

**PERALTA COMMUNITY COLLEGE DISTRICT**  
**Board of Trustees Agenda Report**  
**For the Trustee Meeting Date of July 20, 2010**

ITEM # 19

**ITEM TITLE:**

Consider Approval of Change Order No. 2 to the Design-Build Agreement with Gilbane Building Company for the Laney College Athletic Complex

**SPECIFIC BOARD ACTION REQUESTED:**

Approval is requested for Change Order No. 2 to the design-build agreement with Gilbane Building Company for the Laney College Athletic Complex project. The change order formally accepts a lump sum project cost of \$17,540,000, which is a reduction by \$110,000 from the previous Board approved amount.

**ITEM SUMMARY:**

At the meeting of May 25, 2010, the Board of Trustees approved Change Order No. 1 for a not-to-exceed design-build budget of \$17,650,000 for the Laney Athletic Complex project. Change Order No 1 served to bring the design-build contract in line with the increased project budget and additional scopes of work. Since the approval of Change Order No. 1, Gilbane has completed the bidding for all three increments of the project, including the photovoltaic array. Based upon the competitive bids for increments 1, 2 and 3, a Lump Sum cost of \$17,540,000 for the complete project has been negotiated. This actual amount is \$110,000 less than the estimated not-to-exceed amount of \$17,650,000 approved in Change Order No. 1.

**BACKGROUND/ANALYSIS:**

The Board of Trustees originally approved negotiation of a design-build contract with Gilbane Building Company at the Board meeting of November 18, 2008, following a competitive Request for Proposal process. The amount of the original agreement was \$12,000,000. On May 25, 2010 the Board approved Change Order No. 1, which amended the project budget to a not-to-exceed amount of \$17,650,000. Change Order No. 2 serves to formalize the design-build project contract cost at a Lump Sum amount of \$17,540,000.

The Athletic Field Complex project has been discussed by the Board Facilities and Land Use Committee and the Board of Trustees. The Board approved a total project budget of \$16,500,000 as part of the Bond Measure (A and E) Spending Plan at the meeting of June 23, 2009. The \$1,900,000 for the photovoltaic collection system is part of the \$16,000,000 District-wide Solar/Sustainability allocation of Measure A funds also approved as part of the Bond Measure Spending Plan.

**ALTERNATIVES/OPTIONS:**

Not applicable.

**EVALUATION AND RECOMMENDED ACTION:**

Approval is recommended for Change Order No. 2 to the agreement for services with Gilbane Building Company for design-build services related to the Laney Athletic Complex project at a Lump Sum of \$17,540,000.

**SOURCE OF FUNDS (AND FISCAL/BUDGETARY IMPACT):**

Measure A, as approved by the voters in Peralta's constituency and authorized under Resolution 05/06-45, Exhibit A-1, Laney College, "Athletic Fields, Gym and Facilities," and District-Wide Projects, "Solar energy system installation and the retrofitting of existing energy systems."

Budget code: 1-63-391-6120-1-710000-2338-00.

**OTHER DEPARTMENTS IMPACTED BY THIS ACTION (E.G. INFORMATION TECHNOLOGY):**

YES \_\_\_\_\_ NO  X

**COMMENTS:**

All Board recommended contracts are subject to negotiation and execution by the Chancellor.

**WHO WILL BE PRESENTING THIS ITEM AT THE BOARD MEETING?**

Vice Chancellor Ikharo

**DID A BOARD STANDING COMMITTEE RECOMMEND THE ITEM? YES  X  NO \_\_\_\_\_**

**IF "YES", PLEASE INCLUDE THAT INFORMATION IN YOUR SUMMARY.**

**PLEASE ACQUIRE SIGNATURES IN THIS ORDER:**

**DOCUMENT PREPARED BY:**  
Prepared by: Sadiq B. Ikhano Date: July 13, 10  
Dr. Sadiq B. Ikhano  
Vice Chancellor for General Services

**DOCUMENT PRESENTED BY:**  
Sadiq B. Ikhano Date: July 13, 10  
Dr. Sadiq B. Ikhano  
Vice Chancellor for General Services

