



INTER-OFFICE CORRESPONDENCE
LOS ANGELES COMMUNITY COLLEGES
OFFICE OF THE CHANCELLOR

TO: Members of the Board of Trustees
FROM: Francisco C. Rodriguez, Chancellor
DATE: October 12, 2016
SUBJECT: BOARD LETTER FOR OCTOBER 19, 2016 MEETING

Committee Meeting

Next week's committee meetings will be held at the ***Educational Services Center***. The meeting times and locations are as follows:

<u>Meetings</u>	<u>Time</u>	<u>Location</u>
Budget & Finance Committee	3:00 p.m. – 4:30 p.m.	Board Room
Break	4:30 p.m. – 4:45 p.m.	
Facilities Master Planning & Oversight Committee	4:45 p.m. – 6: 15 p.m.	Board Room
Institutional Effectiveness & Student Success Committee	4:45 p.m. – 6:15 p.m.	6 th Floor Large Conference Room
Break	6:15 p.m. – 6:30 p.m.	
Convene and Recess to Closed Session	6:30 p.m. – 7:30 p.m.	Hearing Room

Budget & Finance Committee (Moreno, Chair; Fong, Vice Chair; Hoffman, Member)

The committee will meet from 3:00 p.m. to 4:30 p.m. in the **Board Room**. The agenda and supporting documents may be viewed by clicking on the following link:

<https://spdev.laccd.edu/Board/StandingCommittees/Documents/2016-2017StandingCommitteeAgendas/20161019-Budget-Finance-Committee-Agenda.pdf>

Facilities Master Planning & Oversight Committee (Eng, Chair; Moreno, Vice Chair; Fong, Member)

The committee will meet from 4:45 p.m. to 6:15 p.m. in the **Board Room**. The agenda and supporting documents may be viewed by clicking on the following link:

<https://spdev.laccd.edu/Board/StandingCommittees/Documents/2016-2017StandingCommitteeAgendas/20161019-Facilities-Master-Planning-Oversight-Agenda.pdf>

Institutional Effectiveness & Student Success Committee (Hoffman, Chair; Kamlager, Vice Chair; Pearlman, Member)

The committee will meet from 4:45 p.m. to 6:15 p.m. in the **6th Floor Large Conference Room**. The agenda and supporting documents may be viewed by clicking on the following link:

<https://spdev.laccd.edu/Board/StandingCommittees/Documents/2016-2017StandingCommitteeAgendas/20161019-Institutional-Effectiveness-Student-Success-Agenda.pdf>

Confidential Matters

The attached correspondence is confidential and should not be shared with other persons.

Office of General Counsel – Enclosed for your review is the Board Letter Litigation Report. ***(Refer to Attachment A)***

Other Matters

Enclosed for your information is the Lead Construction Counsel's Semi-Annual Report. ***(Refer to Attachment B)***

Please let me know should you have any questions regarding the meeting.



LOS ANGELES COMMUNITY COLLEGE DISTRICT

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**LEAD CONSTRUCTION COUNSEL'S
SEMI- ANNUAL REPORT**

Build-LACCD Bond Program Legal Fees & Costs Update

October 19, 2016

I. INTRODUCTION

This Report is an Executive Summary prepared for the Chancellor, Facilities, and the Board of Trustees by Lead Construction Counsel, John P. Dacey, Esq. and updates the June 3, 2016 Report previously submitted.

The observations contained in this Report regarding Legal Fees and Costs (“Legal Fees”) expenditures are from near inception of the Bond Program through August 30, 2016 (“Report”)¹. This update to the June 3, 2016 Report has been requested by James D. O’Reilly, Chief Facilities Executive for the District.

This Report is divided into the following sections:

- (A) Increasing Legal Fees: 2008 through 2014 in the Bond Program;
- (B) Decreasing Legal Fees 2015 through 2016 in the Bond Program;
- (C) Ongoing and New Efforts to Continue the Curtailment of Legal Fees Incurred by the District; and
- (D) Update on the Results of Facilities Management Team’s ² Efforts on Bond Program Legal Matters.

Regarding the results and observations set forth in this Report, specific supporting detail can be provided upon request.

II. REPORTING CATEGORIES

A. Increasing Legal Fees: 2008 through 2014 in the Bond Program

Following the passage of Measure J in 2008, Legal Fees in the Bond Program began an upward spiral. For example, Legal Fees:

- in 2008 were ~\$845,000.00;
- in 2009 they jumped to ~\$2 million;

¹ This Report captures Legal Fees from 2005 through August 2016. Data from the Office of General Counsel for Legal Fees from 2002 through 2004 was not available at the time of producing this Report. The Legal Fees in this Report are “rounded” for simplicity in presentation. Specific numbers are available upon request.

