

CAPISTRANO UNIFIED SCHOOL DISTRICT
San Juan Capistrano, California

December 13, 2010

TO: President Brick
and Members
Board of Trustees, Capistrano Unified School District

FROM: Joseph M. Farley, Superintendent

SUBJECT: **CONSULTANT AGREEMENT, LEGAL SERVICES – GEORGE COOPER
RUDOLPH, ATTORNEY & COUNSELOR AT LAW**

BACKGROUND INFORMATION

The legal firm of Luce Forward Hamilton and Scripps, LLP has been handling the litigation involving Whispering Hills LLC v. Capistrano Unified School District, Case No. 00300788. The lead attorney on the case, George Rudolph, is leaving Luce Forward to start his own legal firm: George Cooper Rudolph, Attorney & Counselor at Law.

CURRENT CONSIDERATIONS

Given Mr. Rudolph's familiarity with the case (he has been with the case since its inception), staff is recommending the case be transferred to Mr. Rudolph's new firm. This agenda item requests approval of the attached consulting agreement for legal services with George Cooper Rudolph, Attorney & Counselor at Law (Exhibit A) and the transfer of the Whispering Hills LLC v. Capistrano Unified School District matter, Case no. 00300788 to the new firm.

The following exhibits pertaining to the agreement are attached:

- A. Consultant Agreement including Engagement Letter and Fee Agreement
- B. Hold Harmless and Indemnification
- C. Insurance
- D. Special Conditions

FINANCIAL IMPLICATIONS

Financial Impact: None – No additional costs are anticipated with respect to the transfer of this case to the new firm. Costs associated with legal services will be incurred on an as-needed basis, per fee schedule.

Funding Source: Whispering Hills - General Fund to be reimbursed from CFD 2005-1 when CFD funds become available. Funds for other services will come from the appropriate accounts, depending on department.

STAFF RECOMMENDATION

It is recommended the Board President recognize Ron Lebs, Deputy Superintendent, Business and Support Services, who will present this item. Following discussion, it is recommended the Board approve the consulting agreement for legal services – George Cooper Rudolph, Attorney & Counselor at Law and authorize staff to execute the necessary case transfer documents.

DISCUSSION/
ACTION



Consultant Agreement

This AGREEMENT is hereby entered into between the Capistrano Unified School District, hereinafter referred to as "DISTRICT" and George Cooper Rudolph Attorney and Counselor at Law

hereinafter referred to as "CONSULTANT."

WHEREAS, DISTRICT is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if such persons are specially trained and experienced and competent to perform the special services required;

WHEREAS, CONSULTANT is specially trained and experienced and competent to perform the special services required by the DISTRICT, and such services are needed on a limited basis;

NOW, THEREFORE, the parties agree as follows:

1. **Services to be Provided by CONSULTANT:** Legal services pertaining to Whispering Hills LLC and general legal services as required by District.

2. **Term:** CONSULTANT shall commence providing services under this AGREEMENT on December 17, 2010 and will diligently perform as required and complete performance by December 31, 2011.

3. **Compensation:** DISTRICT agrees to pay the CONSULTANT for services satisfactorily rendered pursuant to this AGREEMENT a total fee not to exceed amount specified by District purchase order as per attached fee schedule Exhibit A and/or proposal Exhibit N/A. DISTRICT shall pay CONSULTANT after receipt of consultant invoice and with approval of a District representative.

EXHIBIT A (1 of 14)

4. **Expenses:** DISTRICT shall not be liable to CONSULTANT for any costs or expenses paid or incurred by CONSULTANT in performing services for DISTRICT except as follows:
N/A

5. **Independent Contractor:** CONSULTANT, in the performance of this AGREEMENT, shall be and act as an independent contractor. CONSULTANT understands and agrees that he/she and all his/her employees shall not be considered officers, employees or agents of the DISTRICT, and are not entitled to benefits of any kind or nature normally provided employees of the DISTRICT and/or to which DISTRICT's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONSULTANT assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the services to be provided under this AGREEMENT. CONSULTANT shall assume full responsibility for payment of all Federal, State and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to CONSULTANT's employees.

6. **Materials:** CONSULTANT shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this AGREEMENT except as follows: N/A

CONSULTANT's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession.

7. **Originality of Services:** CONSULTANT agrees that all technologies, formulae, procedures, processes, methods, writings, and ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, submitted to the DISTRICT and/or used in connection with this AGREEMENT, shall be wholly original to CONSULTANT and shall not be copied in whole or in part from any other source, except that submitted to CONSULTANT by DISTRICT as basis for such services.