**FINANCE DEPARTMENT REVIEW**

Finance review required       Finance review *not* required

If Finance review is required, determination is:  Approved       Not Approved

If not approved, please give reason: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
For Finance and Administration

**GENERAL COUNSEL (Legality and Format/adherence to Education Codes):**

Legal review required       Legal review *not* required

If Legal review is required, determination is:  Approved       Not Approved

Signature: [Signature] Date: 7/16/10  
Thuy T. Nguyen, General Counsel

**CHANCELLOR'S OFFICE APPROVAL**

Approved, and Place on Agenda       Not Approved, but Place on Agenda

Signature: [Signature] Date: 7/15/10  
Wise E. Allen, Chancellor

# PERALTA COMMUNITY COLLEGE DISTRICT

Office of General Services • 333 East 8th Street Oakland, California 94606 • Phone 510/466-7200 • Fax 510/466-7315

## CHANGE ORDER NO. 2

**PROJECT: LANEY ATHLETIC COMPLEX**

**DATE: JULY 9, 2010**

**OWNER: Peralta Community College District**  
**CONTRACTOR: GILBANE BUILDING CO., INC.**

**DSA FILE NO.: 1-C1**  
**DSA APP NO.: 01-110972**  
**PCCD PROJECT #: 02338**  
**PROJECT MANAGER: Trent Tornabene**

The Contractor is authorized to make the changes listed in **PRELIMINARY CHANGE ORDER NO. 2** and described in its Change Order Attachment when this Change Order has been approved.

Original Contract Sum.....\$ 12,000,000.00  
 Net Change by previously authorized Change Orders.....\$ 5,650,000.00  
 The Contract sum prior to this Change Order was.....\$ 17,650,000.00  
 The Contract sum will be increased/decreased by this Change Order.....\$ 110,000.00  
 The New Contract Sum including this Change Order will be.....\$ 17,540,000.00  
 Cumulative Change Order(s) as a percentage of contract including this Change Order 46.16 %  
 The Contract is changed by (33) Days  
 Contract completion date as of this Change Order therefore is: May 31, 2011

**Attachment: PRELIMINARY CHANGE ORDER NO. 2**

Approved: Architect of Record          Date:	Approved: General Contractor          Date:  <u>07/09/10.</u>	Approved: Peralta Community College District          Date: <u>07/12/10</u>  Sadiq B. Ikhenna  Vice Chancellor of General Services  Date: <u>7/12/10</u>
Approved: Electrical or Structural Engineer          Date:	Approved: Mechanical Engineer          Date:	Approved: Div. of the State Architect          Date:

**PERALTA COMMUNITY COLLEGE DISTRICT**  
 Department of General Services • Phone 510/466-7341 • Fax 510/466-7315

**PRELIMINARY CHANGE ORDER NO. 1**

PROJECT:	LANEY ATHLETIC COMPLEX	DATE:	07/09/2010
OWNER:	Peralta Community College District	DSA FILE NO.:	1-C1
TO:	PCCD 333 East Eighth Street Oakland, CA 94608	DSA APP. NO.:	01-110972
		PCCD PROJECT NO.:	02338

You are hereby directed to make the following change(s) in this Contract. When signed by the Owner and Architect and received by the Contractor, this document becomes effective immediately and the Contractor shall proceed as with the changes described below. An official change order shall be issued to follow up on this preliminary change order as soon as possible.

DESCRIPTION: Formal acceptance of Lump Sum project cost for the Laney Athletic Complex

REASON INITIATED A-2: Owner requested change

- ATTACHMENTS:
- Change Order #2
  - Change Order #1 (previously executed)
  - Value engineering Items
  - Qualifications: Inclusions and Exclusions
  - Drawing sheets and specifications identifying value engineering deletions

The proposed basis of adjustment to the Contract Price and Contract time are as follows:

Amount of Change:     Add                       Deduct                      \$ 110,000.00

Lump Sum                       T & M Not to Exceed                       Force Amount

Time Extension:    33 calendar days

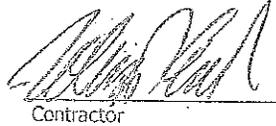
ISSUED BY:

\_\_\_\_\_  
Architect of Record                      Date

REVIEWED BY:

 07/09/10  
\_\_\_\_\_  
Project Manager                      Date

APPROVED BY:

 7-9-10  
\_\_\_\_\_  
Contractor                      Date

Signature by the Contractor indicates the Contractor's agreement with the above adjustments in Contract Sum and Contract Time.

