

Board of Trustees Agenda Item

Board Meeting Date: February 1, 2010

Title of Item:

Agreement for Services – Rice University Connexions contractor

Background and Analysis:

Contractor will port newly opened textbooks onto the Connexions repository and create ancillaries for open textbooks. Contractor is a member of the Community College Open Textbook Collaborative which is a project of the Community College Consortium for Open Educational Resource and funded by a 2-year grant to Foothill-De Anza Community College District by The Hewlett Foundation. The total payment for services of the contractor shall not exceed \$200,000 and will be paid in 1 lump sum.

Recommendation: (specify if information only)

Please approve.

Submitted by:	Judy Baker, Dean (bakerjudy@fhda.edu)
Additional contact names:	Jacky Hood (hoodjackylene@fhda.edu)
Is backup provided?	See Exhibit A

Foothill-DeAnza Community College District

AGREEMENT FOR SERVICES

This Agreement entered this 20 day January of 2010 by and between the Foothill-De Anza Community College District, a community college district of the State of California, hereinafter called "District" and Rice University 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 \$ 200,000.

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 February 1, 2010 through ^{JULY} January 31, 2011 ^{jb} ^{EW} as specified in Exhibit "A". Either party may terminate this contract at any time for any reason by providing 30 days notice to the other Party.

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 actions and claims the resulting directly from the negligence or willful misconduct of Contractor in connection including but not limited to the f (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 for 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, its officers, agents, employees or servant of performance of any work required of contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage attributable to the District's own negligence or willful 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 2778.4 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. Intellectual Property: Any system or documents developed, produced or provided under this contract shall become the joint property of the District and the Contractor. 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 joint property of the District and the Contractor.

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 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 and Contractor. 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.

15. Publications and Presentations. Sponsor acknowledges that Rice, the Principal Investigator and the other Project Team members shall have the right to publish or otherwise publicly disclose at academic and professional conferences and other meetings the results of the Research Project. A draft copy of the proposed publication or public presentation (except for student theses and dissertations) shall be provided to District for its review at least

30 days prior to submission for publication or public presentation. , Sponsor may suggest changes to the proposed publication or public presentation, but the author shall retain final authority;. Notwithstanding anything in this Agreement to the contrary, copyrights in publications, public presentations and other scholarly writings shall be owned by their respective authors.

16. Name and Logo Use. Neither Party shall use the other party's name, trademarks or other logos, or the names of any individuals involved in the Research Project, including, but not limited to, the Principal Investigator and the other Project Team members, in any publication or public presentation without the prior written consent of such other party. The foregoing restriction shall not apply to the inclusion of an acknowledgment of Sponsor's funding of the Research Project in any such publication or public presentation. Notwithstanding the above, each party has the right to post on their websites that an award to Rice has been made and include a short public abstract.

17. DISCLAIMER OF WARRANTIES. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, RICE MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING THE RESULTS OF THE RESEARCH PROJECT OR ANY RELATED INTELLECTUAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, REPRESENTATIONS AND WARRANTIES AS TO NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE.

18. Liability Limitation. Neither Sponsor nor Rice shall be liable for any incidental, consequential, special or other economic damages, such as loss of anticipated business or profits, suffered by the other party in connection with this Agreement, the Research Project or any related Intellectual Property, including, but not limited to, any use or commercialization thereof.

19. Indemnification. Notwithstanding anything in this Agreement to the contrary, Sponsor shall indemnify, hold harmless and defend Rice (including, but not limited to, its trustees, officers, employees, agents and representatives, the Principal Investigator and the other Project Team members) for, from and against any and all demands, claims, causes of action, damages, losses, liabilities, costs and expenses (including, but not limited to, attorney's fees and court costs), related to any property damage or loss, bodily injury or death, directly or indirectly arising as a result of or in connection with Sponsor's use or commercialization of the results of the Research Project or any related Intellectual Property, whether arising at law or in equity, and whether under contract, tort or strict liability principles. Sponsor's defense obligations shall be with attorneys approved by Rice, which approval shall not be unreasonably

20. Power and Authority; Due Authorization; No Conflict; Enforceability; Binding Effect. Each party represents and warrants to the other party that (i) such party has the power and authority to execute, deliver and perform its obligations under this Agreement, (ii) the execution, delivery and performance of this Agreement have been duly authorized by such party and does not and shall not conflict with any agreement or instrument to which it is bound, (iii) this Agreement constitutes the legal, valid and binding obligation of such party, enforceable against it in accordance with its terms, and (iv) this Agreement, and the interests, rights, duties and obligations hereunder, shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns.

21. Force Majeure; Remedies Cumulative. Either party's delayed performance under this Agreement may be temporarily excused without liability, if such delay is a result of causes or conditions beyond that party's control and without that party's fault or negligence (such causes or conditions specifically do not include the financial incapacity to pay); provided, however, that such party must diligently pursue actions to remedy such cause or condition. The rights and remedies provided in this Agreement are cumulative in nature and shall be in addition to any such other rights and remedies available at law and in equity.