8. **Copyright/Trademark/Patent:** CONSULTANT understands and agrees that all matters produced under this AGREEMENT shall become the property of DISTRICT and cannot be used without DISTRICT's express written permission. DISTRICT shall have all right,

title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the DISTRICT. CONSULTANT consents to use of CONSULTANT's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

9. **Termination:** DISTRICT may, at any time, with or without reason, terminate this AGREEMENT and compensate CONSULTANT only for services satisfactorily rendered to the date of termination. Written notice by DISTRICT shall be sufficient to stop further performance of services by CONSULTANT. Notice shall be deemed given when received by the CONSULTANT or no later than three days after the day of mailing, whichever is sooner.

DISTRICT may terminate this AGREEMENT upon written notice of intention to terminate for cause. Cause shall include: (a) material violation of the AGREEMENT by the CONSULTANT; or (b) any act by CONSULTANT exposing the DISTRICT to liability to others for personal injury or property damage; or (c) CONSULTANT is adjudged bankrupt, CONSULTANT makes a general assignment for the benefit of creditors or a receiver is appointed due to CONSULTANT's insolvency. Written notice by DISTRICT shall contain the reasons for such intention to terminate and unless within ten (10) days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this AGREEMENT shall, upon the expiration of ten (10) days cease and terminate. In the event of such termination, the DISTRICT may secure the required services from another contractor. If the cost to the DISTRICT exceeds the cost of providing the service pursuant to this AGREEMENT, the excess cost shall be charged to and collected from the CONSULTANT. The foregoing provisions are in addition to, and not a limitation of, any other rights or remedies available to the DISTRICT. Written notice by DISTRICT shall be deemed given when received by the other party, or no later than three days after the day of mailing, whichever is sooner.

10. **Hold Harmless:** CONSULTANT agrees to and shall defend, indemnify and hold harmless the DISTRICT, its Governing Board, officers, agents, employees and volunteers from all claims, including active and passive claims, losses, costs, attorney fees and expenses arising out of any liability or claim of liability for personal injury, bodily injury to persons or death, furnishing or use of any copyrighted or uncopyrighted matter or patented or unpatented invention, contractual liability, and damage to property sustained or claimed to have been sustained arising out of activities/services provided by CONSULTANT or its subcontractors,

whether authorized by this Agreement or not. CONSULTANT further agrees to waive all rights of subrogation against the DISTRICT. The provisions of this article do not apply to any damage or losses caused solely by the negligence or willful misconduct of DISTRICT or any of its agents or employees.

11. **Insurance:** Pursuant to Section 10, CONSULTANT agrees to carry a commercial general liability insurance and automobile liability insurance with limits of One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage in a form mutually acceptable to both parties to protect CONSULTANT and DISTRICT against liability or claims of liability, which may arise out of the AGREEMENT. In addition, CONSULTANT agrees to provide an endorsement to this policy stating, "Such insurance as is afforded by this policy shall be primary, and any insurance carried by DISTRICT shall be excess and noncontributory." No later than the actual start date, CONSULTANT shall provide DISTRICT with certificates of insurance evidencing all coverages and endorsements required hereunder including a thirty (30) day written notice of cancellation or reduction in coverage. CONSULTANT agrees to name DISTRICT and its officers, agents and employees as additional insured's by separate endorsement under said policy.

12. **Assignment:** The obligations of the CONSULTANT pursuant to this AGREEMENT shall not be assigned by the CONSULTANT.

13. **Compliance with Applicable Laws:** The services completed herein must meet the approval of the DISTRICT and shall be subject to the DISTRICT's general right of inspection to secure the satisfactory completion thereof. CONSULTANT agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to CONSULTANT, CONSULTANT's business, and personnel engaged in operations covered by this AGREEMENT or accruing out of the performance of such operations.

14. **Permits/Licenses:** CONSULTANT and all CONSULTANT's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this AGREEMENT.

15. **Employment with Public Agency:** CONSULTANT, if an employee of another public agency, agrees that CONSULTANT will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this AGREEMENT.

16. **Entire Agreement/Amendment:** This AGREEMENT and any exhibits attached hereto constitute the entire agreement among the parties to it and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated, and may be amended only by a written amendment executed by both parties to the AGREEMENT.

