

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

Board of Trustees Agenda Item

Board Meeting Date: February 7, 2011

Title of Item:

Design and install measures to reduce power usage at De Anza College

Background and Analysis:

Monitoring-based commissioning (MBCx) of the Student and Community Services Building at De Anza College has been done by Salas O'Brien Engineers, Inc. Phase 1 of this project determined the power usage and recommended measures to reduce the kilowatt hours used in this building.

The Board of Trustees is requested to approve the scope of services to design and install the recommended MBCx measures to reduce the kilowatt hours used in the Student and Community Services Building. The fixed fee for contracted services is \$26,100. The funding source is General Fund 76.

A utility rebate incentive of <\$24,969> will be realized based on the power savings, under our agreement with the California Community Colleges Energy Efficiency Partnership Program with PG&E. Reference CCC-IOU #2K0702462.

Along with the rebate incentive and annual energy savings, the payback period will be approximately 7.5 years. Ongoing energy savings will be between \$9,500 and \$10,000 annually.

Recommendation: Approval

Charles Allen, Executive Director of Facilities, Operations and Construction Management recommends that the Board approve this proposal for engineering services by Salas O'Brien Engineers, Inc.

Submitted by:	Charles Allen, Executive Director of Facilities, Operations & Construction Management
Additional contact names:	Frank Nunez, Director of Facilities
Is backup provided?	Yes

Foothill-DeAnza Community College District

AGREEMENT FOR SERVICES

This Agreement entered this 17 day of December, 2010, by and between the Foothill-De Anza Community College District, a community college district of the State of California, hereinafter called "District" and Salas O'Brien Engineers 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 \$ 26,100.

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 11/3/2011 through 12/31/2011 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

Foothill-DeAnza Community College District

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).

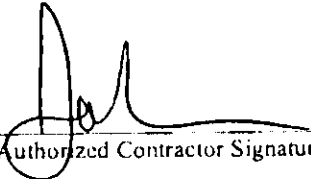
12. **Expenditure Of Public Funds.** Contractor agrees to comply with Government Code Section 8546.7 which provides that the contracting parties for any contract involving expenditure of public funds in excess of \$10,000.00 shall be subject to examination and audit by the State Auditor for a period 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

Foothill-DeAnza Community College District

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.



Authorized Contractor Signature

1-19-11

Date

Salas O'Brien

Contractor's Company Name

94-2624963

Contractor's Tax I.D. Number

 Foothill-De Anza Community College District

By

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.)

Foothill-DeAnza Community College District

EXHIBIT "A"

Contract between Foothill-DeAnza Community College District & Sals O'Brien
Engineers, 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)

Design & install recommended MBE measures to reduce the kilowatt hours used in the De Anza College Student and Community Services building. SEE ATTACHED PROPOSAL OF OCTOBER 25, 2010.

- 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)

Fixed fee of \$26,100⁰⁰ ~~per~~ Paid by monthly billings.

In any event, the total payment for services of contractor shall not exceed \$26,100⁰⁰ 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 12/31, 2011.

Foothill-DeAnza Community College District

Exhibit "I" 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 \$25,000 each claim. Required only if the following blank is checked ____.

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.



O'BRIEN

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San José, CA 95112-2218
(408) 282-1500 • F: (408) 297-2995

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October 25, 2010

Foothill-De Anza Community College District
21250 Stevens Creek Blvd
Cupertino, CA 95014
Ph: (650) 222-9445

Attention: Frank Nunez
Subject: Proposal for Engineering Services – MBCx Project: DeAnza Student Services

Dear Frank:

Salas O'Brien is pleased to present our proposal to provide MBCx services for the DeAnza Student Services Building.

SCOPE OF SERVICES FOR THE DESIGN & INSTALLATION OF MBCx MEASURES IS AS FOLLOWS:

- 1) Static pressure reset sequence.
- 2) Photocell controls in the atrium.
- 3) Occupancy sensors in 10 rooms.
- 4) Design, install and Connect occupancy sensors and connect to the EMS (5 zones).
- 5) Revise equipment schedules and revise lockouts.
- 6) Revise economizer controls.

Work includes project management, installation, and commissioning of sequences.

