

Board of Trustees Agenda Item

Board Meeting Date: June 6, 2011

Title of Item:

Measure E Consent

Background and Analysis:

Aggregate amount for these items is \$108,300

De Anza College –

None

Foothill College

- A) Enovity, Inc. – Standard Agreement – New ETS/Data Center Building - \$66,300
- B) Trans Tech Consultants – Agreement for Services – Vehicle Fueling Stations - \$42,000

Central Services –

None

Charles Allen, Executive Director of Facilities, Operations, and Construction Management, Tom Armstrong, Director, Bond Program Management, De Anza College, recommend that Measure E consent items be ratified/approved by the Board of Trustees.

Submitted by:	Charles Allen, Executive Director, Facilities, Operations, & Construction Management
Additional contact names:	Tom Armstrong, Dir. Bond Program/DAC, Art Heinrich, Dir. Bond Program/FHC
Is backup provided?	Yes

8/1/03

Title: Standard Agreement
Vendor: Enovity Inc.
Agreement Date: June 10, 2010
Campus: Foothill College
Project Number: 419
Project Name: New ETS/Data Center Building
Amount: \$66,300.00
For: Provide commissioning services to obtain LEED Certification:
1. Fundamental Commissioning per LEED Criteria.
2. Enhanced Commissioning per LEED Criteria.
3. Electrical System Commissioning (Non-LEED).

The funding for this agreement is within the current budget.

Action Requested: Approval

Foothill - De Anza Community College District

INDEPENDENT CONTRACTOR AGREEMENT

De Anza College ☐ Foothill College ☐ District Office ☒ District PO No: _____

This Agreement entered into this 23rd day of June, 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 Enovity Inc.

Address 100 Montgomery Street City San Francisco Zip 94104

Business Phone 415-974-0390 Fax No 415-974-0399 Home _____

Social Security Number _____ *Fed. Tax I.D. Number _____

Business License Number _____

*CONTRACTOR MUST PROVIDE W-9

Are you a current or former employee of the DISTRICT? Yes ☐ No ☒

If yes, date last worked _____

If yes, specify last work location _____

Work Assignment _____

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.

Enovity Inc. provided a good quality work at the Forum 5000 renovation project.

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):

Enovity Inc. will provide the services of LEED Fundamental Commissioning, LEED Enhanced Commissioning and the non-LEED Electrical System Commissioning to the project of New ETS/Data Building. See Attachment "A".

B. Contractor Fee for Services: \$ 66,300.00

(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:
\$ _____

TOTAL COST OF THIS INDEPENDENT CONTRACT WILL NOT EXCEED \$ 66,300.00
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 June 28, 2010 Contract Ending Date March 31, 2013

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.

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.

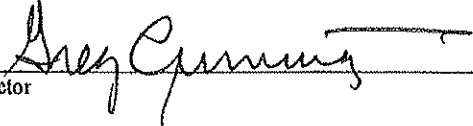
G. Payment Of Prevailing Wages: Except for projects of \$1000 or less, if CONTRACTOR provides public project services such as carpet laying or building construction, alteration, demolition or repair CONTRACTOR shall pay all workers on the District project the prevailing wage pursuant to the California 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. 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.


Contractor

6/23/10
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.


Authorized College/District Requestor/Budgeter

6/29/10
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.]

"A"

COMMISSIONING SERVICES PROPOSAL

ETS / Data Center

Foothill Community College
12345 El Monte Road, Los Altos Hills, CA 94022
Foothill De Anza Community College District

Prepared for:

Thomas Lo, Senior Project Engineer
Gilbane Building Co
Foothill De Anza Community College District
12345 El Monte Road
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(P): 650-949-6907

November 20, 2009

Prepared by:

Greg Cunningham, AIA, LEED AP, Principal
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1.0 PROJECT OVERVIEW

Enovity, Inc. is pleased to submit this proposal for Commissioning Services for the ETS / Data Center at the Foothill Community College Campus. This proposal is organized as follows:

- Section 1 – Project Overview
- Section 2 – Commissioning Services: Detailed Scope of Work
- Section 3 – Proposed Fees

PROJECT DESCRIPTION

The scope of this project includes the design, construction, and warranty phases of a new two-story ETS / Data Center building of approximately 18,260 gross square feet.