17. **Nondiscrimination:** CONSULTANT agrees that it will not engage in unlawful discrimination in employment of persons because of race, color, religious creed, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons.

18. **Non-waiver:** The failure of DISTRICT or CONSULTANT to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this AGREEMENT, shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

19. **Notice:** All notices or demands to be given under this AGREEMENT by either party to the other, shall be in writing and given either by: (a) personal service or (b) U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received, if personally served or if mailed, on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section. At the date of this AGREEMENT, the addresses of the parties are as follows:

<u>DISTRICT</u>	<u>CONSULTANT</u>
Terry Fluent, Director of Purchasing Capistrano Unified School District 33122 Valle Road San Juan Capistrano, CA 92675 (949) 234-9441	George Cooper Rudolph Attorney & Counselor at Law 15212 Davenport Street Tustin, CA 92782-1752 (949) 387-7966 gcrudolph@cox.net

20. **Severability:** If any term, condition or provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

21. **Attorney Fees/Costs:** Should litigation be necessary to enforce any terms or provisions of the AGREEMENT, then each party shall bear its own litigation and collection expenses, witness fees, courts costs, and attorneys' fees.

22. **Governing Law:** The laws of the State of California shall govern the terms and conditions of this AGREEMENT with venue in Orange County, California.

23. **Exhibits:** This AGREEMENT incorporates by this reference, the following exhibits, which are attached hereto and incorporated herein: (if applicable)

- a. Exhibit A Fee schedule/Letter of Engagement
- b. Exhibit B Hold Harmless and Indemnification
- c. Exhibit C Insurance
- d. Exhibit D Special Conditions

CONSULTANT NAME: George C. Rudolph Attorney at Law

Contract No. C1011103

This AGREEMENT is entered into this 11th Day of December 2010

DISTRICT

CONSULTANT

By

Terry Hueft, Director of Purchasing

By



Signature

**GEORGE COOPER RUDOLPH
ATTORNEY & COUNSELOR
AT LAW**

Printed Name

Title

December 13, 2010
Board Approval Date


Social Security or Taxpayer Identification

**EXHIBIT A
(7 of 14)**

LAW OFFICES OF
GEORGE COOPER RUDOLPH
ATTORNEY & COUNSELOR AT LAW

16212 DAVENPORT STREET
TUSTIN, CALIFORNIA 92782-1752

TELEPHONE: 949 287 1960
E MAIL: GCR@GCRPCONFIRM.COM

December 16, 2010

Ron Lebs, Deputy Superintendent
Capistrano Unified School District
33122 Valle Road
San Juan Capistrano, CA 92675

Re: 2011 Engagement and Fee Agreement

Dear Ron:

This will confirm the request of Capistrano Unified School District ("CUSD") that the Law Offices of George Cooper Rudolph ("the Firm") accept representation of CUSD, during the fiscal year ending June 30, 2011, upon the terms set forth in this letter agreement ("Agreement").

I. Scope of Services. CUSD has requested, and the Firm has agreed, to provide ongoing advice, counsel and representation to CUSD, regarding both transactional and litigation matters in which CUSD requests our involvement. The terms embodied in this letter will apply to any transactional and litigation matter in which CUSD requests our representation, unless a project engagement and fee agreement is executed with respect to any particular matter. Importantly, we are *not* being engaged to provide any of the following services:

- (a) Advise, counsel or represent CUSD, or provide other legal services to CUSD in connection with any matter as to which our involvement has not been specifically requested in writing.
- (b) Represent or protect the interest of any individual or entity other than CUSD.
- (c) Provide tax advice.

1.1 Currently Pending Matters. During the fiscal year ending June 30, 2011, the Firm will represent CUSD, as substitute counsel of record in place of Luce, Forward, Hamilton & Scripps, LLP, in the following currently pending matters ("the Pending Matters") and in accordance with the terms of this Agreement:

- A. *Whispering Hills, LLC v. Capistrano Unified School District*, Orange County Superior Court Case No. 30-2009 00300788 (our file no. 38170-3); and
- B. Petition to Make Specified Changes in Capistrano Unified School District Community Facilities District No. 2005-1 (our file no. 38170-4).