 07/12/10  
\_\_\_\_\_  
Director of Capital Projects                      Date

 7/12/10  
\_\_\_\_\_  
Vice Chancellor of General Services                      Date

**CHANGE ORDER NO. 2 TO THE DESIGN BUILD CONTRACT  
BETWEEN  
THE PERALTA COMMUNITY COLLEGE DISTRICT AND GILBANE  
BUILDING COMPANY  
FOR THE LANEY ATHLETIC FIELDS PROJECT.**

The Peralta Community College District ("District") and Gilbane Building Company. ("Contractor") have agreed, by this Change Order No. 2, upon a lump sum price for the work of the Contract Documents, of which this Change Order No. 2 is a part.

This Agreement has followed negotiations and is based upon the following recitals of fact.

**RECITALS**

WHEREAS, on or about July 22, 2008, the District received competitive proposals from competing design build contractors, pursuant to Section 81703 of the California Education Code, and pursuant thereto, selected Contractor as the design build contractor for the Laney Athletic Fields Project ("Project").

WHEREAS, on or about April 24, 2009, the District and Contractor executed the Design Build Contract for the Project, incorporated herein by this reference, with an original not-to-exceed contract sum of \$12 million, with an original contract completion date of 440 days from execution of the Contract.

WHEREAS, on or about May 11, 2010, District and Contractor executed Change Order No. 1 to the Contract, attached hereto is Exhibit I and incorporated herein by this reference, making the following adjustments to the Contract:

- o Increasing the not-to-exceed Contract amount to \$17,650,000.00;
- o Increasing the Contract Time by 291 days;
- o Increasing the scope of the Project pursuant to the drawings and specifications included in Change Order I; and
- o Adding to the Project, a photovoltaic collection system, as described in Change Order 1.

WHEREAS, Contractor has performed under the Contract, in the following increments:

- o Increment I, the Parking Lot Increment and associated improvements, performed and substantially completed.

o Increment 2, Ball Fields, which has been bid and partially approved for construction.

o Increment 3, the Field House which has been bid to subcontractors, but not yet approved for construction.

WHEREAS, Contractor has received bids for the photovoltaic system

WHEREAS, the District and the Contractor have agreed upon an adjusted design services cost.

WHEREAS, the District and the Contractor have disputed the proper scope, terms and conditions of the Contract including without limitation those provisions for bidding services noted in section 00525, Article 7, of Contractor's and District's performance under the Contract, of Contractor's invoicing of costs and of District's responsibility for costs of extended time, as well as the proper calculation of reimbursable Project costs under the Contract.

WHEREAS, District and Contractor wish to conclude their negotiations and agree upon a lump sum change order to fully and finally resolve all disputes, issues, claims, and otherwise, regarding the scope of Work and time of performance of the Contract.

#### AGREEMENT

WHEREFORE, District and Contractor have agreed, by this Change Order to the following:

1. Contract Scope. The scope of Work of Contract shall consist of all Work encompassed by the original Contract and as modified by Change Order No. 1 (hereafter, the "Work"), attachments hereto identified as Contract Documents; and, any extra work arising out of or connected with Contractor's pending requests for information, change order requests, requests for proposals, comments and revisions, and any other items in any manner changing or impacting the completion of the Work, as of July 5, 2010. Without limiting the foregoing, this Contract Scope includes potential changes from the Division of State Architect to plans and specifications currently awaiting their review. Changes made by the DSA that could not be reasonably inferred or expected by the Contractor including any delays in DSA approval not currently known or expected and not attributed to negligence by the Contractor or its design partners, shall be addressed per the contract terms regarding changes in the work.

