5.2 BUSINESS ACTION ITEMS

I. RECOMMENDED REPLACEMENT OF GENERAL CONTRACTOR FOR WEST CAMPUS TURN-AROUND

The progress on construction of the Business/Communication Center walkway/front entrance and modification of the West Campus Turnaround has proceeded at a very slow pace. Despite numerous promises by the General Contractor, Construction Group of Santa Barbara, the timelines have slipped badly, and the most recent work schedule (dated June 20, 1994) has not been met. On June 16, 1994, the Contractor was given notice of non-conformance with the contract. Due to the critical nature of the project and strategic location on West Campus, safety is of the highest concern. The project MUST be completed in a timely manner to provide access to the new building and the West Campus thoroughfare. The "window" to complete the project is quite limited, and disruption of the entire campus traffic pattern and pedestrian flow is in jeopardy.

Under provisions of the General Conditions, page VIII-14, ¶37, Owner’s Right to Terminate Contract, the following procedures will/have been followed:

37. OWNER’S RIGHT TO TERMINATE CONTRACT

a. If the Contractor refuses or fails to prosecute the work or any separable part thereof with such diligence as will ensure its completion within the time specified or any extension thereof, or fails to complete said work within such time, or if the Contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or should fail, except in cases of which extension of time is provided, to supply enough properly skilled workmen or proper materials to complete the work in the time specified, or if he should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, ordinances or instructions of the Architect, or otherwise be guilty of a substantial violation of any provision of the contract, or if he or his subcontractors should violate any of the provisions of this contract, then the Owner may, without prejudice to any other right or remedy, serve written notice upon him and his surety of his intention to terminate this contract, such notice to contain the reasons for such intention to terminate, and unless within ten (10) days after the service of such condition shall cease or such violation shall cease and satisfactory arrangements for the correction thereof be made, this contract shall upon the expiration of said ten (10) days, cease and terminate.

b. In such case, Contractor shall not be entitled to receive any further payment until work is finished. In event of any such termination, the Owner shall immediately serve written notice thereof upon surety and Contractor, and surety shall have the right to take over and perform this contract, provided, however, that if surety within fifteen (15) days after service upon it of said notice of termination does not
give the Owner written notice of its intention to take over and perform this contract or does not commence performance thereof within thirty (30) days from date of serving such notice, the Owner may take over the work and prosecute same to completion by contract or by any other method it may deem advisable for the account and at the expense of Contractor, and he and his surety shall be liable to the Owner for any excess cost or other damages occasioned the Owner thereby. If the Owner takes over the work as hereinbefore provided, the Owner may, without liability for so doing, take possession of and utilize in completing the work such materials, appliances, plant, and other property belonging to the Contractor as may be on the site of the work and necessary therefor.

c. If unpaid balance of contract price shall exceed expense of finishing work including compensation for additional architectural, engineering, managerial, and administrative services, such excess shall be paid to Contractor. If such expenses shall exceed such unpaid balance, Contractor shall pay difference to the Owner. Expense incurred by the Owner as herein provided, and damage incurred throughout Contractor’s default, shall be certified by Architect.

The Superintendent/President recommends terminating the contract with Construction Group of Santa Barbara effective immediately.

Attachment 5.2-1
Mr. Bruce M. Burke  
Burke Construction Group of S. B.  
1230 Coast Village Road  
Santa Barbara CA 93108

June 30, 1994

RE: SANTA BARBARA CITY COLLEGE WEST CAMPUS TURNAROUND

Over the past two months the progress on the Turnaround has been painfully slow. Work crews have been minimal and sporadic, pulling on and off the job for no apparent reason. There has been no regular supervision and direction by the General Contractor, and the work that has been done is not coordinated or sequenced according to your work plan. In some instances you are apparently using your own crew when subcontractors were listed in the agreement.

On June 16, 1994, you were informed by the architect on behalf of the District that construction progress was unsatisfactory and that this failure constitutes non-conformance with the contract.

On June 22, 1994, you submitted a new work schedule outlining specific dates that certain elements of the job would be completed. On June 22, 1994, at the construction job meeting the District voiced further concern about the “window” period and the necessity of completing the job in a timely manner.