Exhibit A
EXHIBIT A
(8 of 14)

Capistrano Unified School District
2011 Engagement and Fee Agreement
Page 2

1.2 Duties of Lawyer and Client. The Firm will provide legal counsel and assistance in accordance with the rules governing our profession. We will report to you as the authorized representative of CUSD. We will keep CUSD informed of developments in each matter in which we represent CUSD, as those developments occur. On CUSD's part, CUSD understands the need to provide us with truthful and accurate information, and the need to cooperate and to keep us informed of any developments. Obviously, we will both be expected to abide by the terms of this Agreement.

2. Staffing. I will have responsibility for CUSD's representation, and for coordinating and supervising the work of other professionals in connection with that representation, respecting each of the Pending Matters and all other matters in which CUSD requests the Firm's involvement. Other attorneys, paralegals, and litigation/clerical assistants may be used where appropriate. Staffing decisions will be made by me, with the objective of rendering services on an efficient and cost-effective basis.

3. Fees. We establish an hourly rate for each attorney and paralegal who will perform services on behalf of CUSD. Those hourly rates for the professionals most likely to perform services on CUSD's matters are set forth on the attached Rate Sheet. We will bill CUSD in quarter-hour increments. CUSD agrees to pay the Firm's rates, as set forth on the attached Rate Sheet.

3.1 Estimates. From time to time, we may estimate the amount of fees we anticipate will be incurred to perform certain services. Such estimates are by their nature inexact. The cost of legal services is often difficult to predict, particularly when the work is affected by factors over which we have no control. Unless we agree in writing to a fixed or guaranteed maximum fee, any estimate we provide does not limit CUSD's obligation to pay for the Firm's legal services.

4. Expenses. In addition to our fees, we will bill CUSD for certain expenses. A copy of our expense schedule is attached to this Agreement. It may also be appropriate to engage third-party providers to support our work for CUSD. We may also incur other out-of-pocket disbursements, such as travel expenses, deposition fees, filing and recording fees, investigator fees, expert witness fees, document imaging fees, and messenger fees. We will either bill CUSD for the charges or arrange with CUSD in advance for third-party providers to bill CUSD directly. We have no obligation to incur or advance any expense exceeding \$250.00 unless reimbursement is secured by a trust deposit. CUSD agrees to reimburse us for those costs and expenses we advance, in addition to our hourly fees.

5. Monthly Billing. We will bill on a monthly basis; and all statements are due and payable upon receipt and are payable within thirty (30) days after the statement date. The statements will indicate the fees and costs incurred, any amount applied from any advance deposit, and any current balance owed. We will make every effort to include our out-of-pocket

Capistrano Unified School District
2011 Engagement and Fee Agreement
Page 3

disbursements in the current monthly statement; however, records of some disbursements are not immediately available to us and thus may not appear on a statement until one or more months following the date on which charges were actually incurred.

If CUSD has any questions or concerns about a statement, please call them to my attention without delay. If CUSD does not raise any questions or objections regarding the statement within sixty (60) days of the statement date, CUSD agrees that CUSD will be deemed to have accepted and approved the statement, and thereafter will not be entitled to object to the statement.

6. Discharge and Withdrawal. CUSD may discharge the Firm at any time, and the Firm shall have the right to withdraw from representing CUSD at any time, subject to any required court approvals. Reasons for our withdrawal may include, but are not limited to, CUSD's breach of this Agreement, CUSD's failure to pay our invoices when due, CUSD's refusal to cooperate with us or to follow our advice on a material matter, or any fact or circumstance that renders our continuing representation unlawful, or unethical, or makes it unreasonably difficult to carry out our representation effectively.

7. No Guarantee. Nothing in this Agreement should be construed as a promise or a guarantee about the outcome of any matter which we will handle on CUSD's behalf. Our comments about the outcome of CUSD's matter are expressions of opinion only. Likewise, any estimate of fees given by the Firm is not a guarantee; actual fees incurred may vary from estimates given.

8. Duties Upon Termination of Active Representation. Upon cessation of our active involvement in a particular matter in which we have been engaged, we will have no further duty to inform CUSD of future developments or changes in the law as may be relevant to such matter in which our representation has ceased. Further, unless CUSD requests in writing to the contrary, we will have no obligation to monitor renewal or notice dates or similar deadlines which may arise from the matters for which we had previously been retained.

9. File Maintenance. We will maintain CUSD's files and documents throughout the period in which we are actively handling a particular matter, and for ten (10) years thereafter. We will have the right to purge CUSD's files after ten years or any longer time we deem appropriate given the circumstances, without any obligation to notify CUSD. The Firm routinely purges its files and records of matters that have been resolved. Of course, CUSD has the right to request its files or documents at any time prior to such destruction, and the same will be promptly delivered to CUSD or as directed, at CUSD's expense. Electronically-stored information will be purged from our system in accordance with our regular policies and procedures, which may result in the information's destruction after 3 months.

