

PERALTA COMMUNITY COLLEGE DISTRICT
Board of Trustees Agenda Report
For the Trustee Meeting Date of July 16, 2013

ITEM TITLE:

Consider Approval to Enter into an Agreement with Mondo USA, Inc. (Mondo) to Mitigate the Deterioration of District-wide Tracks at Laney College, College of Alameda and Merritt College

SPECIFIC BOARD ACTION REQUESTED:

Approval is requested to enter into an agreement with Mondo USA, Inc. to mitigate the deterioration of district-wide tracks at Laney College, College of Alameda and Merritt College, in the amount not-to-exceed \$1,400,000 (one million four hundred thousand dollars).

ITEM SUMMARY:

This agreement is an exception to competitive bidding that is allowable pursuant to *Shore v. Central Contra Costa Sanitary District* (1962) 208 Cal.App.2d 465 and *Graydon v. Pasadena Development Agency* (1980) 104 Cal.App.3d 631.

The District and Mondo entered into mediation, since all three tracks in the District suffered a production defect because Mondo used a red dye (a non-Mondo product), when mixed with the Mondo surface material created a chemical reaction that was deleterious to the tracks. This reaction caused the untimely deterioration of all track surfaces. The premature deterioration consisting of brittleness, dryness, and substantial chipping of the surface layers occurred within the Mondo five-year warranty period. Additionally the defect affected the college's track and training program and caused a complete alteration of the college's training program.

Peralta Community College District and Mondo mediated the dispute and reached the following agreement effective June 19, 2013, subject to the approval of the Chancellor and Board of Trustees. Under the Settlement Agreement and Mutual General Release, Mondo's scope of work shall include but is not limited to the following:

- 1) Removal of the existing track surface, and manufacture, supply and install a new track surface, track and field line and event marking using a minimum 13.5 mm thick Super-X Performance track surfacing system with hexagonal backing.
- 2) Installation shall be performed by expert specialized proprietary certified installers assisted by general laborers.
- 3) Removal and disposal of the existing track surfacing and preparation/leveling of the exposed asphalt base suitable to receive the new track surfacing.
- 4) All concrete slabs to receive track surfacing must be installed, on a minimum 12-mil polyethylene moisture barrier membrane, in accordance with accepted industry standards to protect the concrete from infiltration of water from the sub-grade.

- 5) Install a topical moisture reduction barrier (TMRB) to protect the concrete from infiltration of water from natural or artificial causes.
- 6) Use Aquafin Vaportight Coat SG2 applied at a rate of 160 sq. ft. per 2.1 gallon kit.
- 7) Commence resurfacing work on the tracks by Mondo as soon as possible. The critical path for the work at each school is four weeks. The track resurfacing project for each school, including the track and field line and event marking, shall be completed no later than the dates stipulated in the agreement.
- 8) Comply with all applicable California project labor agreement (PLA) and prevailing wage requirements.
- 9) Mondo's standard limited/specified warranty conditions, five years on the synthetic surface and one year on the line markings will be extended to ten years on the synthetic surface at all three colleges.

Mondo U.S.A. Inc. was incorporated in 1989 and is based in Conshohocken, Pennsylvania. Federico Stroppiana is the president of the corporation. All Board approved contracts are subject to final negotiation and execution by the Chancellor. The Chancellor recommends approval.

SOURCE OF FUNDS (AND FISCAL/BUDGETARY IMPACT):

Measure A projects, as approved by voters in Peralta's constituency and authorized under Resolution 05/06-45, Laney College, "Classroom and facilities repairs and grounds improvements," Merritt College, "Classroom and facilities repairs and grounds improvements," College of Alameda, "Remodeling and equipping classroom and campus facilities, and "Berkeley City College, "Plumbing, electrical, mechanical system upgrades and improvements," "Remodeling of classroom space," "Science Lab upgrades," and "Equipment, technology upgrades, and facility and classroom improvements for the college's following programs and proposed programs: American Sign Language, Biotechnology, Business, Computer Information Systems, Disaster Preparedness, Fine and Applied Arts, Global Studies, International Trade, Multimedia Arts, Social Services Paraprofessional, Travel and Tourism Industry, Foundations (Basic Skills), Network Administration, Teacher Preparedness, International Studies, and High School Honor's Courses (Advanced Placement)."

