

Board of Trustees Agenda Item

Board Meeting Date: November 5, 2012

Title of Item:

Consignment Agreements for Nomura equipment and Okuma Multis equipment with Gosiger Inc.

Background and Analysis:

The De Anza College Manufacturing and CNC Technology program supports the local manufacturing community. The students are trained on the same equipment that is used in Silicon Valley. Okuma and Nomura are two of the largest manufacturers of multi axis CNC turning centers in the world and are used by local companies and advisory members, such as Apple, Intuitive Surgical and Northrop Grumman to name a few. Considering these two manufacturers are the local industry standard and due to the complexity of curriculum development, programming, operation, maintenance, and safety issues related to these machines, the faculty made the decision last year to teach classes based on the local industry standard. De Anza College Manufacturing and CNC Technology department, through Gosiger Inc., will become an Okuma and Nomura educational center.

If the Board approves the two Consignment Agreements including the Equipment Partnership Agreement, then Gosiger Inc. will loan a Nomura NN-UB8 screw machine valued at more than \$170,000.00 and an Okuma Multis B200BB-W mill turn machine valued at more than \$490,000 to De Anza College at no charge excluding the incidental costs for rigging and maintenance lubricant. The term of the Consignment Agreements will be November 1, 2012, through October 31, 2013. In the spirit of keeping the latest technology available for instruction, the equipment would typically be on the College's premises for not more than three years at a time. At the end of the term, the District is under no obligation to purchase the equipment, but it must bear outbound rigging (in and out of building only) charges if it chooses to return the equipment to Gosiger Inc.

Recommendation: (specify if information only)

Authorize the District Vice Chancellor of Business Services to execute the attached two Consignment Agreements including the Equipment Partnership Agreement with Gosiger Inc. on behalf of the District for a Nomura NN-UB8 screw machine and an Okuma Mutis B200BB-W mill turn machine.

Submitted by:	Kevin McElroy, Vice Chancellor of Business Services x6201
Additional contacts:	Gina Bailey, Anita Kandula, Mike Appio
Is backup provided?	Yes

Equipment Partnership Agreement

This is an agreement between **Gosiger inc.** (hereinafter referred to as the Vendor) and **DeAnza College** (hereinafter referred to as the College). Whereas the College will be the temporary recipient of late-model CNC machine tool technology and/or related support equipment, on loan, utilized for the purposes of instruction and the Vendor will utilize said equipment located at the College to demonstrate to prospective buyers. The parties will jointly engage in promotional activities in support of their respective interests.

In consideration of the mutual promises set out herein, the parties hereby agree as follows:

1. **Equipment:**

- 1.1 The goal is to keep at least one piece of equipment at the college during the term of this agreement.
- 1.2 The equipment shall be late-model and representative of technology currently in use by or in demand by business and industry.
- 1.3 The equipment shall be CNC turning and/or milling machinery. Quantities and alternatives shall be agreed upon by both parties based on availability.
- 1.4 The equipment will be loaned to the College for no cost according to the duration period found in Section 2.
- 1.5 The equipment shall be outfitted with a sufficient number of tool holders to support effective instruction as mutually agreed upon by College faculty and the Vendor.
- 1.6 The College and the Vendor shall share in the costs of coolant and way lube as both parties agree is appropriate.
- 1.7 The Vendor shall be responsible for all transportation/freight fees and the College shall be responsible for all rigging requirements (in & out) of said equipment.
- 1.8 Unless otherwise agreed upon, the College shall be responsible for all electrical, air and data connection costs of said equipment, if any, and shall work with the Vendor in arranging these connections.
- 1.9 The Vendor shall be responsible for the purchase and installation costs of any required transformers needed to facilitate the connection of the equipment.
- 1.10 The College will regularly monitor the equipment for needed maintenance and will execute routine maintenance as authorized by the Vendor. Any non-routine maintenance shall be the sole responsibility of the Vendor.

2. **Duration**

- 2.1 The equipment shall be on the College premises a minimum of three months per machine unless otherwise agreed upon by all parties.
- 2.2 In the spirit of keeping the latest technology available for instruction, the equipment typically would be on the College's premises for not more than three years at a time.

- 2.3 In the event a piece of equipment is removed from the College, the Vendor shall make a good faith effort to give at least three weeks' notice so as to minimize any disruptions or breaks in instruction.
- 2.4 The Vendor will replace equipment that has been removed promptly in a good faith effort to minimize any disruptions or breaks in instruction.

