



**Maricopa County Community College District
Governing Board Minutes
March 9, 2016**

A Special Meeting of the Maricopa County Community College District Governing Board was scheduled to be held beginning at 5:30 p.m. at the District Support Services Center, 2411 West 14th Street, Tempe, Arizona, pursuant to ARS §38-431.07, notice having been duly given.

GOVERNING BOARD

Alfredo Gutierrez, President
Doyle Burke, Member
John Heep, Member
Tracy Livingston, Member
Jane McGrath, Member
Dana Saar, Member

Absent: Johanna Haver, Secretary

ADMINISTRATION

Maria Harper-Marinick
Debra Thompson
LaCoya Shelton-Johnson
Paul Dale
Edward Kelty
Chris Bustamante
Steven Gonzales
Maggie McConnell (Interim)

**CALL TO ORDER
OF SPECIAL MEETING**

President Gutierrez called to order the meeting of the Maricopa County Community College District Governing Board for March 9, 2016. President Gutierrez announced that this was an open session because there was a recommendation for action. There were questions about legal responsibilities and those questions would be discussed in executive session. The college felt that action should be taken quickly. If there were legal issues regarding this, an executive session will be scheduled to discuss legal implications at next meeting. Any legal questions that arise this evening will be addressed by Legal Counsel.

**INTRODUCTORY
COMMENTS**

Vice Chancellor of Business Services Debra Thompson provided a brief introduction which included maps, photos and handouts showing what areas were going to be discussed this evening pertaining to the construction contract dispute at Scottsdale Community College. The project involved the Xeriscape Project at SCC but it was not just about plants. In 2013 Burris Horrel Corporation was awarded the original construction contract through a competitive bid. They were also awarded two other projects – one at MCC for a new Art Gallery and a second for a library remodel at SCC. Burris Horrell defaulted on all three projects in February 2015. They produced poor quality work and an inability to meet completion dates. The project is in process and needs to be finished to restore the college to normal operations.

Associate Vice Chancellor for Facilities Development Arlen Solochek provided further information pertaining to the discussion and action being sought during this special meeting. He indicated that approval was being sought for a third contractor, Okland Construction, to complete the construction of the Xeriscape Improvements and Performing Arts Center Storage Room Addition for a cost of \$596,429.

Justification for this request is as follows

At the Governing Board's July 2013 meeting, Burris Horrel Corporation (BHC) was awarded the original construction contract through a competitive bid. BHC also was awarded two additional projects through competitive bids in the same time period, the new Art Gallery at Mesa Community College, and a second project, the Library Remodel, at Scottsdale

Community College. Due to the poor quality work and inability to meet completion dates, BHC was defaulted on all three projects in February 2015. The District entered into negotiations with GCNA for the completion of all three projects under the requirements of the performance bond furnished for each project. GCNA then selected Sletten Construction as their completion contractor. As standard in a surety's assumption of a project and as agreed to in the Takeover Agreements, the surety's financial obligation to make required repairs, rework and complete the project is limited to the amount of the contract value (penal sum). If the surety's direct and related expenditures reach the penal sum amount, the surety's obligations end.

On February 10, 2016, Facilities Planning & Development received a letter from the surety's attorney notifying the District of the surety's claim that its projected expenditures would reach the penal sum of the bond by the end of that week, and that its obligations under the takeover agreement were met. GCNA directed Sletten to stop work and leave the site as of the end of the day two days later, on February 12,

The District immediately and strenuously disputed to the surety's position. The District has retained outside legal counsel to pursue improper stopping of the work, as well as other claims against the surety. Regardless of the claims and negotiations with the surety, they will not be returning to the project site, so the District must step in to complete the remaining work.

The District is taking this unusual action, including a request for a special meeting by the Board for this approval, in order to avoid further disruption to the college's operations, and eliminate continuing adverse impacts to the college.

The District recommends that Okland Construction be retained to complete the remaining work due to their ability to step in quickly to assume responsibility for completing the work, their ability to self-perform critical portions of the work, and their presence already at the College with the recent selection as the Construction Manager at Risk for the Cloud Song project. Okland Construction is available to the District through Arizona State University's job order construction award (ASU 2016-16000 RFQ) that includes cooperative language allowing other public institutions to access the award.

The cost noted above is an estimated range and preliminary estimate. In order to complete as much work as possible and restore the college to a normal appearance, Okland will restart the work as quickly as possible, using some of the subcontractors that already were on site and performing adequately, Okland will identify new subcontractors and obtain price proposals for remaining work. Okland and the District must wait for Sletten and surety to release the current subcontractors to negotiate their contracts with Okland.

Initial funding for Okland Construction to complete the project will come from remaining funds in the already approved project budget, damages previously withheld from BHC and GCNA, and remaining balances in other projects also assumed by the surety at Scottsdale. If additional funds still are needed, the college and District will use fund balance or other budgeted amounts.

MOTION

Motion 10392

Board Member Burke moved for approval of \$596,429 for Okland Construction to complete the Xeriscape Project at Scottsdale Community College. President Gutierrez arbitrarily increased the amount to \$600,000. Motion approved 6-0

MOTION

Motion 10393

Board Member Burke moved for approval to move into Executive Session for an explanation of the legal status of this project. Motion approved 6-0

ADJOURNMENT

The Special Meeting adjourned at 6:30 p.m.

Johanna Haver
Governing Board
Secretary