purchasing Agent (281-341-8642) | <input checked="" type="checkbox"/> Comm. Pct. 4 (281-980-9077) |
| <input type="checkbox"/> Road & Bridge | <input checked="" type="checkbox"/> County Clerk (281-341-8697) |
| | <input checked="" type="checkbox"/> County Atty (281-341-4557) |

RECOMMENDATION / ACTION REQUESTED:

Special Handling Requested (specify): 10-1-09 2 orig. ret. to Mary at CO. Attorney

- Consultant shall be entitled to rely on approvals received from County to complete the LEED Certification Services.
- 2.05 Consultant shall conduct a predesign workshop with County and County's contractors/consultants at which the participants will review the LEED Green Building Rating System. Consultant shall provide the appropriate Green Building Rating System Project Checklist as a template for establishing green building goals, identifying potential LEED Points, examine strategies for implementation, assess the impact on County's program and budget, and determine the LEED points to be targeted during this workshop.
 - 2.06 Consultant shall prepare a LEED Certification Plan based on the LEED points targeted. The LEED Certification Plan shall describe the LEED certification process and may contain a description of the green building goals established, LEED points targeted, implementation strategies selected, list of participants and their roles and responsibilities, description as to how the plan is to be implemented, certification schedule, specific details about the design review, list of systems and components to be certified, and certification documentation required.
 - 2.07 Consultant shall revise the LEED Certification Plan as the design and construction of the Project progresses to reflect any changes approved by County.
 - 2.08 Consultant shall organize and manage the LEED design documentation and certification process.
 - 2.09 Consultant shall review the LEED Certification process and regularly report progress to County.
 - 2.10 Consultant shall provide the services of LEED accredited professionals necessary for the certification of the Project, subject to written approval by County.
 - 2.11 Consultant shall register the Project with the USGBC. Registration fees charged by the USGBC shall be a reimbursable expense.
 - 2.12 Consultant shall prepare submittals for Credit Rulings from the USGBC for interpretation of credit language, principles, or implementation strategies. Credit Ruling fees charged by the USGBC shall be a reimbursable expense.
 - 2.13 Consultant shall submit a LEED Certification Application for the Project to the USGBC, including required calculations and documentation for each LEED credit claimed, in accordance with the LEED Certification Plan.
 - 2.14 Consultant shall prepare responses and submit additional documents required by comments or questions received from the USGBC after review of the original submission for certification.
 - 2.15 Consultant shall provide specifications that incorporate LEED requirements for inclusion in the Contract Documents. The Contract Documents shall define the contractor's responsibilities and documentation requirements related to LEED certification, including Construction Waste Management, Construction Indoor Air Quality, and obtaining materials credits.
 - 2.16 Consultant shall conduct a pre-bid meeting to review the differences between current standard construction practices and LEED principles, procedures and requirements.
 - 2.17 Consultant shall prepare responses to questions from prospective bidders and provide clarifications and interpretations of the bidding documents related to LEED certification in the form of addenda.
 - 2.18 Consultant shall consider requests for substitutions, if permitted by the bidding documents, and shall prepare addenda identifying approved substitutions related to LEED certification.
 - 2.19 Consultant shall assist County in bid validation or proposal evaluation and determination of the successful bidder or proposal, if any, related to LEED certification.

