

Board of Trustees Agenda Item

Board Meeting Date: 5/7/12

Title of Item: Measure C Project Stabilization/Construction Careers Mid-Program Report

Background and Analysis:

The Project Stabilization/Construction Careers Agreement that is applicable to listed Measure C Bond Program Projects was approved by the Board at the April 7, 2008 meeting.

The agreement includes a memorandum of understanding that the parties will meet and confer when 50% of the projects have been let or by December 31, 2011, whichever occurs first, for the purpose of evaluating the performance of the Agreement in meeting the District's objectives.

The criteria that was established in the memorandum of understanding for evaluating the performance of the agreement are:

- 1) The extent to which the agreement supports the goals and objectives of the District as defined in the Measure C Bond Measure to upgrade and expand facilities to support student learning;
- 2) Labor harmony during construction of the projects;
- 3) Student and local resident participation in the Construction Careers Program;
- 4) Compliance with Prevailing Wage laws.

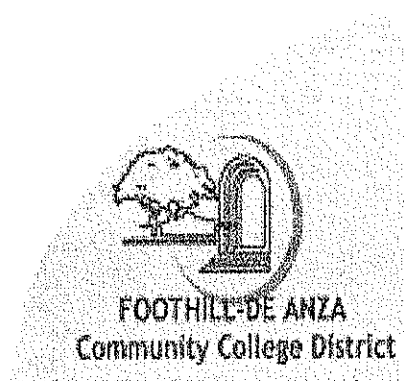
District and Gilbane-Maas representatives and the Santa Clara & San Benito Counties Building & Construction Trades Council, along with union representatives, met and conferred on November 22, 2011 for the purpose of evaluating the performance of the PSA using the criteria previously established in the agreement. The attached summarizes the results/conclusions reached at the meeting.

Conclusion

The District and Gilbane-Maas representatives and the Santa Clara & San Benito Counties Building & Construction Trades Council, along with union representatives, agree that the Agreement has functioned as intended with positive effects in the areas detailed above. Additionally, and in consultation with the Building Trades Council, as the result of further refinement and definition of Measure C maintenance projects, the attached amendment No. 1 to the Project Stabilization/Construction Careers Agreement to update the list of covered projects is recommended for Board approval.

Recommendation: Executive Director of Facilities, Operations and Construction Management Charles Allen recommends board acceptance of the Mid-Program Report and approval of Amendment No. 1 to the Project Stabilization/Construction Careers Agreement to update the list of covered projects.

Submitted by:	Charles Allen, ext. 6150
Additional contact names:	Kevin McElroy, ext. 6201
Is backup provided?	Yes



MEASURE C

PROJECT STABILIZATION / CONSTRUCTION CAREERS AGREEMENT (PSA)

Mid Program Performance Evaluation

April 2012

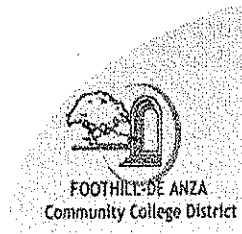


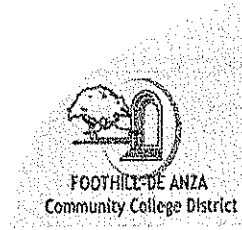
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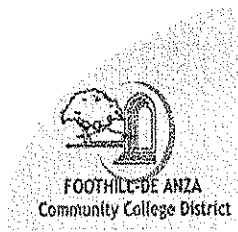
A. EXECUTIVE SUMMARY

Foothill - De Anza Community College District and the Santa Clara & San Benito Counties Building & Construction Trades Council and the Local Unions entered into a Project Stabilization / Construction Careers Agreement ("PSA") on April 8, 2008.

The purpose of this Agreement is to promote efficiency of construction operations during the construction of projects covered by the Agreement and funded by proceeds from Measure C bonds, to promote career opportunities and job placement for District students, and to provide for peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the projects.