The fixed fee shall be contracted in the amount of \$26,100 including reimbursable expenses. Fees for any changes in scope, beyond what is noted above, will be in addition to and shall not be charged without client authorization.

If you are in agreement, kindly sign this proposal where indicated and fax to 408-297-2995 *Attention Contracts* or by emailing it to contracts@salasobrien.com. By signing this proposal, Client authorizes the work to commence and agrees to Salas O'Brien's Standard Terms and Conditions hereby incorporated as Exhibit A.

We thank you for this opportunity to be of service. Please do not hesitate to contact us with questions or comments.

Energetically Yours,
Salas O'Brien Engineers, Inc.

John Salas, P.E.
Principal

Approved by: _____ Date: _____
Frank Nunez

Cc: JS, Chron 10437.00
Enclosure: Current Rate Schedule and Exhibit A

EXHIBIT A

SALAS O'BRIEN ENGINEERING, INC. STANDARD TERMS AND CONDITIONS

1. **Billing.** Salas O'Brien Engineers, Inc. ("Engineer") shall bill "Client" on or about the 1st of the month. Billing to be based on percentage of completion.
2. **Payment.** All invoices are due and payable within thirty (30) days of invoice date. Interest may be charged at 1.5% monthly on all invoices over thirty days. In the event if any payment is unpaid on any invoice in excess of sixty (60) days, Client shall be deemed to be in substantial breach of the Agreement and Engineer may, in its sole discretion, elect to suspend its services hereunder without prejudice. Client shall reimburse Engineer for all costs of collections, including reasonable attorneys' fees.
3. **Extra Services.** Services in addition to those set forth in the Agreement shall be charged at the Engineer's then prevailing rates and shall be in addition to the above agreed upon fees. No additional services shall be performed without written authorization from the Client.
4. **Dispute Resolution.** The parties shall, as soon as reasonably practicable after one party gives written notice of a dispute to the other party, meet and confer in good faith regarding such dispute at such time and place as mutually agreed. All discussion pursuant to this Section 4 shall be considered a settlement negotiations for the purpose of laws protecting statements, disclosures or conduct in such context, and all offers or other statements or conduct shall be protected under such laws. If no resolution is reached, the parties shall, within forty-five (45) days of the first meeting referred to above, attempt to settle the dispute by formal mediation in San Jose, California. If the parties cannot agree upon a mediator within such forty-five (45) day period, the American Arbitration Association in San Jose, California shall administer the mediation. Such mediation shall occur no later than ninety (90) days after the dispute arises. All findings of fact and results of such mediation shall be in written form prepared by such mediator and provided to each party to such mediation. In the event that the parties are unable to resolve the dispute through formal mediation pursuant to this Section 4, the parties shall be entitled to seek any and all available legal remedies.
5. **Indemnification.** The Engineer agrees to indemnify and hold the Client harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the Engineer's grossly negligent acts, errors or omissions in the performance of professional services under this Agreement (except to the extent caused by the Client's negligent or intentional act or omission). The Client agrees to indemnify and hold the Engineer harmless from any damage, liability or cost (including reasonable attorneys' fees and cost of defense) to the extent caused by a material breach of this Agreement by Client or the negligent acts, errors or omissions of the Client or contractors, subcontractors, consultants or others for whom the Client is legally liable, and arising from the project that is the subject of this Agreement.
6. **Insurance.** During the term of this Agreement, each party agrees to provide evidence of insurance coverage to the other party. In addition, the Engineer agrees to use commercially reasonable efforts to maintain continuous professional liability coverage for the period of design and construction of this project, and for a period of ten years following substantial completion, if such coverage is reasonably available at commercially affordable premiums. For the purposes of this Agreement, "reasonably available" and "commercially affordable" shall mean that more than half the design professional's practicing in the State of California as engineers for similar services are able to obtain such coverage.
7. **Owner's Consultants.** It is understood and agreed that the Client may contract directly with other design professionals for design services. Engineer shall have no responsibility for any portion of the project designed by the Client's other consultants. The Engineer shall not be required to check or verify other consultants' construction documents and shall be entitled to rely on the accuracy and completeness thereof, as well as the compliance of such documents with applicable laws, codes, statutes, ordinances and regulations. The Client agrees, to the fullest extent permitted by law, to indemnify and hold the Engineer harmless from any damage, liability or cost, including reasonable attorneys' fees and defense costs, arising in any way from the services performed by any other consultants to the Client. The Client further agrees to require all other consultants under separate contract to coordinate their construction documents with those of the Engineer, to promptly report any conflicts or inconsistencies to the Engineer and to cooperate fully in the resolution of those conflicts or inconsistencies.