- 2.20 Consultant shall review requests by County's contractor for additional information about the Contract Documents related to LEED certification. A request for additional information about the Contract Documents shall be in a form prepared or approved by Consultant and shall include a detailed written statement that indicates the specific Drawings and Specifications in need of clarification and the nature of the clarification requested.
- 2.21 If deemed appropriate by Consultant, Consultant shall, on County's behalf, prepare, reproduce and distribute supplemental Drawings, Specifications and information in response to requests for information by the Contractor related to LEED certification.
- 2.22 Consultant shall visit the Project site at regular intervals appropriate to the stage of contractor's operations, or as otherwise agreed by County and Consultant in the Project work related to LEED certification. However, Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Project. Consultant shall not have control over, charge of, or be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Project, since these are solely County's contractor's rights and responsibilities under the Contract Documents.
- 2.23 Consultant shall at all times have access to the construction site and the Project whenever it is in preparation or progress.
- 2.24 Consultant shall review and approve or take other appropriate action upon the County's contractor's submittals such as Shop Drawings, Product data and Samples, but only for the limited purpose of checking for conformance with the requirements for LEED certification. Consultant's actions shall be taken with such reasonable promptness as to cause no delay in the Project or in the activities of County or County's contractors/consultants, while allowing sufficient time in Consultant's professional judgment to permit adequate review. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are County's contractor's responsibility. Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Consultant, of any construction means, methods, techniques, sequences or procedures. Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 2.25 Consultant shall timely review requests by County or County's contractors/consultants for changes in the Project related to LEED certification. If Consultant determines that requested changes in the Project are not materially different from the requirements for LEED certification, Consultant shall recommend an order for a minor change in the Project be issued or recommend to the County that the requested change be denied.
- 2.26 If Consultant determines that implementation of the requested changes would result in a material change to LEED certification, Consultant shall notify County, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished to the County's contractor, if any, Consultant shall make a recommendation to County regarding the implementation of the requested changes.
- 2.27 Consultant shall prepare a Final LEED Certification Report documenting the LEED rating the Project achieved, including the LEED Certification Plan, LEED Certification Documentation submitted, LEED Certification Reviews received from the USGBC, together with specific LEED points that the Project is recognized as having received, all clarifications or interpretations of credits, and any re-certification requirements.

**SECTION III
CONSULTANT'S COMPENSATION**

- 3.01 For and in consideration of the services rendered by Consultant, and subject to the limit of appropriation under Section VII, County shall pay to Consultant an amount not to exceed \$30,000.00.
- 3.02 Consultant shall submit invoices to County and County shall pay each invoice within thirty (30) days after County Project Manager's written approval provided however, that the approval or payment of any invoice shall not be considered to be conclusive evidence of performance by Consultant to the point indicated by such invoice or of receipt or acceptance by County of the services covered by such invoice.

**SECTION IV
TERM & TERMINATION**

- 4.01 This Agreement shall commence upon execution of County and shall terminate upon Consultant's submission of LEED Certification Plan to the U.S. Green Building Council.
- 4.02 County may terminate this Agreement at any time by providing ten (10) days written notice to Consultant.
- 4.03 Upon receipt of such notice, Consultant shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.
- 4.04 Within thirty (30) days after receipt of notice of termination, Consultant shall submit a statement, showing in detail the services performed under this Agreement to the date of termination.
- 4.05 County shall then pay Consultant that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of charges as have been previously made.
- 4.06 Copies of all completed or partially completed designs, drawings, electronic data files and specifications prepared under this Agreement shall be delivered to County when and if this Agreement is terminated in the manner and for the purposes provided in this Agreement.

**SECTION V
WAIVER OF WORKERS COMPENSATION INSURANCE**

Consultant acknowledges and agrees that County is under no obligation to provide Workers Compensation Insurance and Consultant agrees to waive any and all future claims to any injury claimed and/or sustained while providing the services described in this Agreement.

**SECTION VI
NOTICE**

- 6.01 Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt

requested, in a United States Post Office, addressed to County or Consultant at the addresses set forth below.

6.02 If mailed, any notice or communication shall be deemed to be received three days after the date of deposit in the United States Mail.

6.03 Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

A. If to Consultant:

Architect for Life
Attn: Lolalisa De Carlo King
2450 Louisiana Street, Suite 400-233
Houston, Texas 77006

B. If to County notice must be sent to both the Fort Bend County Purchasing Agent and County Project Manager:

Fort Bend County Purchasing Department
Gilbert D. Jalomo, Jr., CPPB
4520 Reading Road, Suite A
Rosenberg TX 77471

Facilities Management and Planning Department
Don Brady, Director
1402 Band Road, Suite 100
Rosenberg, TX 77471

6.04 Either party may designate a different address by giving the other party ten (10) days written notice.

SECTION VII LIMIT OF APPROPRIATION

7.01 Prior to the execution of this Agreement, Consultant has been advised by County, and Consultant clearly understands and agrees, such understanding and agreement being of the absolute essence to this contract, that County shall have available the total maximum sum of \$30,000.00, specifically allocated to fully discharge any and all liabilities which may be incurred by County.

7.02 Consultant does further understand and agree, said understanding and agreement also being of the absolute essence of this contract, that the total maximum compensation that Consultant may become entitled to hereunder and the total maximum sum that County shall become liable to pay to Consultant hereunder shall not under any conditions, circumstances or interpretations thereof exceed the sum of \$30,000.00.

