DATE: December 16, 2003  

TO: Board of Trustees  

FROM: Dr. Philip R. Day, Jr., Chancellor  

Subject: CAPITAL OUTLAY  
Authorization to approve a construction change order(s) to Alpha Bay Builders Inc. which causes the total of all change orders to exceed 10% of the original contract price.  
Construction of New Tennis Court Bleachers – Ocean Avenue Campus  
(Resolution No. 031216-B3)

BACKGROUND INFORMATION:

Project: Construction of new Tennis Court Bleachers – Ocean Avenue Campus

The Board of Trustees on April 24, 2003 (Resolution 030424-B4) authorized the District to enter into a contract with Alpha Bay Builders, Inc. (Contractor) in the amount of $176,000 to construct new tennis court bleachers at the Ocean Avenue Campus (Project). Additionally at that time, the Board authorized the execution of construction change orders in accordance with Public Code 20659 provided that such change orders amounted to no more than a 10% variation from the original contract amount.

The District to date has approved change orders to the contract in the amount of $17,347 which equals approximately 10% of the original contract value. District staff has determined that the Project requires additional work and that a change order(s) be issued to the Contractor to perform this additional change order work. The issuing of this change order(s) would cause the total of all change orders on the Project to exceed ten percent (10%) of the original contract amount.

Issuing this additional change order(s) to the Contractor would: avoid a significant inconvenience to the students, faculty and staff; lead to a higher quality project than if completed and then torn apart to perform the additional work; avoid a substantial delay to the project and interference with the District’s ability to use the bleachers for instructional and spectator purposes for the Spring 2004 Semester; and obtain an end result that could cost more under separate contracting.
California case law, including *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631, states that there are circumstances under which competitive bidding for additional construction work would not be in the public interest and would not be advantageous to the Project: “Where competitive proposals work an incongruity and are unavailing as affecting the final result, or where competitive proposals do not produce any advantage, or where it is practically impossible to obtain what is required and observe such form, competitive bidding is not applicable.”

A prompt resolution of this matter is critical to ensuring that the bleachers are adequately prepared for the Spring 2004 Semester.

WHEREAS: It would be contrary to the purposes of the competitive bidding laws to advertise and take competitive bids for the work which is the subject of the proposed Change Order(s) and the proposed Change Order(s) could not be foreseen and would not constitute an act of favoritism, improvidence or extravagance, fraud or corruption and Issuing the proposed Change Order(s) would prevent the waste of public funds and obtain the best economic result for the public.

**SHARED GOVERNANCE REVIEW:**

Yes ___; No X__; if yes, which committee: ______

Date of Review: ______

*(A negative response indicates that a review is not necessary)*

**RECOMMENDATION:**

RESOLVED: That authorization is hereby given to execute the attached Change Order(s), Exhibit “A” in the amount of $25,380.77, and

FURTHER BE IT RESOLVED: That the Chancellor, Vice Chancellor of Finance and Administration and/or their designee are hereby authorized to execute any and all documents on behalf of the District to effectuate this resolution.

Peter Goldstein, originator
W/ David Liggett