2. Contract Time. Contractor's time to achieve Contract Substantial Completion and Final Completion is hereby increased by an additional 31 days to May 31<sup>st</sup>, 2011. The new Contract Sum provides full compensation for the adjustments in the Contract Time. Further, the District will reduce liquidated damages to \$1,000 per day and Gilbane will waive the incentive clause for early completion.

3. Contract Sum. The Contract Sum is hereby increased to \$17,540,000.00, which shall be a lump sum. (In addition, there is a \$110,000 allowance for permits and work by EBMUD, that will be handled directly by the District.) This adjusted Contract Sum represents full compensation for all costs of performance of the Contract Scope identified above, including but not limited to, any and all claims of any type that result from any delays, billing disputes, performance disputes, changes, actions, events, issues, or change orders, identified above (hereafter, "project issues"), or otherwise known or reasonably known by Contractor as of July 5, 2010. The Contract Sum established by this Change Order No. 2 specifically includes any costs and time of performance arising out of or connected to any of the Project issues identified herein, including issues arising out of or connected to Work identified herein. The Contract Sum shall be earned progressively based upon the pricing and satisfactory completion of the separate Increments, design services, subcontractor bid packages and Contractor's contract responsibilities, per Section 1.7 of Section 01200 (Payments and Completion).

4. Limited Release. With the exception of potential claims and rights to compensation specifically reserved below, Contractor and District, hereby waive, forgive, and release the other from any and all claims requests, liens, liabilities, obligations or demands for extra compensation, schedule relief, delay, or other relief of any sort, which have arisen by July 5<sup>th</sup>, 2010, in connection with this Contract Scope and Project issues as set forth above.

5. Exceptions. Notwithstanding the foregoing release, Owner shall not release any claims it may have regarding (i.) contract warranties, (ii.) any damages covered by insurance including without limitation any claims for personal injury or property damage, and/or (iii.) the quality, timeliness, or performance of the Contract going forward from the date of execution of this Change Order. Under no circumstances may this release be relied on by any supplier, subconsultant or subcontractor in defense of any claims for deficiencies in their supply or performance, nor may it be asserted as a defense by any insurance carrier in defense of claims otherwise covered by insurance.

6. Not used.

7. Date. The date of this Change Order No. 2 shall be July 5, 2010.

8. Attachments – Contract Documents. Attachments to this Change Order, intended to be Contract Documents, are the following:

- a. Change Order 1 (previously executed).
- b. List of value engineering items agreed to be deleted from scope (prepared by Owner and Contractor). Such deletions from scope items shall be construed narrowly. Items identified by category only, or not identified by drawing number and specification reference, shall not be deemed deleted. Under no circumstances shall the cumulative total value of such value engineering deletions exceed a value of \$340,000 (based on take-offs prepared by Contractor to support each deletion, that accurately reflect quantities and market price of deleted work),

nor may underruns in value justify deletions omitted from the list or otherwise not recognized.

c. List of QUALIFICATIONS consisting of: (i.) "INCLUSIONS" listing items either not shown or not clearly indicated in the scope of Work of Change Order No. 1, but which Owner and Contractor agree are within the scope of the Work of this Contract, and (ii.) "EXCLUSIONS" listing items either shown or not clearly shown in the scope of Work of Change Order No. 1, and which Owner and Contractor agree are not in the scope of Work of this Contract. (The exclusion of work shown on the EA and AV drawings is intended to exclude the AV work only, and not, for example, the electrical work shown on the electrical drawings.)

9. Attachments – For Information Only. Attachments to this Change Order, intended for information only, are the following:

o Increment 3 Drawing Sheets and Specifications provided for the sole and limited purpose of identifying specific value engineering deletions.

9. Contract Continues. Except as specifically amended by the above, the Contract shall remain unchanged and in full force and effect.

PERALTA COMMUNITY COLLEGE DISTRICT

By \_\_\_\_\_

Its: \_\_\_\_\_

GILBANE BUILDING COMPANY

By  \_\_\_\_\_

Its: V.P. 07/09/10.