

Board of Trustees Agenda Item

Board Meeting Date: May 3, 2010

Title of Item:

Agreement for Services – Bill Buxton, Contractor

Background and Analysis:

Contractor will manage peer reviews of open textbooks, copyright openings by individual authors, author/adopter communities, and the Community College Open Textbook Collaborative website. Contractor has provided exemplary results first as a volunteer and then as a part-time consultant since August 2009. This work is funded by a grant from the William and Flora Hewlett Foundation.

Recommendation: (specify if information only)

Please approve. *Judy Hood 3/24/10*

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 24th day of March, 2010, by and between the Foothill-De Anza Community College District, a community college district of the State of California, hereinafter called "District" and Bill Buxton 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 \$ 72,000.
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 May 10, 2010 through October 31, 2010 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 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, its officers, agents, employees or servants, resulting from the

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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 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. **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

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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.

William E. Galt
Authorized Contractor Signature

Contractor's Company Name
559-94-3492
Contractor's Tax I.D. Number

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

By SEE LIST →
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.)

3-24-10
Date

Approvals _____ Date _____

Judy Baker, Dean, Foothill Global Access
Open Textbooks Administrative Manager

Richard Galope 4/1/10
Richard Galope, VP

Shirley Barker 4/2/10
Shirley Barker, VP

Judy Miner 4-20-10
Judy Miner, President

Andrew Dunn for the Board of Trustees

Foothill-DeAnza Community College District

EXHIBIT "A"

Contract between Foothill-DeAnza Community College District and Bill Buxton

_____, 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)

Maintain Reviewer coursework & administer training.
Work with MERLOT to develop joint textbook reviewer training.
Phase out paid reviews once collaborative goals are met.
Evaluate automation of Merlot textbook update.
Continue finding, vetting, and working with reviewers.
Post reviews on the collaborative website
Integrate Accessibility information into collaborative website.
Maintain collaborative website and ancillary systems.
Complete color modifications and corrections as necessary.
Compile reviewer demographics report (schools, degrees, location).
Continue with Print on Demand vendor evaluation.
Contact reviewers and authors as required.
Continue adding textbooks for reviews to website.
Note when Flatworld publishes new textbooks.
Train others on website updates and maintenance.
Perform related duties as required by collaborative administration.
Provide support for authors/creators to convert textbooks to repositories.
Provide support for authors/creators/partners to convert files to open source formats.

- 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)

Progress Payments billable on the following dates:

\$12,000 May 10, 2010
\$12,000 June 1, 2010
\$12,000 July 1, 2010
\$12,000 August 1, 2010
\$12,000 September 1, 2010
\$12,000 October 1, 2010

In any event, the total payment for services of contractor shall not exceed \$ 72,000 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 October 31, 2010.