As required by the agreement, District and Gilbane-Maas representatives and the Santa Clara & San Benito Counties Building & Construction Trades Council, along with union representatives, met and conferred on November 22, 2011 for the purpose of evaluating the performance of the PSA using the criteria previously established in the agreement. The following reflects the results / conclusions reached at the meeting for each of the criteria that were previously established in the agreement:

1. *Extent to which the PSA supports the goals and objectives of the District as defined in the Measure C Bond Measure to upgrade and expand facilities to support student learning.*



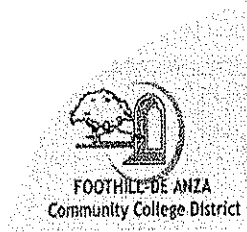
The District is pleased with the success and progress of the Measure C bond program. The projects have had good general contractor and subcontractor participation which has contributed to the receipt of competitive bids. A majority of the bids came in below estimates. In general, the District is pleased with the quality of contractors who have worked on Measure C projects as well. The PSA has been effective in supporting these goals.

2. *Labor harmony during construction of the Projects.*

There have been no strikes or lockouts on any PSA covered project. There have been no construction delays on any PSA covered project as a result of any labor dispute.

To effectively implement the PSA on the larger projects covered by the agreement, a Pre-Job/Mark-up meeting has been held to review the scope of work to be performed by the general contractor and the various subcontractors. These meetings have been attended by representatives of the general contractor, subcontractors, building trades unions, the Santa Clara & San Benito Counties Building & Construction Trades Council, the District and Gilbane-Maas. These meetings have been effective in identifying and resolving craft jurisdiction issues prior to the commencement of construction.

Periodic Labor-Management meetings have been held approximately every six months since commencement of the PSA. These meetings involve representatives from the District, the Santa Clara & San Benito Counties Building & Construction Trades Council, the local building trades unions and Gilbane-Maas. The purpose of these meetings is to review the status of current construction projects being performed under the PSA, to present upcoming projects and to discuss any PSA compliance issues with specific contractors or



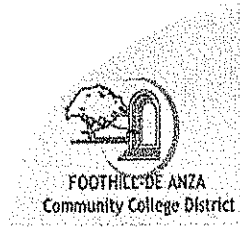
particular building trades unions. These Labor-Management meetings have been well attended and have served as an effective tool in managing the labor relations on the PSA covered projects.

Since the implementation of the PSA, there have been three (3) grievances filed by unions against contractors. In 2010, a grievance was filed by the Carpenters union against a scaffolding subcontractor alleging a violation of the referral procedures. A negotiated resolution between the contractor and the union was achieved and the grievance was withdrawn by the union following completion of the terms of settlement.

In 2011, a grievance was filed by the Laborers union against a temporary fence subcontractor alleging violation of the referral procedures. Because the work was completed, a settlement was negotiated and the grievance was withdrawn.

In 2011, a grievance was filed by the Carpenters union against a scaffolding subcontractor alleging violation of the referral procedures. The subcontractor rejected a settlement offer and the matter went to arbitration. The subcontractor failed to appear at the arbitration hearing and the arbitrator upheld the grievance based on the uncontested evidence presented. In upholding the grievance, the arbitrator awarded the lost wages and benefit contributions according to the proof provided by the union. The PSA procedures have been completed and the matter closed.

In each of the three cases, there was no jobsite activity affecting the performance of the construction work in progress. The PSA grievance dispute resolution procedure has functioned as designed and has been effective in resolving union-contractor disputes.



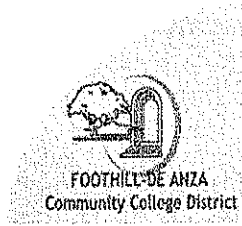
3. *Student and local resident participation in the Construction Careers Program.*

The purpose of the Construction Careers Program is to add an additional student learning outcome: exposure and awareness of apprenticeship and other construction career opportunities and attainment of both math and workplace knowledge to be competitive apprenticeship applicants.