On June 29, 1994, at the job meeting, the District reviewed the job progress with you and found the dates on your June 20 schedule had not been met.

This week you formed up the curbs; and before the five-yard concrete pour, you were cautioned that the concrete did not meet the approved mix. Further, the workmanship in forming was poor quality and many items left out. It is my understanding you have since removed the concrete that was rejected by the District and by the architect.

We conclude, therefore, that the progress that was promised has not been delivered; consequently, termination of your contract will be recommended to the Santa Barbara Community College District Board of Trustees at 4:00 p.m. on June 30 (Thursday), 1994. You have the right to appear to present your side of the issues.

Charles L. Hanson  
Vice President, Business Services

Attachment: 6/16/94 letter from George Girvin  
6/20/94 letter from Construction Group  
c Tom Anderle, Attorney  
George Girvin, Architect  
J. R. Olsen Bonds & Insurance Brokers, Inc.  
(Performance/Payment Bonds)
June 18, 1994

Mr. Bruce Burke  
Construction Group of Santa Barbara  
1230 Coast Village Circle, Suite M  
Santa Barbara, CA 93108

RE: SANTA BARBARA CITY COLLEGE WEST CAMPUS TURNAROUND

Dear Mr. Burke:

This letter is written on behalf of the Santa Barbara Community College District to express their dissatisfaction regarding the lack of progress at the Turnaround. As you know, a thirty (30) day extension was granted due to changes in the contract based on April 29, 1994 issuing of the revised drawing. Thirty-eight (38) days have passed with no substantial progress.

From our standpoint, this lack of progress constitutes a non-conformance with the contract. As a result of the thirty-eight (38) days the Contractor has not been on the job, even with a thirty (30) day extension date of July 10, 1994, the work will not be completed by July 10, 1994. If the present situation does not change immediately, the College feels it has sufficient grounds to terminate the contract.

The purpose of this letter is to notify you that unless conditions change within 10 days of this letter, we will activate the conditions of the contract; specifically, we will void the contract with you based on non-conformance and bring in another contractor to finish this work.

To avoid this action, you must show substantial progress on this job within the next few days. Specifically, we expect that you will man the job adequately to complete the job within the contract timeframe and that noticeable progress will be evident. It will be my responsibility to judge whether the progress will be sufficient to retain your services.

Sincerely yours,

GEORGE W. GIRVIN ASSOCIATES, INC.

George W. Girvin, ASLA  
President
Mon, Jun 20, 1994

George W. Girvin & Associates
Attn: Kate

Re: West Campus Turnaround

Kate,

Please review the attached outline work schedule

<table>
<thead>
<tr>
<th>Task</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Demolition completed</td>
<td>6-23-94</td>
</tr>
<tr>
<td>Subgrade Prep completed</td>
<td>6-24-94</td>
</tr>
<tr>
<td>Underground slewing and trenching completed</td>
<td>6-27-94</td>
</tr>
<tr>
<td>Fine grade and forms for concrete work completed</td>
<td>6-29-94</td>
</tr>
<tr>
<td>Structural walls and stairs completed</td>
<td>6-30-94</td>
</tr>
<tr>
<td>Catchbasin completed</td>
<td>7-1-94</td>
</tr>
<tr>
<td>Curb and gutter work completed</td>
<td>7-1-94</td>
</tr>
<tr>
<td>Rebar installed</td>
<td>7-5-94</td>
</tr>
<tr>
<td>Install concrete paving</td>
<td>7-8-94</td>
</tr>
<tr>
<td>Irrigation and landscape work completed</td>
<td>7-9-94</td>
</tr>
<tr>
<td>Asphalt paving installed</td>
<td>7-9-94</td>
</tr>
<tr>
<td>Clean up items</td>
<td>7-10-94</td>
</tr>
<tr>
<td>Electrical fixtures installed</td>
<td>8-12-94</td>
</tr>
</tbody>
</table>

I was under the impression that we were receiving a "30 working days" extension, for change order #1 & 2, as you can see the above schedule is quite tight. Please note that we have not been paid yet for Pay request #2, which is approaching 45 days.

Please review, if you have any questions, please call, I'll await your response.

Sincerely,

Bruce M. Burke, President