

## **Board of Trustees Agenda Item**

**Board Meeting Date:** June 4, 2012

**Title of Item:** Approval of Resolution 2012-26 per 2012 California Public Contract Code;  
Civil Code Section 9200 – Completion of a Work of Improvement

### **Background and Analysis:**

A new California Civil Code Section that applies to construction, alteration, repair, demolition, or removal that is subject to acceptance by a public entity has been added to the Code that goes into effect on July 1, 2012. Section 9200(a) states that completion ...occurs ... upon acceptance of the work .... by the public entity.

And, as to a public entity, the Law Revision Commission Comments state that acceptance refers to acceptance pursuant to a legislative enactment of a public entity (Board action item), and not to inspection and approval or issuance of a certificate of occupancy under building regulations as has been the past practice at Foothill – De Anza CCD. The existing code requirements are unclear as to the requirement for a Board action item before construction works of improvement can be accepted. The new Law Revision Commission Comments now clarify that the intent of the code is that, for public entities, a legislative enactment by the Board of Trustees is required prior to acceptance.

By adding an additional step to the final completion, acceptance, and final payment process that involves an individual Board action to accept each and every public project will delay final payments to contractors. Therefore, after consultation with the District's legal counsel, Jaret and Jaret, it is recommended that a resolution granting the positions of the Vice Chancellor of Business Services and the Executive Director of Facilities and Operations authority to accept a project's completion pursuant to California Civil Code §9200. With such a delegation of authority, the acceptance process will be more efficient and will get final payments into the hands of contractors and subcontractors more quickly while still being fully in compliance with California Civil Code.

As has been done in the past, all completed projects are reported quarterly via the Measure C and Measure E project reports that are provided routinely to the Audit and Finance Committee. This practice will continue.

**Recommendation:** Executive Director of Facilities, Operations, and Construction Management Charles Allen recommends approval of the attached resolution that would delegate authority to the Vice Chancellor of Business Services and the Executive Director of Facilities and Operations to accept completion of works of improvement pursuant to California Civil Code §9200.

Submitted by:	Charles Allen, Executive Director
Additional contact names:	Kevin McElroy, Vice Chancellor
Is backup provided?	Yes

## RESOLUTION 2012-26

### ACCEPT COMPLETION OF WORKS OF IMPROVEMENT

**WHEREAS**, the Board of Trustees of the Foothill-De Anza Community College District recognizes the amendment of the California Civil Code to include Civil Code §8180 and §9200, operative July 1, 2012; and

**WHEREAS**, the Board of Trustees of the Foothill-De Anza Community College District understands that under Civil Code §8180(b), “Notwithstanding subdivision (a), if a work of improvement is subject to acceptance by a public entity, completion occurs on acceptance,” and that the Law Revision Commission Comments state in pertinent part that “[t]he provision in subdivision (b) for acceptance by a public entity refers to acceptance pursuant to a legislative enactment of the public entity and not to inspection and approval or issuance of a certificate of occupancy under building regulations;

**WHEREAS**, the Board of Trustees of the Foothill-De Anza Community College District understands that under Civil Code §9200, applicable to public works of improvement, “[f]or the purpose of this title, completion of a work of improvement occurs at the earliest of the following times:(a) Acceptance of the work of improvement by the public entity. (b) Cessation of labor on the work of improvement for a continuous period of 60 days;

**WHEREAS**, the Board of Trustees of the Foothill-De Anza Community College District recognizes the importance of appointing an appropriate individual to be responsible for acceptance of completion of any and all works of improvement, public and private, funded by the Foothill-De Anza Community College District;

**WHEREAS**, the Board of Trustees of the Foothill-De Anza Community College District holds the Vice Chancellor of Business Services and the Executive Director of Facilities, Operations, and Construction Management as the appropriate individuals to be responsible for acceptance of completion of any and all works of improvement, public and private, funded by the Foothill-De Anza Community College District; now

**HEREFORE**, be it resolved that by this legislative enactment of the Foothill-De Anza Community College District, a public entity, the Vice Chancellor of Business Services and the Executive Director of Facilities, Operations, and Construction Management are hereby appointed to be responsible for acceptance of completion of any and all works of improvement, public and private, funded by the Foothill-De Anza Community College District.

PASSED AND ADOPTED THIS \_\_ day of the month of \_\_\_\_\_, 2012, by the Board of Trustees of the Foothill-De Anza Community College District.

AYES \_\_\_\_\_  
NOES \_\_\_\_\_  
ABSTENTIONS \_\_\_\_\_  
ABSENT \_\_\_\_\_

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Linda M. Thor, Ed.D., Chancellor and  
Secretary to the Board of Trustees