

Board of Trustees Agenda Item

Board Meeting Date: October 01, 2012

Title of Item: Baldwin Winery & East Cottage Historic Renovation – Unilateral Change Order #14 (\$243,000 credit)

Background and Analysis:

This is a unilateral Change Order to the contract with John Plane Construction, Inc. Due to late delivery of the completed construction project by John Plane Construction, Inc. the District has contractual rights to monetary damages.

The amount of this change, a \$243,000 credit to the District, will settle the 243 calendar day delay in substantial completion of the East Cottage building. The contract specifications allow a \$1,000 per day liquidated damage assessment for the impacts associated with the late completion of a building and the project records document the 243 calendar day delay.

John Plane Construction, Inc. does not dispute the delay or the assessment of damages; however the company will not formalize an agreement and sign this change order with the District absent a commitment from its insurers to make payment on the claim. John Plane Construction, Inc. has advised that it is their intent to pursue compensation for these damages from their insurer. Nonetheless, these damages from John Plane Construction are due and payable to the District without additional delay, hence the need for a unilateral change.

Recommendation: Executive Director of Facilities, Operation and Construction Management Charles Allen recommends that the Board approve this Unilateral Change Order #14 in the amount of a credit to the District from John Plane Construction, Inc. in the amount of \$243,000.

Submitted by:	Charles Allen
Additional contact names:	Donna Jones-Dulin, Tom Armstrong,
Is backup provided?	Yes (Unilateral Change Order #14)

203 Baldwin Winery and East Cottage Project

Project #1183-203

Gilbane/MAAS

Date: 10/1/2012**To Contractor:**John Plane Construction
1000 South Bascom Ave.
San Jose CA 95128**Project #** 1183-203
Contract Date: 11/16/2009
Contract Number 1
Change Order Number: 14**The Contract is hereby revised by the following items: (Unilateral Change Order)****Baldwin Winery**

DSA# 01-110264

PCCO	Description	Amount
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\$ -

East Cottage

DSA# 01-110101

PCCO**Description**

5	Unilateral credit to the contract for liquidated damages due to late completion of the East Cottage. Actual completion date of 6/16/11 is 243 days later than Contract requirement of 10/16/10. Specification 00510-7 allows \$1,000/day in liquidated damages.	\$ (243,000.00)
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Total Combined
\$ (243,000.00)

The original Contract Value was	\$ 3,270,000.00
Sum of changes by prior Prime Contract Change Orders	\$ 236,025.00
The Contract Value prior to this Prime Contract Change order was	\$ 3,506,025.00
The Contract Value will be changed by this Prime Contract Change Order in the amount of	\$ (243,000.00)
The new Contract Value including this Prime Contract Change Order will be	\$ 3,263,025.00
The Substantial Completion date for the East Cottage building is unchanged	10/16/2010
The Substantial Completion date for the Baldwin Winery building is unchanged	3/3/2011

The Contract documents are hereby amended to include the changes described above. The Contractor shall furnish all labor, material and supervision as applies to complete the work above.

John Plane Construction has advised that they are unwilling to make payment for liquidated damages at this time due to an unresolved insurance claim and a pending lawsuit initiated by John Plane Construction against their insurance provider seeking the full amount of the liquidated damages owed. The District must close this contract and it cannot wait for the administration of the claim and the suit to be resolved. Therefore the District is utilizing this unilateral prime contract change order to document enforcement of liquidated damages and to formally and finally amend the value of this contract.

Architectural Resources Group

ARCHITECT

Pier 9, The Embarcadero
San Francisco, CA 94111BySIGNATUREDATEFoothill-De Anza Community College

OWNER

12345 El Monte Road
Los Altos Hills, CA 94022By Charles AllenSIGNATUREDATE**COLLEGE APPROVAL**By Letha JeanpierreSIGNATUREDATE



Prime Contract Change Order

Date: 10/1/2012

To Contractor:

John Plane Construction, Inc.
100 North Hill Dr., Ste.12
Brisbane, CA 94005

DSA Number

Project #

203C

Contract Date:

11/16/2009

Contract Number: 001

Change Order Number: 005

**The Contract is hereby revised by the following items:
(Unilateral Change Order)**

PCO	Description	Amount
030	Unilateral credit to the contract for liquidated damages due to late completion of the East Cottage. Actual completion date of 6/16/11 is 243 days later than Contract requirement of 10/16/10. Specification 00510-7 allows \$1,000/day in liquidated damages.	\$(243,000)

The original Contract Value was.....	\$980,600
Sum of changes by prior Prime Contract Change Orders.....	\$12,412
The Contract Value prior to this Prime Contract Change Order was.....	\$993,012
The Contract Value will be changed by this Prime Contract Change Order in the amount of.....	\$(243,000)
The new Contract Value including this Prime Contract Change Order will be.....	\$750,012
The Contract duration will be changed by.....	0 Days
The revised Substantial Completion date as of this Prime Contract Change Order is.....	

The Contract documents are hereby amended to include the changes described above. The Contractor shall furnish all labor, material and supervision as applies to complete the work above.

John Plane Construction has advised that they are unwilling to make payment for liquidated damages at this time due to an unresolved insurance claim and a pending lawsuit initiated by John Plane Construction against their insurance provider seeking the full amount of the liquidated damages owed. The District must close this contract and it cannot wait for the administration of the claim and the suit to be resolved. Therefore the District is utilizing this unilateral prime contract change order to document enforcement of liquidated damages and to formally and finally amend the value of this contract.

Architectural Resources Group

ARCHITECT

Pier 9, The Embarcadero
San Francisco, CA 94111

Address

By _____

SIGNATURE _____

DATE _____

OWNER

Address

By _____

SIGNATURE _____

DATE _____

College Approval

By: Letha Jeanpierre

Signature _____

Date: _____