

**Board of Trustees Agenda Report
For the Trustee Meeting Date of February 14, 2012**

ITEM TITLE:

Consider Ratification of Change Order No. 5, ADA Improvements at Laney College, Vertex Construction Services

SPECIFIC BOARD ACTION REQUESTED:

Ratification is requested for Change Order No. 5 to the contract with Vertex Construction Services for the ADA Improvements at Laney College, in the amount of \$130,390.

ITEM SUMMARY:

Ratification is requested for Change Order No. 5 to the contract with Vertex Construction Services for the ADA Improvements at Laney College, in the amount of \$130,390. Including the previously Board approved Change Order Nos. 1, 2, 3 and 4, the cumulative total is \$432,976, which is 18.7% of the original contract amount (\$2,318,000).

This change order is comprised of the following:

- 40% of Change Order No. 5 reflects the Settlement Agreement and Order for work that was added to the contract as a compromise after the bid and DSA approval
- 49% of Change Order No. 5 is for work along Fallon Street mandated by the City of Oakland
- The remaining 11% has resulted from District changed standards for the drinking fountains and unforeseen circumstances

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, "Handicap accessibility."

BACKGROUND/ANALYSIS:

The ADA Improvements Project at Laney College is a court ordered project designed to address pathway access in accordance with the 1990 Americans with Disabilities Act and subsequent Amendments Act of 2008. The law mandated programmatic as well as physical barrier removal, in order to ensure that all persons with disabilities receive comparable access to all public and some private places of business.

Nineteen (19) areas at the Laney campus were identified that required physical barrier removal through construction. The majority of the areas also required DSA approval due to significant structural, fire/life safety and access components included in the settlement. In addition, an aggressive time line was established to complete all facets of the work. Due to DSA review delays and the complexity of the final settlement, four areas of injunctive relief were agreed to be added as modifications to the awarded contract.

On June 10, 2010, this Board awarded a contract for the ADA Improvements Project at Laney College to IMR Contractor Corporation in the amount of \$2,318,000. A Notice to Proceed was issued directing IMR to commence work on August 23, 2010, with construction targeted for completion in August 2011.

Unfortunately, the project was fraught with challenges at the beginning and continued throughout construction. In July 2011, IMR Contractor Corporation filed for bankruptcy, which effectively ended any further progress on the project. IMR's surety company, First National Insurance Company of America, assumed the responsibility of completing the construction. Subsequently, First National awarded the contract to Vertex Construction Services under a takeover agreement with the District.

In September 2011 Vertex Construction Services began work on the project with an end date of February 29, 2012. The District also discontinued the services of the previous construction management firm, Stegeman & Kastner, and contracted with Olive Construction Management, Inc., in order to decrease management fees by hiring a local firm familiar with Peralta's campus and organization.

Four previous change orders were ratified by the Board of Trustees:

- Change Order No. 1, in the amount of \$93,901, was ratified at the meeting of March 15, 2011. This change order was necessary due to the complexity of scheduling construction work around the college educational requirements in various and numerous areas. Additionally, due to the aged infrastructure, unforeseen conditions were encountered during the demolition of the walls, floors and ceilings.
- Change Order No. 2, in the amount of \$105,715, was ratified at the meeting of June 28, 2011. This change order was necessary due to the complexity of scheduling the construction work around the college educational requirements, unforeseen conditions due to the aged infrastructure, and water intrusion problems.
- Change Order No. 3, in the amount of \$29,728, was ratified at the meeting of July 19, 2011. This change order was necessary due to field changes and to meet code compliance with DSA and the City of Oakland.
- Change Order No. 4, in the amount of \$73,242, was ratified at the Board meeting of December 6, 2011. It was issued to Vertex Construction Services for work performed by IMR as a provision of the takeover agreement between the District and the surety company, First National Insurance Company of America.

The total of the first four change orders is \$302,586, which is 13% of the original contract amount. Cumulatively these four change orders are attributed to:

Deferred Maintenance due the aged infrastructure	30%
Owner Requested Changes	7%
Division 1 (permits)	15%
Other Unforeseen Conditions (not deferred maintenance)	14%
City of Oakland requested changes	11%
Changes required by DSA	7%

Change Order No. 5

To date Vertex Construction Services has submitted an additional \$292,129 in proposed change orders. Change Order No. 5 represents \$130,390 for work that is warranted and should be ratified by the Board in order to complete the project by March 13, 2012. The \$130,390 Change Order No. 5 amount represents a negotiated reduction of \$28,134, or 22%. Any delays to approval of Change Order No. 5 will result in future stop notices and prevent the project from attaining completion on schedule, as well as opening the District to delay liabilities by the surety company. The District will address the credit issues and liquidated damages at the completion of this project.

From the additional \$292,129 of proposed change order items requested by Vertex, items totaling \$124,497 have been rejected and \$15,000 is still pending. Staff believes one final change order will be forwarded to the Board prior to project completion, but it may be deductive in nature. Staff is currently in the process of assessing existing requests in order to recommend rejection or approval. Although every effort has been made to reduce the change order work on this project, these changes were unavoidable. It was necessary for the contractor to perform this work so that the project schedule would not be delayed and the sequencing of the work would not be adversely affected. In accordance with Board Policy 6.83, approval was requested from the Chancellor for the change order work, and Change Order No. 5 is now brought before the Board for ratification. It is in the best interests of the District and financially prudent to authorize and ratify this change order.

DELIVERABLES/SCOPE OF WORK:

Change Order No. 5 consists of ten (10) Preliminary Change Order Items as detailed in the attached Summary of Change Order No. 5.

ANTICIPATED COMPLETION DATE:

This change order work has been completed, and Board ratification is requested.

ALTERNATIVES/OPTIONS:

Not applicable.

EVALUATION AND RECOMMENDED ACTION:

Ratification is recommended for Change Order No. 5 to the contract with Vertex Construction Services for the ADA Improvements at Laney College, in the amount of \$130,390.

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

YES _____ No X

COMMENTS:

No additional comments.

WHO WILL BE PRESENTING THIS ITEM AT THE BOARD MEETING? (VICE CHANCELLOR)

Vice Chancellor Ikhara

(*****Board contract approval is subject to negotiation and execution by the Chancellor.)

DOCUMENT PREPARED BY:

Prepared by: Dr. Sadiq B. Ikharo Date: February 2, 2012
Vice Chancellor for General Services

DOCUMENT PRESENTED AND APPROVED BY:

Presented and approved by: Dr. Sadiq B. Ikharo Date: February 2, 2012
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: Ron Gerhard
Ron Gerhard, Vice Chancellor Finance

Date: 2-8-12

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: Thuy Thi Nguyen
General Counsel

Date: 2-7-12

CHANCELLOR'S OFFICE APPROVAL

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

Signature: Wise E. Allen
Wise E. Allen, Chancellor

Date: 2-7-12