PROPOSED SERVICES

The scope of services listed herein includes LEED Fundamental and Enhanced Commissioning Services and Commissioning of non-LEED systems as described below. Commissioning services will be provided to the equivalent standard as established by the U.S. Green Building Council for LEED-2009 BD+C. Systems that are not required to be commissioned under the LEED rating system (non-LEED systems) will follow fundamental commissioning practices (enhanced commissioning activities are not included).

REFERENCED PROPOSAL DOCUMENTS

This proposal is based on the following information that was provided to Enovity:

1. 100% Schematic Design Pricing Set dated 10/02/09
2. Commissioning Memo dated October 29, 2009

PROJECT SCHEDULE

The following project schedule has been assumed as the basis for the fee structure of this proposal:

<u>Activity</u>	<u>Start</u>	<u>Finish</u>
Detailed Design	November 2009	May 2010
Construction	July 2010	October 2011 (Substantial Completion)
Warranty	November 2011	November 2012

2.0 COMMISSIONING SERVICES

2.1 COMMISSIONED SYSTEMS

LEED SYSTEMS TO BE COMMISSIONED

The following building systems are required by the U.S. Green Building Council (USGBC) to be commissioned for LEED Fundamental and Enhanced Commissioning scope of work:

1. HVAC systems and HVAC controls in their entirety
2. Building lighting and controls
3. Domestic hot water generators and distribution system
4. Renewable energy systems (none are assumed for this project and no fees have been included)

NON-LEED SYSTEMS TO BE COMMISSIONED

The following building systems are not required to be commissioned for LEED compliance but are included as an additive alternate scope of work. Fees are listed separately in Section 3 of this proposal.

1. (2) Emergency generators, (1) transformer, (1) automatic transfer switch, (4) UPS, and (2) switchboards
2. Assumed that specifications will include requirements for NEMA-certified independent electrical testing agency hired directly by the contractor.

SYSTEMS NOT INCLUDED IN THE COMMISSIONING SCOPE OF WORK

The following systems are excluded from this proposal:

- Electronic security /access control systems including security cameras and card key system



- Life safety systems (fire alarm, fire protection (dry chemical/sprinkler system)
- Paging / Intercom system / AV
- Domestic plumbing systems including water treatment and stormwater system
- Building envelope; i.e., fenestration and roofing system
- Telecommunications, VOIP, PBX systems
- IT infrastructure, computers and other special equipment (including interaction/sequence of operation with fire suppression system)

2.2 TASK SUMMARY

The general requirements for LEED for Fundamental (EA Prerequisite 1) and Enhanced Commissioning EA Credit 3) are summarized below:

1. Enovity will assume role of LEED Commissioning Authority (CxA) for the project.
2. CxA to review the Owner's Project Requirements (OPR) and Basis of Design (BOD) documentation for clarity and completeness.
3. CxA to perform a formal commissioning review of the design documents prior to the mid-construction documents phase and back-check the review comments in the subsequent design submission.
4. CxA to ensure that commissioning specifications are included in the construction documents.
5. CxA to develop and implement a commissioning plan.
6. CxA to perform a review of contractor submittals applicable to systems being commissioned for compliance with the OPR and BOD.
7. CxA to verify the installation and functional performance of the systems to be commissioned.
8. CxA to assist the Contractor in developing a Systems Manual for the project.
9. CxA to verify training requirements for facility operating staff are completed.
10. CxA to complete a summary construction phase commissioning report.
11. CxA to review the building operation within 10 months after substantial completion with O&M staff and occupants and assist in preparing a plan for resolution of commissioning-related issues.