3. Responsibilities of the College

- 3.1 To utilize the loaned equipment for the purposes of instructing students on the latest and most commonly used or innovative technology possible.
- 3.2 To ensure the proper operation and care of loaned piece of equipment so that it is returned to the Vendor in excellent condition, allowing for reasonable wear and tear.
- 3.3 Only College faculty authorized by the Vendor shall operate the equipment or shall oversee its operation by College registered students.
- 3.4 To provide the Vendor a mutually agreed upon amount of shop floor space for locating the equipment.
- 3.5 To provide the Vendor access to the equipment when requested for demonstration and promotion purposes.
- 3.6 To collaborate with the Vendor on events showcasing the equipment and technology for the betterment and advancement of manufacturing practices overall.
- 3.7 The College agrees to insure loaned equipment against property and casualty loss.
- 3.8 Any repairs to the equipment due to College operator error or negligence will be at the College's expense.

4. Responsibilities of the Vendor

- 4.1 To loan the College at no cost mutually agreed upon CNC machining equipment for the purposes of instructing students on the latest and most commonly used or innovative machining technology possible in accordance with the duration period outlined in Section 2.
- 4.2 To provide sufficient technological support to College faculty on the equipment.
- 4.3 To provide all client interface and support on the equipment.
- 4.4 To work with College faculty in scheduling the equipment to be shown to prospective clients.
- 4.5 To collaborate with the College on events showcasing the equipment and technology for the betterment and advancement of manufacturing practices overall.

5. Relationship of the Parties

- 5.1 The parties acknowledge and agree that the relationship created by this

Agreement is that of independent contractors, each is an independent business entity and, as such, neither party may represent itself as an employee, agent, or representative of the other; nor may it incur any obligations on behalf of the other party; nor are the parties joint ventures or partners; nor does the relationship created under this agreement constitute a franchise.

6. Indemnification:

- 6.1 The Vendor agrees to indemnify, defend, save and hold harmless the College, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the performance of services by the Vendor pursuant to this Agreement.
- 6.2 The College agrees to indemnify, defend, save and hold harmless the Vendor, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees, taxes and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the performance of services by the College pursuant to this Agreement.

7. Term & Termination

- 7.1 The term of this Agreement shall be for a one-year period, beginning on **November 1st, 2012**, and ending on **October 31st, 2013**. Each party is free to decline to renew the Agreement.
- 7.2 This agreement may be terminated by either party if the other party breaches any term or condition of the Agreement.

8. Additional

- 8.1 The equipment is to remain Gosiger's personal property. The College agrees that the equipment shall at all times be separately identifiable personal property.
- 8.2 The College will not, without Gosiger's prior written approval, assign or transfer this equipment or any interest herein, not withhold, sublease or relinquish possession of, or create or suffer to exist any lien, mortgage, security interest or encumbrance upon the equipment.

AGREED:

Date:

Mike Appio, Department Head (Mfg & CNC Technology)

Bradley T. Gecowets, Executive Director

CONSIGNMENT AGREEMENT

Consignor:

Gosiger West
2334 E. Valencia Drive
Fullerton, CA 92831

Consignee:

Foothill-DeAnza Community
College District
12345 El Monte Rd
Los Altos Hills, CA. 94022

Consigned Merchandise (as listed below):

<u>QTY</u>	<u>DESCRIPTION</u>	<u>S/N</u>	<u>CONSIGNOR'S LIST PRICE/VALUE</u>
1	Nomura NN-UB8	#162091103	\$170,000.00

Above includes all standard accessories.

Date of Execution: November 1st 2012 **Consignor:** Gosiger West

Consignment Period: Beginning November 1st 2012 Ending October 31st 2013 as per
Section 7) 7.1 of Education Partnership Agreement

WITNESSETH:

WHEREAS, CONSIGNOR is a distributor of industrial machinery of various types as well as attachments thereto and parts therefore, including specifically the industrial machines described above as Consigned Merchandise, and

WHEREAS, CONSIGNOR is willing to deliver the Consigned Merchandise to CONSIGNEE on a consignment basis, the terms and conditions of which are set forth herein,

NOW, THEREFORE, In consideration of the mutual promises and covenants of the parties as hereinafter set forth, the parties hereby agree as follows:

1. **DELIVERY AND STORAGE** – CONSIGNOR shall deliver or cause to be delivered to CONSIGNEE the Consigned Merchandise, to be stored or installed by CONSIGNEE at the location shown above. CONSIGNEE shall receive all such Consigned Merchandise as it is delivered and shall store or install the same in a safe and secure manner. Transportation charges to CONSIGNOR's location shall be paid for by the CONSIGNEE, and removal from carrier and installation at

CONSIGNEE'S location (rigger's charges) shall be the responsibility of CONSIGNOR.