22. Resolution of Disputes. In the event of any dispute or disagreement between the parties either in interpreting any provision of this Agreement or about the performance of either party and upon the written request of either party, each of the parties will appoint a designated representative to attempt to resolve such dispute or disagreement. The designated representatives will discuss the problem and negotiate in good faith in an effort to resolve the dispute without any formal proceedings. The specific format of such discussion shall be left to the discretion of the designated representatives. No litigation for the resolution of such dispute may be commenced until the designated representatives have met and either party has concluded in good faith that amicable resolution through continued

negotiation does not appear likely (unless either party fails or refuses to appoint a designated representative and schedule a meeting of such representatives within thirty (30) days after a request to do so by the other party).

.Agreement for Services

Project or Bid _____

Rev. 1/14/2009 P.O. No.

Foothill-DeAnza Community College District



Authorized Contractor Signature
Sarah J. White, Director
Office of Sponsored Research

William Marsh Rice University

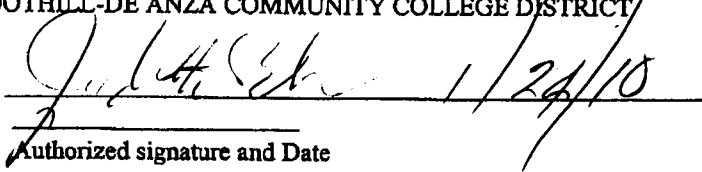
Contractor's Company Name

74-1109620

Contractor's Tax J.D. Number

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

By

 1/24/10
Authorized signature and Date

JUDY BAKER, DEAN Title
FOA

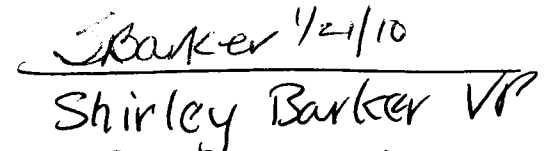
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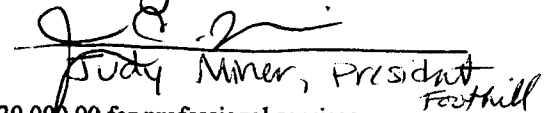
Date

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.)

 1/21/10
Richard Galage VP

 1/21/10
Shirley Barker VP


Judy Miner, President Foothill

Agreement for Services

Project or Bid

P.O. No.

Rev. 1/14/2009

Foothill-DeAnza Community College District

EXHIBIT "A"

Contract between Foothill-DeAnza Community College District and Rice University

_____, 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 attachment.

- 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)

\$200,000 lump sum February 2, 2010

In any event, the total payment for services of contractor shall not exceed \$ 200,000 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 July 31, 2011, 2_____.

Exhibit A (Draft Connexions Statement of Work for December 2009 - May 2010)

Connexions budget is split 50% for Content Conversion and 50% for Tools Development, Maintenance and Support, and Reporting and Planning Costs.

Year 1 (December 2009 - June 2010)

Note: Connexions will receive its share of contract funds (\$200,000) upon commencement of this agreement on approximately February 2, 2009.

1. **Content Conversion:** Converting open textbooks to CNXML format and publishing them on the Connexions repository, cnx.org. The funds cover managing the content projects and putting the projects out for bid to content formatting companies or converting them using staff and project personnel.

In YR1 approximately 30% of the content conversion funds will be used.

2. **Support and Maintenance:** Provide platform maintenance and support to faculty and students using the open textbooks and Connexions repository. Funds will cover support personnel including interns for answering technical support and help questions and funds for bug fixing and platform maintenance.

3. **Update Collaborative Statistics PDF** (which has several custom features) and deliver a new version to QOOP for printing. This task will only be needed in YR 1, because the custom features will be integrated into the standard printing in YR2.

4. **Improve authoring experience:** The chief impediment to authoring currently is the slow access times for authoring. Our team will focus on relieving the long wait times that authors experience. We also will concentrate on improvements to the collection building and editing interface to make the user interface more streamlined.

5. **Communication and Reporting :** Connexions will participate in monthly conference calls October 2009 - June 2010 with the CCOTP team to plan and report on progress and will attend the quarterly CCCOER conference calls. Additionally, Connexions will produce quarterly reports of the progress toward the grant goals (Dec 2009, Mar 2010 and Jun 2010)

Year 2 (July 2010 - May 2011)

1. **Content Conversion:** Converting open textbooks to CNXML format and publishing them on the Connexions repository, cnx.org. The funds cover managing the content projects and putting the projects out for bid to content formatting companies or converting them using staff and project personnel. In Year 2, content conversion will accelerate and the remaining funds used to convert open textbooks and publish in Connexions.

2. **Support and Maintenance:** Provide platform maintenance and support to faculty and students using the open textbooks and Connexions repository. Funds will cover support personnel including interns

for answering technical support and help questions and funds for bug fixing and platform maintenance.

3. Adapt the print and web display tools to meet identified needs of community college faculty and students open textbooks in Connexions. The following adaptations were identified in the pilot project that converted *Collaborative Statistics*:

- Closer matching of the online and print numbering systems.
- Support for homework and laboratory modules so that
 - Pagination starts on a new page.
 - Numbering starts over from 1.
- Support for appendices numbering appropriately in the table of contents in print.

4. Communication and Reporting : Connexions will participate in monthly conference calls starting from July 2010 to May 2011 with the CCOTP team to plan and report on progress, and will attend the quarterly CCCOER conference calls. Additionally, Connexions will produce quarterly reports of the progress toward the grant goals (Sep 2010, Dec 2010, Mar 2011, Jun 2011)