2.3 DETAILED SCOPE OF WORK

Scopes of work are defined below according to the following phases:

1. Detailed Design Phase
2. Construction Phase
3. Acceptance Phase
4. Warranty Phase

2.3.1 Scope of Work – Detailed Design Phase

DEVELOPMENT OF OWNERS PROJECT REQUIREMENTS (OPR) DOCUMENT

We will work with Gilbane and the District to develop the Owner's Project Requirements (OPR) required by LEED. Enovity will provide a template OPR for use by the team. The OPR should be completed prior to the start of BOD development.

DEVELOPMENT OF BASIS OF DESIGN (BOD) DOCUMENT

Once the OPR document is complete, we will begin working with the designers to develop the Basis of Design (BOD) required by LEED. Enovity will provide a template BOD for use by the team. The BOD should be completed prior to Enovity's Initial Design Review (see below).

LEED ENHANCED COMMISSIONING DESIGN REVIEW

Enovity will perform a formal LEED Commissioning Design Review of the detailed design documents at the 50% complete milestone. This formal review is required to satisfy the LEED Enhanced Commissioning



requirement. This review will be comprehensive for the LEED systems and will include review of non-LEED systems. The review will address energy efficiency, sustainable project elements, HVAC sequence of operations, constructability, conflicts between plan sections and between plans and specifications, and completeness with respect to LEED credits that impact commissioning; i.e., LEED M&V credit. The design team will be required to provide timely written responses to Enovity's formal comments. Enovity will then back-check the subsequent design submission (90%) to verify that Enovity's comments have been incorporated into the detailed design documents.

DEVELOPMENT OF INITIAL COMMISSIONING PLAN

Enovity will then begin development of a Design Phase (Initial) Commissioning Plan. The Commissioning Plan will include a list of all systems and specific equipment and components to be commissioned, early drafts (placeholders) for relevant tests, procedures and template forms, a narrative procedural discussion on the commissioning process, communication protocols, reporting and documentation requirements, and a preliminary schedule for the commissioning process. The Commissioning Plan is a living document that will be updated throughout the construction phase of the project. The Commissioning Plan will include the following components:

- Narrative discussion and graphical outline of the commissioning process;
- List of systems to be commissioned;
- Management and responsibilities matrix;
- Written deliverables;
- Preliminary schedule of commissioning activities with major milestones;
- Preliminary draft testing procedures and acceptance criteria.

DEVELOPMENT OF COMMISSIONING SPECIFICATIONS

Enovity will develop commissioning specifications for the project. It is expected that the design team and Contractor will review and adopt these specifications in final form as part of the final construction documents. Specifications will include Division 0 specifications (General Commissioning Requirements), along with trade specifications for each area defined by the scope of work.

DETAILED DESIGN PHASE DELIVERABLES AND MILESTONES:

1. Provide OPR and BOD template; review and comment on draft OPR and BOD documents
2. Prepare 100% Design Development Review Report
3. Prepare LEED Enhanced Commissioning Design Review Report based on the 50% detailed design submission and back-check the comments in the 90% design submission
4. Prepare Initial Commissioning Plan; incorporate comments and revise
5. Prepare Commissioning Specifications; incorporate comments and revise

2.3.2 Scope of Work – Construction Phase

GENERAL OVERVIEW

During construction, our role is to lead the efforts in planning, organizing and scheduling commissioning activities; holding periodic commissioning progress meetings and preparing meeting minutes; reviewing construction submittals; writing equipment pre-functional checklists and functional test procedures; observing construction periodically during the early stages; witnessing systems readiness (pre-startup) checks and systems inspections; observing systems startup, observing testing and balancing; witnessing functional tests; working with the A/E of record to resolve design-related issues; and acting as arbiter of test results. We will not perform testing directly, but we will witness tests performed by the contractor and subcontractors. The following sub-sections are presented in a relative sequence that lays out a general schedule of activities and deliverables.