2. **TITLE, CONSIGNOR** – is and shall remain at all times the owner and title holder of the Consigned Merchandise. The Consigned Merchandise shall not be carried on CONSIGNEE'S books as an asset of CONSIGNEE, nor shall its cost be carried as a liability.
3. **RECEIPT AND RECORDS** – CONSIGNEE shall, during all business hours, permit CONSIGNOR, its agents, attorneys and representatives to inspect the Consigned Merchandise, examine the same and verify all written reports and quantities held by CONSIGNEE.
4. **SALE BY CONSIGNEE** – is not permitted.
5. **RETURN OR OTHER DISPOSITION OF CONSIGNED MERCHANDISE** – The Consigned Merchandise shall at all times be subject to the direction and control of CONSIGNOR and CONSIGNOR may request return of all or any part thereof at any time, or CONSIGNOR may sell the same to others without prior approval of CONSIGNEE. In the event of any such disposition of the Consigned Merchandise by CONSIGNOR, all transportation and rigger charges incurred in connection therewith ("Ship our charges") shall be paid for by CONSIGNOR.
6. **CONSIGNEE'S OBLIGATIONS** – CONSIGNEE covenants and agrees as follows:
 - a. To safeguard the Consigned Merchandise at all times.
 - b. To keep the Consigned Merchandise free from any adverse lien, security interest or encumbrance and pay all taxes which may be levied thereon and not to waste or destroy the Consigned Merchandise in violation of any statute or ordinance.
 - c. To keep at all times the Consigned Merchandise and its proceeds separate and distinct from any other inventory of CONSIGNEE, and keep the Consigned Merchandise clearly labeled and identified as the property of CONSIGNOR.
 - d. To store the Consigned Merchandise at the location set forth on the title page hereof at all times, unless otherwise agreed by CONSIGNOR.
7. **DEFAULT** – CONSIGNEE shall be deemed to be in default under this Agreement in the event (a) it shall fail to perform any obligation or duty, covenant or liability contained or referred to herein, (b) any loss, theft, substantial damage, destruction or encumbrance to any of the Consigned Merchandise shall be permitted to occur (c) any levy, seizure or attachment of any of the Consigned Merchandise shall occur (d) any insolvency or business failure or business failure

of CONSIGNEE or the appointment of a receiver for any part of the CONSIGNEE's property, or assignment for the benefit of creditors of CONSIGNEE, or the commencement of any proceedings under any bankruptcy or insolvency law by or against CONSIGNEE shall occur (e) CONSIGNOR becomes dissatisfied with the financial stability of the CONSIGNEE or (f) CONSIGNEE permits any security interest or encumbrance to be attached to the Consigned Merchandise.

8. **REMEDIES OF CONSIGNOR** – In the event of a default hereunder, CONSIGNOR, in addition to its right to demand the return of the Consigned Merchandise, may, at its option:

- a. Leave encumbrances at any time levied or placed on the Consigned Merchandise, pay for insurance of Consigned Merchandise, and pay for the maintenance and preservation of the Consigned Merchandise. CONSIGNEE agrees to reimburse CONSIGNOR on demand for any payment of any expense incurred by CONSIGNOR pursuant to the foregoing authorization: and/or
- b. Enter upon CONSIGNEE's premises and take possession of the Consigned Merchandise in the event that CONSIGNEE fails to return or surrender the Consigned Merchandise. CONSIGNOR shall be entitled to all expenses of return of the Consigned Merchandise, including reasonable attorneys' fees and costs.

9. **MISCELLANEOUS PROVISIONS** –

- a. Entire Agreement. This agreement constitutes the entire agreement between the parties and supersedes all previous agreements heretofore in force between the parties hereto. This agreement or any part hereof may not be modified, waived or changed except in writing signed by both parties hereto.
- b. Governing Law. This agreement shall be constructed under the laws of the state in which the Consigned Merchandise is located which shall bind the parties on all questions arising hereunder, regardless of the jurisdiction in which any action or proceeding may be initiated or maintained.
- c. Non-Waiver of Rights. The waiver of any right accruing to any party hereunder by failure to either exercise that right in a given instance or delay in exercising that right shall not be deemed a waiver of said right in future instances of a similar nature.
- d. Notices. Any notice required to be given in writing under this agreement shall be sent by a means not slower than the United States Mail delivered to the respective parties at the addresses set forth on the title page hereof. Any party,

on written notice to the other, may designate a new address to which notice shall be delivered.

- e. Non-Assignability. This agreement or any obligation of right hereunder, shall be not assignable by either party without the prior written consent of the other party.

IN WITNESS WHEREOF, the parties hereto have executed this agreement by their duly authorized representative(s).

By:_____ By:_____

Title:_____ Title:_____
For For Gosiger, Inc.

CONSIGNMENT AGREEMENT

Consignor:

Gosiger West
2334 E. Valencia Drive
Fullerton, CA 92831

Consignee:

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College District
12345 El Monte Rd
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Consigned Merchandise (as listed below):

<u>QTY</u>	<u>DESCRIPTION</u>	<u>S/N</u>	<u>CONSIGNOR'S LIST PRICE/VALUE</u>
1	Okuma Multis B200BB-W	#156142	\$490,000.00

Above includes all standard accessories.

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By:_____ By:_____

Title:_____ Title:_____
For For Gosiger, Inc.