² Facilities Management Team refers to the District Facilities executives, Program Management Office (“PMO”) executives and Lead Construction Counsel personnel.

- in 2010 they jumped again to ~\$3.6 million;
- in 2011 they experienced a slight drop to ~\$3.1 million;
- but then jumped again in 2012 to ~\$5.1 million;
- they increased again in 2013 to ~\$7.6 million; and
- reached their Program apex in 2014 at ~\$8 million.³

Since that time, the Legal Fees have been on a drastic decline.

B. Decreasing Legal Fees: 2015 through 2016 in the Bond Program

- 2015: ~\$4.2 million⁴; and
- 2016: ~\$3.3 million⁵.

As such, current projections indicate a further decrease for 2016 of approximately \$800,000.00 to \$900,000.00 in annual Legal Fees from the 2015 annual amount.

C. Ongoing and New Efforts to Continue the Curtailment of Legal Fees Incurred by the District

1. Ongoing

In my June 3, 2016 Report, I credited the reduction trend in Bond Program Legal Fees to several initiatives implemented by the Facilities Management Team. Namely:

- (1) the revision and introduction of a new “10% Change Order Policy;
- (2) the conception and application of a new Mutual/Partial Change Order process;

³ These prior year numbers vary slightly from the prior year numbers in the June 3, 2016 Report. The variances are the result of the Program Management Office undertaking a reconciliation of such numbers recently.

⁴ From the nearly \$8 million apex experienced in calendar year 2014, Legal Fees in 2015 dropped drastically to less than \$4.2 million (almost a 50% drop from 2014 to 2015).

⁵ This projected annual amount for 2016 is based on actual numbers through August 2016 and projected through December 31, 2016 using the current monthly average.

- (3) the implementation of an Expedited Claims process;
- (4) the revamping of all Contract and Procurement Documents;
- (5) the creation and employment of new Procurement Procedures and Oversight;
- (6) the formation of a new Protest Procedure; and
- (7) the implementation of new processes and procedures to strengthen the oversight of outside panel counsel firms working on Bond Program matters.

These new processes, practices and procedures continue to be utilized by the Facilities Management Team.

Additionally, since my June 3, 2016 Report, the Facilities Management Team has employed, or is the process of activating several additional programs to further reduce the District's risks.

1. New Efforts

These New Efforts are as follows:

- (1) the early investigation and in-house evaluation of claims and disputes by PMO, project staff and Lead Construction Counsel, which has led to a dramatic reduction in the amount of claims being submitted;
- (2) Lead Construction Counsel's early involvement in Change Order matters on troubled projects to help project staff and the PMO quickly assess validity and merit and resolve those Change Order Requests before they escalate into a formal dispute;
- (3) the District is in the process of implementing the use of electronic signatures on Program related invoices, change orders, and field orders to help expedite their processing and reduce the District's exposure to prompt payment claims;
- (4) the employment of a standard Background Investigation procedure

for all Program Management and College Project Team staff is underway to ensure a uniform approach is applied to background checks and that all pertinent information is being ascertained and analyzed before hiring decisions are made;

- (5) the Facilities Management Team is preparing a Request for Proposals to be issued in October to refresh the outside panel counsel bench for the Bond Program, so that the District has more choices when a matter requires outside counsel be engaged;
- (6) the Facilities Management Team is putting plans together to embark on a significant dispute management training effort for all PMO and College Project Team staff to help further mitigate disputes in the field; this will take place after the first of the year; and
- (7) the Facilities Management Team is putting plans together to embark on a significant training effort for all PMO and College Project Team personnel regarding the proper use of change orders, field orders, and other contract terms and conditions, to ensure cost effective and efficient management of each project's risk factors.

D. Update on the Results of Facilities Management Team's Efforts on Bond Program Legal Matters

As a result of the above mentioned efforts, the number of open matters has been reduced from 79 in 2013 to just 8 as of the date of this Report.

Moreover, in the last 3 years, the District was named as a defendant in only 2 lawsuits, both of which were assigned to outside panel counsel firms. The breakdown of current open matters by type is as follows:

- 1 outstanding Claim, which has been suspended by the claimant at as the Facilities Management Team seeks to facilitate a cost effective and expeditious;
- 1 outstanding Stop Payment Notice lawsuit; and

- 6 pending lawsuits/arbitrations.

My June 3, 2016 Report also related that from inception of the new Protest Procedure (August 2014), and the other risk prevention efforts mentioned, up through May 2016, we had approximately 90 procurement awards and only 1 protest which was abandoned. Since the June 3, 2016 Report, we have had 46 procurement awards with no protests.

[End of LCC Memorandum]