COORDINATION, MEETINGS, PLANNING, ADMINISTRATION, COMMISSIONING ISSUES LIST

The Enovity Commissioning Project Manager will coordinate the commissioning activities in a logical, sequential and efficient manner using consistent protocols and forms, centralized documentation, clear



and regular communications and consultations with all necessary parties, frequently updated timelines and schedules and technical expertise. This work includes coordinating the commissioning work and, with the contractor and owner, ensuring that commissioning activities are being scheduled into the Contractor's Master schedule. We will plan a formal Construction Phase Commissioning Kickoff Meeting and will attend periodic commissioning progress meetings and will author, maintain and distribute minutes. We will regularly update, produce and distribute electronically and in hard copy at meetings a Commissioning Issues List that tracks ongoing commissioning issues, with their observed date, responsible party, and resolution. We will review the submittals, RFI and change orders for commissioned equipment.

PHASE ACTIVITIES AND DELIVERABLES:

1. Lead One (1) Construction Phase Commissioning Kickoff Meeting ; prepare meeting minutes
2. Lead Two (2) Construction Commissioning Coordination Meetings Prior to Acceptance Phase; prepare meeting minutes
3. Publish, update and maintain Commissioning Issues List

SUBMITTAL REVIEW

Enovity will review contractor submittals applicable to systems being commissioned for compliance with the OPR and BOD and project construction drawings and specifications. This review will be concurrent with A/E of record review and approval process. Enovity will not be accepting or approving submittals; this is the responsibility of the engineer-of-record. Instead, Enovity will provide written comment where appropriate in a timely manner.

PHASE ACTIVITIES AND DELIVERABLES:

1. Written comment on submittals where appropriate for conformance to the OPR and BOD.

INSTALLATION VERIFICATION AND PRE-START INSPECTIONS

Enovity will work with the contractor to document those systems' installation proceeds in accordance with the contract documents. Installation verification (IV) checklists will be developed by Enovity with input by the contractor and employed by the contractor on the project; these forms will be integrated into the Commissioning Plan and completed forms into the Commissioning Report. The IV forms must be completed, signed and submitted by the contractor prior to systems startup. Our commissioning team will perform limited site visits (see number below) prior to systems startup to observe component and system installation. Site visit reports will be prepared and the Commissioning Issues List will be updated to manage outstanding issues throughout the duration completion of the project.

PHASE ACTIVITIES AND DELIVERABLES:

1. Conduct Two (2) site visits (Installation Verification/Pre-Start Inspections) prior to Systems Startup.
2. Provide Installation Verification Checklists (IV Forms) to be completed by Enovity and the installing contractors
3. Update the Commissioning Issues List
4. Collect completed IV forms and incorporate into the commissioning report

SYSTEMS STARTUP, TAB WITNESSING AND COMPLETION OF SYSTEMS READINESS CHECKLISTS (SRCS)

Verification of the proper startup procedures and parameter settings of the equipment is critical to the fundamental systems operation and to satisfy warranties. Equipment startup forms (manufacturer's recommended startup checklists) will be submitted by the contractor for approval prior to integration into the Commissioning Plan. We will witness startup procedures for most major equipment included in the scope of work. Completed startup forms from the contractor will be verified by Enovity prior to the start of functional testing.

Verification of test and balance (TAB) of air and water systems assures that proper procedures and tools are being utilized and that TAB measurements/settings are reliable. We will review the TAB Plan in



advance of the start of TAB activities and will review the preliminary TAB report upon completion of TAB activities. If necessary, we will witness (spot check) HVAC piping pressure test and flushing (if applicable) and ductwork testing to verify that proper procedures are being followed. TAB work must be 100% complete prior to the start of Functional Performance Testing.

Systems Readiness Checklists (SRCs) will be developed by Enovity and completed and signed off by each installing contractor to certify that systems are ready for functional performance tests. For HVAC systems, this typically includes documentation of completed equipment startups, completion of test and balance (TAB) and preliminary TAB report, and completion of all controls point-to-point verifications, final graphical programming and final sequence of operations.