BACKGROUND/ANALYSIS:

In April 2002, the District entered into a contract with Robert A. Bothman, Inc. (Bothman) to furnish all labor, materials, equipment, plant, tools, supervision, appurtenances, and services required to perform and complete the Athletic Facilities Upgrades at the College of Alameda, Laney College and Merritt College. Bothman hired Mondo, as a sub-contractor, to provide materials and installation of a Mondo Super X track surface at each of the three (3) colleges. This portion of the Athletic Facilities Upgrades was the subject of the Mediation on April 19, 2013.

On April 18, 2002, work on the project began after the Administration issued a notice to proceed. The anticipated project completion was March 22, 2003. However, contract change orders extended the project completion and acceptance to June 2003. In Spring 2005, "bumps/bubbles" were discovered in the Laney Track and after some delay, repair work was done in Spring 2007, at no charge to the District. The tracks continued to deteriorate during 2008 and 2009; the deterioration took a rapid turn for the worse in 2010 when the track "cracking" eventually caused the track surfaces to crumble.

The track surfaces at the three (3) colleges are red in color. Mondo informed the District that the red dye (a non-Mondo product) caused a chemical reaction when mixed with the Mondo surface material. This dye was used in a particular batch of the Mondo track surface material during 2002/2003 causing the premature deterioration of the track surface. On April 22, 2012, Mondo specialists visited and walked the tracks; they determined and agreed that the tracks were defective and in need of replacement. During 2011 to 2012, the parties engaged in settlement discussions, and settlement proposals were exchanged regarding the replacement of the surface layers of the tracks. The parties agreed to participate in a “pre-litigation” mediation to resolve the dispute and arrive at an agreement to mitigate the track issues at Laney College, Merritt College and College of Alameda.

DELIVERABLES AND SCOPE OF WORK:

Mondo will perform, mitigate and complete the scope of work as identified under the Item Summary and the terms and conditions outlined in the Settlement Agreement and Mutual General Release.

ANTICIPATED COMPLETION DATE:

Mondo will commence the track resurfacing work as soon as possible and the critical path for work at each college is four weeks. The track resurfacing project for each college, including the track and field line and event parking, shall be complete by the following dates:

Colleges	Completion Dates
Laney College	October 14, 2013
Merritt College	September 27, 2013
College of Alameda	November 20, 2013 (flexible)

ALTERNATIVES/OPTIONS:

Not Applicable

EVALUATION AND RECOMMENDED ACTION:

The Administration recommends entering into an agreement with Mondo USA, Inc. to mitigate the deterioration of district-wide tracks at Laney College, College of Alameda and Merritt College, in the amount not-to-exceed \$1,400,000 (one million four hundred thousand dollars).

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

YES _____ NO X

COMMENTS:

No additional comments regarding the mitigation of the track resurfacing at all three (3) colleges.

WHO WILL BE PRESENTING THIS ITEM AT THE BOARD MEETING?

Vice Chancellor Ikhara

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

DOCUMENT PREPARED BY:

Prepared by: Dr. Sadiq B. Ikharo
Vice Chancellor of General Services

DOCUMENT PRESENTED AND APPROVED BY:

Presented and approved by: Dr. Sadiq B. Ikharo
Vice Chancellor of 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: Ronald Gerhard
Ron Gerhard, Vice Chancellor 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: Thuy Thi Nguyen
Thuy Thi Nguyen, General Counsel

CHANCELLOR'S OFFICE APPROVAL

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

Signature: José M. Ortiz
Dr. José M. Ortiz, Chancellor