SECTION VIII SUCCESSORS AND ASSIGNS

8.01 County and Consultant bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors,

- administrators and assigns of such other party, in respect to all covenants of this Agreement.
- 8.02 Neither County nor Consultant shall assign, sublet or transfer its or his interest in this Agreement without the prior written consent of the other.
- 8.03 Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public and/or governmental body that may be a party hereto.

SECTION IX PUBLIC CONTACT

- 9.01 Contact with the any media outlet, citizens of Fort Bend County or governmental agencies shall be the sole responsibility of County.
- 9.02 Under no circumstances, whatsoever, shall Consultant release any material or information developed or received in the performance of its services hereunder without the express written permission of County, except where required to do so by law, save and except documents and reports submitted to the USGBC required for County's LEED certification.

SECTION X COMPLIANCE AND STANDARDS

County acknowledges and agrees that Consultant's responsibilities under this Agreement consist primarily of advising and consulting with County in connection with the Services. County agrees that Consultant shall have no liability for or with respect to professional services rendered by others, plans, designs or specifications provided by others, construction work performed by others, or materials furnished by others (including without limitation any Consultant, engineer, construction manager or contractor) in connection with Consultant's responsibilities under this Agreement. However, Consultant has certain review functions related to the Project and remains liable for such review functions. Consultant is not providing legal assistance to County in connection with such negotiations or otherwise. Consultant shall use its best efforts to assist County in identifying and promoting high performance green buildings relative to the Project. Consultant is responsible for, and is liable for its performance in accordance with this Agreement and of those Services listed in Exhibit A.

SECTION XI OWNERSHIP OF DOCUMENTS

County shall be the absolute and unqualified owner of all drawings, preliminary layouts, record drawings, sketches, reports and other documents prepared pursuant to this Agreement by Consultant. Any documents and/or applications submitted by Consultant on behalf of County shall be the property of County and Consultant shall have no claim of ownership during the term or this Agreement or upon termination of this Agreement.

SECTION XII
INDEMNIFICATION

- 12.01 CONSULTANT SHALL SAVE HARMLESS COUNTY FROM AND AGAINST ALL CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF, ITS AGENTS, CONTRACTORS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT OR ANY OF CONSULTANT'S AGENTS, SERVANTS OR EMPLOYEES.
- 12.02 CONSULTANT SHALL ALSO SAVE HARMLESS COUNTY FROM AND AGAINST ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES WHICH MIGHT BE INCURRED BY COUNTY, IN LITIGATION OR OTHERWISE RESISTING SAID CLAIMS OR LIABILITIES THAT MIGHT BE IMPOSED ON COUNTY AS THE RESULT OF SUCH ACTIVITIES BY CONSULTANT, ITS AGENTS, CONTRACTORS OR EMPLOYEES.

SECTION XIII
MODIFICATIONS

This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent written modification signed by both parties hereto.

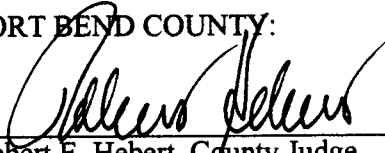
SECTION XIV
MISCELLANEOUS

- 14.01 By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.
- 14.02 Nothing in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.
- 14.03 Consultant agrees and understands that: by law, the Fort Bend County Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients; the Fort Bend County Attorney's Office may not advise or approve a contract or other legal document on behalf of any other party not its client; the Fort Bend County Attorney's Office has reviewed this document solely from the legal perspective of its client; the approval of this document by the Fort Bend County Attorneys Office was offered solely to benefit its client; Consultant and other parties should not rely on this approval and should seek review and approval by their own respective legal counsel.
- 14.04 If there is a conflict between this Agreement and Exhibit A, the provisions of this Agreement shall prevail.