PHASE ACTIVITIES AND DELIVERABLES:

1. Conduct Three (3) site visits to witness Systems Startup, Test and Balance, Controls Checkout and Back-checks
2. Collect Startups Forms from the installing contractors, review and approve
3. Review TAB Plan and TAB Preliminary Report, review and approve/comment where appropriate
4. Provide System Readiness Checklists (SRCs) to the contractor. Review and approve completed SRC forms

FUNCTIONAL PERFORMANCE TESTING (FPT), COMPLETION OF COMMISSIONING ISSUES LIST

Enovity will assist the contractor in coordinating functional performance tests (FPT's) performed by installing subcontractors and we will witness FPTs for all major equipment. Tests on identical HVAC equipment; i.e., VAV terminal units, will be performed for all modes of operation on a representative sample of like systems; however the contractor will be responsible for testing 100% of all equipment. The functional testing will include operating and verifying the various systems and components through each of the written sequences of operations, and other significant modes and sequences, including startup; shutdown; unoccupied mode; all modes of heating related to control setpoints; energy efficiency features; manual mode. Functional testing will be performed on a component level manually by the BAS contractor supported by the M/E subcontractors and witnessed by Enovity, together with extensive collection and review of BAS system-wide trend logs performed by Enovity staff, to provide a high level of confidence of proper system function. Enovity will witness one test and one re-test related to a particular component or system. *Not included in our fee is our time for additional tests beyond one re-test; this work will be billed as an additional time and materials (T&M) service.* The Commissioning Issues List and a separate record of functional testing will be updated and maintained by Enovity throughout the functional testing period. All issues will be recorded as they occur, and written progress reports and test results with recommended actions will be provided directly to the owner's representative and the contractor representative.

PHASE ACTIVITIES AND DELIVERABLES:

1. Provide Functional Performance Test forms (FPTs) to the contractor. Review and approve completed FPT forms
2. Conduct Four (4) site visits to witness Component / Systems Functional Testing and Back-checks
3. Provide an updated Commissioning Issues List to the team

2.3.3 Scope of Work – Acceptance Phase

ASSIST CONTRACTOR IN COMPLETING THE LEED SYSTEMS MANUAL

During the Acceptance Phase, Enovity will lead a commissioning coordination meeting with the contractor to review results of the functional performance testing and the Commissioning Issues List. Enovity staff will prepare the LEED Systems Manual for the project. This will involve collecting, organizing and assembling elements of the LEED Systems Manual from contractor deliverables as defined in the specifications.

PHASE ACTIVITIES AND DELIVERABLES:

1. Lead one in-person commissioning coordination meeting to review contractor deliverables



- completion of project acceptance
- 2. Provide assistance to contractor in clarifying conformance to LEED Systems Manual requirements
- 3. Review contractor deliverables for inclusion in Systems Manual
- 4. Assemble final Systems Manual for Owner

REVIEW TRAINING PLAN AND APPROVE TRAINING REPORT

Enovity will review the contractor's training plan and training elements for conformance to project requirements, i.e., as defined in the specifications and the OPR document. Enovity will provide comment where appropriate. This phase also includes turnover of project Operations and Maintenance (O&M) Manuals from the contractor to the Owner. Enovity will review verification of training performed by the contractor for the facility O&M staff for commissioned systems. The contractor will provide evidence to Enovity that training requirements have been met.

PHASE ACTIVITIES AND DELIVERABLES:

- 1. Review contractor training plan and elements. Provide comment where appropriate.
- 2. Review documentation of completed training elements and approve for conformance to LEED Enhanced Commissioning requirements.

COMPLETE CONSTRUCTION PHASE COMMISSIONING REPORT

To conclude the project Acceptance Phase, Enovity will complete a Construction Phase Commissioning Report conforming to the LEED Commissioning requirements within 60 days of Substantial Completion.

