

Board Agenda Item, October 4, 2010

Title of Item: Approval of Independent Contractor Agreement

**Background and Analysis:**

The State of California issued the Green Innovation Challenge in May 2010, with the intent to encourage business-led partnerships to develop creative methods of increasing employment within the green economy. NOVA Workforce Board submitted a concept paper requesting \$4 million on behalf of a collaborative known as the SolarTech Workforce Innovation Collaborative (SWIC). The partners include NOVA, SolarTech, Foothill-De Anza Community College District, and others in the private, public, and nonprofit sectors. On June 29th the State announced that SWIC was approved for funding in the amount of \$4 million. **The deliverables will occur over 24 months, beginning June 30, 2010.** The Grant awards \$1,258,917 to Foothill-De Anza Community College District to implement the training and education component of the program.

Catherine Ayers was one of the authors for the proposal, and has been coordinating the efforts to implement the training and education workplan to meet the timeline and deliverables in the funded proposal. Catherine Ayers will provide project management to the SolarTech Workforce Innovations Collaborative (SWIC) in coordination with FHDA Professional & Workforce Development and the Center for Applied Competitive Technologies.

Services include:

- Manage the day-to-day operation of SWIC within FHDA, including the planning and implementation for the training and education component of SWIC. *See attached projected activities.*
- Ensure objectives are met and work plan is implemented on a timely basis.
- Communicate project information to FHDA, NOVA and industry stakeholders and provide direction to other community college and educational partners,
- Ensure compliance activities related to the grant are performed, including data collection and monthly reporting.
- Serve as the primary contact for NOVA, the fiscal agent for the SolarTech Workforce Innovations Collaborative.

Services, including expenses, will not exceed \$98,500 from July 1, 2010-June 30, 2011.

**Recommendation:**

Catherine Ayers is uniquely qualified to fill this project management role. This project is funded by Green Innovation Challenge funds. I recommend approval.

Submitted by:	Rick Kuhn, Economic and Resource Development
Additional Contact Names:	Richard Galope, Economic and Workforce Development
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 1st day of July, 2010 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 \$76,700 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 Catherine Ayers

Address 949 Sunset Dr City San Carlos Zip 94070

Business Phone 650-593-4701 Fax No \_\_\_\_\_ Home 650-593-6779

Social Security Number \_\_\_\_\_ \*Fed. Tax I.D. Number 94-3118599

**\*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 June 1989

If yes, specify last work location  
District Office

Work Assignment  
Intern to Chancellor Tom Fryer

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 Policy 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 \$76,700) and for all public projects of \$15,000 or more pursuant to Public Contract Code 20651.

Contractor was on the planning team for the Green Innovations Challenge proposal for funding from EDD, and was a co-author of the project proposal, SolarTech Workforce Innovations Collaborative (SWIC). She was the co-director of the Silicon Valley Solar Industry-Driven Regional Collaborative, which was a precursor to this project, with the same partners: NOVA Workforce Board and SolarTech. She has unique expertise in managing energy-related workforce development projects, including contacts, compliance and reporting.

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 if possible):

Catherine Ayers will act as project director, in coordination with the staff of the Center for Applied Competitive Technology, for the training and education segment of the SWIC project. Her role is to coordinate delivery of the training services from FHDA and other education partners stipulated in the grant proposal and insure objectives are met. She will communicate with partners, fiscal agent (NOVA), funders and FHDA to meet reporting and performance requirements. See attached Statement of Work.

B. Contractor Fee for Services: \$ 98,000

(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:  
\$ 500

TOTAL COST OF THIS INDEPENDENT CONTRACT WILL NOT EXCEED \$ 98,500.00  
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 July 1, 2010 Contract Ending Date June 30, 2011

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.

Payment on receipt of invoice.

**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](http://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.

Catherine Ayers  
Contractor

7-1-2010  
Date

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.

RJH  
Authorized College/District Requestor/Budgeter

10/14/10  
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.]

Richard G.E. Galope 10/18/10  
Richard G.E. Galope, M.B.A.  
Vice President  
Workforce Development & Instruction

Shirley Treanor 10-19-10  
Shirley Treanor  
Vice President  
Education Resource & Instruction Division

7-1-2010

## **Statement of Work**

Catherine Ayers & Associates

Consulting services for Professional & Workforce Development and the Center for Applied Competitive Technologies, Foothill-De Anza Community College District.

Catherine Ayers will provide project management to the SolarTech Workforce Innovations Collaborative (SWIC) funded by the Green Innovations Challenge grant from the State of California Labor & Workforce Development Agency to fiscal agent NOVA Workforce Board, and partners, SolarTech and FHDA.

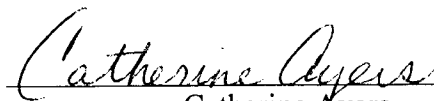
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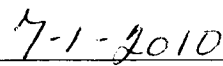
- Manage the day-to-day operation of SWIC within FHDA, including the planning and implementation for the training and education component of SWIC. See attached projected activities.
- Ensure objectives are met and work plan is implemented on a timely basis.
- Communicate project information and direction to FHDA, other community college/educational partners, NOVA and industry stakeholders.
- Ensure compliance activities related to the grant are performed, including data collection and monthly reporting.
- Serve as the primary contact identified for all correspondence sent from NOVA, the fiscal agent for the SolarTech Workforce Innovations Collaborative.

Consideration:

First project year (July 1, 2010 – June 30, 2011): \$98,000 (1225 hours @ \$80/hour).  
Plus expenses: not to exceed \$500 for travel and project related materials.

Payment is requested upon submission of invoices at monthly intervals.

  
Catherine Ayers

  
Date

## SolarTech Workforce Innovations Collaborative

### Projected Activities, FHDA, (July 2010)

1. Deliver Introduction to CleanTech through Foothill Engineering Dept. Sept 21-Dec 17, 2010
2. Develop Solar Sales & Estimation Training, based on industry needs and NABCEP requirements. July 1- November 15, 2010
3. Deliver Solar Sales/Estimation Training – Foothill pilot. Nov 15, 2010-Feb 28, 2011
4. Deliver Solar Sales/Estimation Training, Ohlone College and Cabrillo College pilots. Jan 18, 2011-July 31, 2011
5. Develop PV Design Engineering and Manufacturing Engineering Sequence, through Solar Training Institute. Aug 15, 2010 – Jan 15, 2011
6. Deliver pilot Engineering curriculum/training, STI is lead in collaboration with FHDA. Nov 1, 2010 – Aug 31, 2011
7. PV-EV Living Lab, planning and development/installation. Oct 4, 2010-June 30, 2011
8. PV EV Curriculum Development at De Anza College, Automotive Technology relevant to PV charging. Jan 4, 2010-June 30, 2011.
9. Deploy PV EV Charging Living Lab and training at De Anza. July 1, 2011 – March 31, 2012
10. Develop Finance and Sustainability Mgt curriculum, based on WAM process outcomes — or adjust topic to needs identified. June 1, 2011-Sept 15, 2011
11. Deliver Finance and Sustainability training. Sept 19, 2011-March 31, 2012
12. Deliver Solar Sales Training, year 2 at Foothill, Ohlone and Cabrillo – if warranted by job placements. Aug 15, 2011-March 31, 2012
13. Transition high-demand training into credit curriculum to sustain training resources. Develop Solar PV Engineering Degree. July 4, 2011- June 30, 2012
14. Administer and manage training development and delivery. July 2 2010 – June 30, 2012