EXECUTION PAGE TO FOLLOW

SECTION XVI
EXECUTION

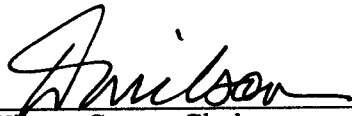
FORT BEND COUNTY:



Robert E. Hebert, County Judge

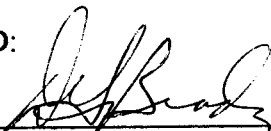
9-22-09
Date

Attest:



Dianne Wilson, County Clerk


APPROVED:

By: 

Don Brady, County Facilities
Management & Planning Director

9-22-09
Date

CONSULTANT:
ARCHITECT FOR LIFE

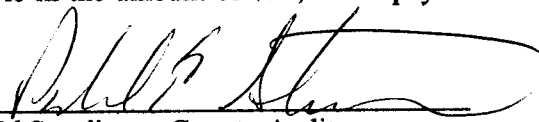


Lolalisa DeCarlo King,
MBA, LEED-AP

Sept. 11, 2009
Date

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$30,000 to pay the obligation of Fort Bend County under this Agreement.



Ed Sturdivant, County Auditor

Exhibit A: Proposal from Consultant dated August 18, 2009

I:\Mary\Construction\Consultant for Life.PSA.Pct 2 Senior Center.3882(08242009)

Exhibit A



PROPOSAL August 18, 2009

Architect for Life will serve as the LEED® Consultant for New Construction and Major Renovations ("LEED NC") Certification and fundamental commissioning services for a Senior Center located on a 16-acre site in Houston, TX. The goal of these professional consulting services is to provide Fort Bend County with practical recommendations for how the County can upgrade and improve the overall performance of the building in question in conformity with the requirements of the LEED NC 3.0 standards. **Architect for Life** will use the LEED NC 3.0 framework to offer recommendations about how Fort Bend County can improve facility performance in the following six categories:

Sustainable Sites

Water Efficiency

Energy and Atmosphere

Materials and Resources

Indoor Environmental Quality

Innovation in Operations

The scope of services for this project includes the following:

1. **Register** the project with the US Green Building Council ("USGBC");
2. **Assess** the LEED credits available for the project, as early as possible;
3. **Delivery** of preliminary specifications outlining the targeted LEED credits;
4. **Perform** a whole building energy simulation analysis needed for LEED;

5. **Coordinate** with the project team to complete the LEED requirements:
6. **Document** compliance with the targeted LEED credits (design & construction):
7. **Submit** the final LEED application to the U.S. Green Building Council.

The Architect for Life analysis utilizes building data including orientation, size, proposed HVAC systems, and process load requirements to quantify the energy performance for the proposed facility.

PAYMENT TERMS

\$ 30,000 including items listed in the scope of services and fundamental commissioning is typically secured with a \$5,000 retainer marking date of hire; followed by monthly billing based on percentage completion with detailed reporting of work performed through the final submittal to the U. S. Green Building Council. Final invoicing will occur the date the final submittal is received by the U. S. Green Building Council.

REIMBURSABLE EXPENSES

Should Fort Bend County decide to appeal a credit for any reason, the direct cost to file the appeal is \$500.00 per credit payable to the U.S. Green Building Council. Architect for Life can file any credit appeal on behalf of Fort Bend County if requested within 30 days of receiving official information from the U.S. Green Building Council. The appeal would be reimbursed as a direct cost incurred to file, if requested. No travel, food, nor beverages will need to be utilized, nor reimbursed on this Project.

CERTAIN ITEMS EXCLUDED

The fee for scope of services does not include the cost of civil design, architectural design, engineering, drawings and specifications nor enhanced commissioning.

TRAVEL

Architect for Life has a Houston address and proposes to coordinate tasks necessary for LEED Certification by face-to-face meetings, electronic communication and cellular services. Travel to the site, travel attendance to required Fort Bend County meetings and to the designer of record's office is included in this proposal fee.

LIABILITY

Architect for Life will perform the services necessary for this project to achieve a LEED rating. However, Architect for Life can only provide assistance for the LEED credits as far as the appropriate measures are taken by the County, contractor, and other project team members during the design and construction of this project. The entire project team including, but not limited to, the County, architect, engineers and any other hired consultant is responsible for the achievement of particular credits necessary for final LEED Certification of this project. In some cases, the County and/or the design project team members must send Architect for Life certain information about the project in order for Architect for Life to fulfill its responsibilities. The final LEED rating is given by the USGBC.

Thank you so very much for allowing Architect for Life to serve Fort Bend County.

Lolalisa DeCarlo King

Lolalisa DeCarlo King, AIA, NCARB, MBA, LEED-AP
Architect for Life
713-419-1351