CONSTRUCTION PHASE REPORT DELIVERABLES

- 1. Updated Commissioning Issues List
- 2. Final IV, Startup Forms, SRC, and FPT Forms (signed by contractor)
- 3. Final Commissioning Plan, OPR, BOD and specifications
- 4. Final compiled commissioning documents (1 hard copy and soft copy on flash drive) within 60 days following Substantial Completion
- 5. Complete LEED Online Commissioning Documentation Upload

2.3.4 Scope of Work – Warranty Phase

POST OCCUPANCY REVIEW AND WARRANTY ISSUES RESOLUTION

Enovity will provide limited assistance to the facility operations and maintenance staff during the first year of building operation (warranty period). This warranty review is required for the LEED Enhanced Commissioning credit and will assist the O&M staff and Owner in ensuring that the contractor will act upon warranty items prior to expiration of warranty and release of retention payments. Per the requirements of LEED, Enovity will return to the site no later than ten (10) months into the initial building operation period. The purpose of this site visit is to perform on-site facility inspection and conducting interviews with O&M staff. We will assist the O&M staff, and contractor if required, to facilitate limited re-testing of faulty equipment or to analyze chronic system deficiencies. Enovity may include an updated BAS trend log review and analysis as part of this activity. Enovity will work with the O&M staff to develop a plan for resolution of outstanding comfort, equipment malfunction, operational and energy efficiency issues. Enovity will provide an update to the Commissioning Report in the form of an addendum that includes an updated Commissioning Issues List and summary of O&M and facility user concerns and recommendations for improved system operation. The Warranty Phase activities will be limited to the scope of LEED systems only.

PHASE ACTIVITIES AND DELIVERABLES:

- 1. Schedule and perform one site visit, conduct interviews and perform inspections to update Commissioning Issues List
- 2. Provide limited review and analysis of BAS trend logs; assist O&M staff in interpreting trend log



results

3. Provide limited assistance to O&M staff for strategies to resolve warranty items
4. Provide an written update to the Final Commissioning Report

3.0 PROPOSED FEES

FEES FOR LEED FUNDAMENTAL COMMISSIONING

Per the described scope of work in the previous sections for LEED Fundamental Systems Commissioning, the lump sum fixed fee, which includes all direct project expenses, is as follows:

Thirty-Four Thousand Two Hundred Seventy Dollars.....\$34,270.00

FEES FOR LEED ENHANCED COMMISSIONING

Per the described scope of work in the previous sections for LEED Enhanced Commissioning, the lump sum fixed fee, which includes all direct project expenses, is as follows:

Twelve Thousand Ninety Dollars.....\$12,090.00

ADD ALTERNATE FEES FOR NON-LEED SYSTEMS

Based on the described scope of work in the previous sections for non-LEED systems commissioning services, the lump sum fixed fee, which includes all direct project expenses, is listed as follows by system:

3. **Electrical systems** (limited to (2) Emergency generators, (1) transformer, (1) automatic transfer switch, (4) UPS, and (2) switchboards)

Nineteen Thousand Nine Hundred Forty Dollars.....\$19,940.00

\$66,300

This is a Lump Sum proposal. A Schedule of Values will be used to reflect the task line items identified under Fees in the above section. Invoices will be submitted on a monthly basis at the end of each month for percentage of completion for each task. Invoices will be due and payable in full within 30 days from the invoice date. This proposal is valid for 30 days.

4.0 CONTRACT AGREEMENT

As indication of selecting Enovity, Inc. for the proposed services, please issue a contract agreement referencing this proposal document. The following is Enovity's Master Agreement contract with the Foothill De Anza Community College District:

Master Agreement for Commissioning Services Dated August 25, 2008

Additionally, the following are points of contact regarding the services to be provided.