8. **Third Party Beneficiaries.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Engineer. The Engineer's services under this Agreement are being performed solely for the Client's benefit, and no other entity shall have any claim against the Engineer because of this Agreement or the performance or nonperformance of services hereunder. The Client agrees to include a provision in all agreements with third parties, Home Owner's Associations and other entities involved in this project to carry out the intent of this Section 8.
9. **Liability.** The Engineer is not responsible for job safety in, on, or around the project site (or sites). Any reviews the Engineer may make are not, and are not intended to be, reviews of safety practices. Client understands and agrees that the Engineer is not responsible for means, methods, or sequences of construction or job site safety or for the Contractor's errors. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO BOTH THE CLIENT AND THE ENGINEER, THE RISKS HAVE BEEN ALLOCATED SUCH THAT THE CLIENT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE LIABILITY OF THE ENGINEER AND ITS SUBCONSULTANTS TO THE CLIENT AND TO ALL CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS ON THE PROJECT FOR ANY AND ALL CLAIMS, LOSSES, COSTS, DAMAGES OF ANY NATURE WHATSOEVER OR CLAIMS EXPENSES FROM ANY CAUSE OR CAUSES, SO THAT THE TOTAL AGGREGATE LIABILITY OF THE ENGINEER AND ITS SUBCONSULTANTS SHALL NOT EXCEED \$150,000.00, OR THE ENGINEER'S TOTAL FEE FOR SERVICES RENDERED ON THIS PROJECT, WHICHEVER IS GREATER. SUCH CLAIMS AND CAUSES INCLUDE, BUT ARE NOT LIMITED TO NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT OR WARRANTY. ADDITIONALLY, IN NO EVENT SHALL THE ENGINEER, TO THE FULLEST EXTENT PERMITTED BY LAW, BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, EVEN IF SUCH DAMAGES WERE FORESEEABLE.
10. **Opinion of Probable Cost.** In providing opinions of probable cost or construction cost, Client understands and agrees that the Engineering has no control over the costs or the price of labor, equipment or materials, or over the Client's method of pricing, and that the opinions of probable construction costs provided herein are to be made on the basis of the Engineer's qualifications and experience. The Engineer makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.
11. **Force Majeure.** The failure of the Engineer to perform its obligations shall not be a breach of this Agreement or give rise to any right of termination or reversion if such failure is caused by restrictions of governmental agencies, labor disputes, inability to obtain necessary materials or any other reason beyond the Engineer's control, in the event of delay from any such cause, the obligation to perform shall be postponed for a period of time reasonably related to such cause.
12. **Additional Items.** If project is suspended or abandoned prior to the completion of professional services, fees will become payable only for the services completed at the time of such suspension or abandonment. This Agreement may be terminated by either party at the conclusion of any phase by 10 days written notice.
13. **Successors and Assigns.** Neither party shall assign any rights or obligations under the Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any assignment of rights shall not work as a novation of obligations thereunder without written agreement. Any attempt to assign any rights, duties, or obligations under the Agreement without the other party's written consent will be void, provided that either party may assign this Agreement to a surviving entity in connection with any merger, acquisition or consolidation.
14. **Entire Agreement.** This Agreement and its attachments set forth the entire agreement between the parties and supersedes any and all prior or contemporaneous agreements of the parties with respect to the subject matter contained herein. Engineer shall not be bound by, and specifically objects to, any term, condition, or other provision inconsistent with or in addition to any provision of this Agreement that is submitted by Client in any correspondence or any other document, unless Engineer specifically agrees to such provision in writing by an authorized representative. No change, amendment, or modification of any provision of this Agreement shall be valid unless set forth in a written instrument signed by both parties.
15. **Governing Law.** This Agreement shall be governed by the laws of the State of California.
16. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which together shall constitute only one agreement. Signatures sent by facsimile transmission or in PDF format shall be deemed to be originals for all purposes of this Agreement.