Based on the nature and value of the construction projects performed to date, over 150,000 hours of work on Measure C bond projects have been performed by California State registered apprentices. A significant number of those apprentices are students enrolled at the District. Additionally, the Construction Careers Program was the catalyst for the expansion of the District's Internship Program to include Construction and is currently being used on the Physical Sciences and Engineering Center project at Foothill College where the general contractor has hired interns from the District's internship program.

4. *Compliance with the Prevailing Wages laws.*

The District has been fully successful in ensuring compliance with prevailing wage laws. There have been relatively few requests for certified payrolls on covered projects since the inception of the PSA. Occasionally, a contractor is requested to confirm the payment of fringe benefits, etc. And occasionally, the contractor does not respond in a timely manner with the requested certified payroll records, therefore the District follows up with additional correspondences as needed to ensure compliance. The Department of Industrial Relations (DIR) has requested information regarding a general contractor on one project at Foothill College relating to a possible violation of the Labor Code. At this point the DIR has only requested this information. It should be noted that due to its use



of a PSA, the District is exempt from new requirements that took effect January 1, 2012, requiring all Community College Districts who receive State Bond proceeds to fund the Department of Industrial Relations Compliance Monitoring Unit for the enforcement of prevailing wages. This represents a savings of .0025% of all construction costs incurred on future PSA projects.

B. CONCLUSION

The parties agree that the PSA has functioned as intended with positive effects in the areas detailed above. The parties agree to continue with the agreement for work under the Measure C Bond Program. After review, and as the result of further refinement and definition of Measure C projects, and in consultation with the Building Trades Council, the parties have agreed to amend the PSA to update the list of covered projects to include several previously undefined or unlisted Scheduled Maintenance projects (amendment No. 1).

**FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT
PROJECT STABILIZATION / CONSTRUCTION CAREERS AGREEMENT**

AMENDMENT NUMBER 1

WHEREAS, the Foothill-De Anza Community College District ("District") and the Santa Clara & San Benito Counties Building & Construction Trades Council ("Council") and affiliated and signatory Local Unions ("Unions") entered into the Foothill-De Anza Community College District Project Stabilization/Construction Careers Agreement ("Agreement") on April 8, 2008;

WHEREAS, the parties to the Agreement also entered into a Memorandum of Understanding ("MOU") on April 8, 2008, providing, among other things, that they would meet and confer regarding the performance of the Agreement when fifty percent (50%) of the projects covered by the Agreement had been let for bid or on December 31, 2011;

WHEREAS, the parties did meet on November 22, 2011, to evaluate the performance of the Agreement;

WHEREAS, the MOU provides that the Agreement may be modified by mutual agreement based on the results of the evaluation of the performance of the Agreement and, further, that such modification must be reduced to writing; and

WHEREAS, the parties now desire to modify the Agreement based on the results of the evaluation.

NOW THEREFORE, the parties, in consideration of the mutual promises and covenants herein, mutually agree as follows:

1. Section 1.4 and Appendix B of the Agreement shall be modified to include the following construction projects:

Project Number	Project Name	Project Budget
<u>Foothill</u>		
100J	Golf Range Turf Replacement	\$375,000
100N	HVAC & Interior Lighting	\$300,000
100I	Smithwick Emergency Generator	\$300,000
100M	Utility Infrastructure Upgrades – Ph. II	\$3,691,255
<u>De Anza</u>		
200C	A9/PE6 HVAC Improvements	\$915,514
200P	Flat Roof Repairs	\$1,979,782
<u>District</u>		
801	Property Acquisition (Construct New Educational Center)	\$38,000,000

2. All other provisions of the Agreement shall remain in full force and effect.

**FOOTHILL-DE ANZA COMMUNITY
COLLEGE DISTRICT**

Dated: _____

By: _____
Kevin McElroy
Vice Chancellor of Business Services

**SANTA CLARA & SAN BENITO COUNTIES
BUILDING & CONSTRUCTION TRADES COUNCIL**

Dated: _____

By: _____
Neil M. Struthers
Chief Executive Officer

Approved as to Form and Legality:

By: _____
Nancy J. Clark
Deputy County Counsel
Attorney for District