CONTRACT AGREEMENT

All legal notices and agreements shall be directed to Enovity's Corporate Office to the following:

Greg Cunningham, Principal
Enovity, Inc.
100 Montgomery Street
Suite 600
San Francisco, CA 94104

(415) 974-0390 x101 Phone
(415) 974-0399 Fax
gcunningham@enovity.com



Commissioning Services Proposal
ETS / Data Center
Foothill Community College
November 20, 2009

INVOICE PAYMENTS

Invoice payments shall be directed to Enovity's Corporate Office to the following:

Accounts Receivable (415) 974-0399 Fax
Enovity, Inc.

100 Montgomery Street
Suite 600

San Francisco, CA 94104

(415) 974-0390 Phone

B

Title: Agreement For Services
Vendor: Trans Tech Consultants
Agreement Date: June 6, 2011
Campus: Foothill College & De Anza College
Project Number: 415
Project Name: Vehicle Fueling Stations
Amount: \$42,000.00
For: Engineering design, permitting, construction administration and closeout services for installation of two above-ground diesel fuel tanks and vehicle fueling systems at both Foothill and De Anza colleges.

The funding for this agreement is within the current budget.

Action Requested: Ratification

Foothill-DeAnza Community College District

AGREEMENT FOR SERVICES

This Agreement entered this 18th day of May, 2011, by and between the Foothill-De Anza Community College District, a community college district of the State of California, hereinafter called "District" and Trans Tech Consultants 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 \$ 42,000.00.
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 5-18-2011 through 12-31-2012 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

Date

Contractor's Company Name

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 Trans Tech Consultants
_____, 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)

Please see attached Exhibit "B" for scope of work.

- 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)

The contract price is a lump sum of forty-two thousand;

Schedule of Values:

Foothill College:

Design phase services:	\$10,000
Construction phase services:	\$4,000
Permitting services:	\$3,000
Permit fees:	\$2,500

Send Invoices to:

Gilbane/Maas
Attn: Susan Moore
12345 El Monte Road,
Los Altos Hills, CA 94022

De Anza College:

Design phase services:	\$10,000
Construction phase services:	\$4,000
Permitting services:	\$3,000
Permit fees:	\$2,500
SPCC Plan:	\$3,000

Total: \$42,000

In any event, the total payment for services of contractor shall not exceed \$ 42,000.00 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 December 31, 2012.

Foothill-DeAnza Community College District

Exhibit "T" 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.

Foothill-De Anza Community College District

EXHIBIT "B"

Detailed description of services to be performed and work product to be delivered to District by Contractor:

Provide engineering design services, permitting, construction administration and closeout services of installing two above ground tanks and vehicle fueling systems for diesel fuel at the corporation yards at both Foothill and De Anza colleges. The scope includes as the following:

- a) Visit Foothill and De Anza colleges and inspect proposed installation locations and meet with the District to make recommendations for new diesel fueling systems.
- b) Provide a petroleum equipment list and cut sheets for owner approval.
- c) Prepare tank area plans for the ASTs and dispensing systems.
- d) Provide designs for drive slabs, guard-posts and signage.
- e) Provide designs showing compliance with accessibility requirement per 2010 California Building code for the fuel dispensing system and card-reader.
- f) Provide structural engineering drawings and calculations for the tanks that contemplate anchoring the tanks to new concrete foundations and diesel-pipe rack support system.
- g) Prepare an electrical wiring, conduit plan and emergency shut-off control diagram including the fuel management system.
- h) The sets of drawings will be stamped by a licensed engineer and be suitable for plan checking.
- i) Attend bid walk at each site, answer questions during bid and construction phases and issue bid addenda as required.
- j) Provide permitting services with Santa Clara County fire Department and the Santa Clara County Dept. of Environmental Health.
- k) Respond to plan check comments and perform a punch list inspection at each site.
- l) Provide a Spill Prevention Control and Countermeasure Plan as required by 40 CFR Part 112 and by the County of Santa Clara for the De Anza College corporate yard.

End