Capistrano Unified School District
2011 Engagement and Fee Agreement
Page 4

10. Arbitration of Disputes. We appreciate the opportunity to serve as CUSD's attorneys and anticipate a productive, harmonious relationship. If CUSD becomes dissatisfied for any reason with the services we have performed or the fees charged, we encourage CUSD to bring that to our attention immediately. If we perceive a problem with the representation, we will discuss it with CUSD. Most such problems should be remedied by communication and discussion. However, a dispute could arise between us regarding the construction or application of this Agreement, and/or the performance of any services under this Agreement, which cannot be resolved by discussion. We believe that such attorney-client disputes are more satisfactorily resolved through confidential binding arbitration than by litigation in court. CUSD and we choose confidential binding arbitration to resolve such disputes because it is usually less expensive and quicker than litigation, and will preserve all the parties' privacy. It is understood and agreed that choosing binding arbitration waives a trial by jury.

The place of the confidential binding arbitration will be in Orange County, California. Arbitration proceedings may be commenced by any party by giving all other interested parties written notice, and the proceedings shall be governed by the California Arbitration Act (*Code Civ. Proc.*, § 1281 *et seq.*). The arbitrator must decide all disputes in accordance with that Act and the rules of any arbitration tribunal mutually selected by the parties. The arbitrator shall have the power to decide all matters, including arbitrability and legal questions raised by pleading or summary judgment motions. The arbitrator's award shall be final and binding, and a judgment upon the award may be entered and enforced by any court of competent jurisdiction.

Notwithstanding the above agreement to arbitrate, fee disputes may first be submitted to the California State Bar's program for non-binding arbitration of fee disputes. If the Bar panel declines to hear a fee dispute, or if either party rejects the Bar panel's decision on any fee dispute, the fee dispute will be resolved by private arbitration as set forth above. CUSD and the Firm agree to waive the rule that provides that an attorney and a client cannot agree to arbitrate fee disputes until a dispute has arisen. If that rule is applied to any fee dispute under this Agreement, CUSD and the Firm agree that the remainder of this arbitration agreement will remain in effect and must be enforced with respect to all other disputes or claims.

11. Effective Date. If this letter accurately reflects our agreement, please sign the enclosed duplicate copy and return it to us. This Agreement will take effect only when signed and returned to us. This Agreement contains the entire agreement of the parties, and no modification of the terms of this Agreement will be effective unless set out in writing and signed by both CUSD and the Firm

Capistrano Unified School District
2011 Engagement and Fee Agreement
Page 5

If CUSD has questions concerning any provision of this Agreement, we invite CUSD's inquiries. CUSD is also free to consult with other counsel regarding this Agreement, including the foregoing arbitration provisions.

We greatly appreciate and thank you for the opportunity to be of service to CUSD.

Very truly yours,



George Cooper Rudolph, Esq.

GCR:dmm
Attachments (2011 Rate Sheet; 2011 Expense Schedule)

ACCEPTANCE AND APPROVAL

The above engagement and fee agreement is agreed to and accepted. The undersigned represents that he has been duly authorized to execute this Agreement on behalf of CUSD, and acknowledges that he signs below within the course and scope of that authority.

Date: _____

CAPISTRANO UNIFIED SCHOOL DISTRICT

By: _____
Ron Lebs, Deputy Superintendent

LAW OFFICES OF
GEORGE COOPER RUDOLPH
ATTORNEY & COUNSELOR AT LAW

15212 DAVENPORT STREET
TUSTIN, CALIFORNIA 92782-1752

TELEPHONE 949 387 7966
E-MAIL GCORUDOLPH@COX.NET

2011 RATE SHEET

Professional	Position	Hourly Billing Rate
George C. Rudolph	Attorney/Principal	\$375.00
Associates	Contract Attorneys	\$275.00
Paralegals	Contract Paralegals	\$125.00
Litigation Support and e-Discovery Specialists, where authorized	Contract Attorneys, Paralegals and Litigation Support II Professionals	Actual fees and costs incurred

2011 EXPENSE SCHEDULE

Automobile Travel Expense	IRS mileage reimbursement rate: actual parking and toll costs incurred
Airline and lodging, where required	Actual costs incurred
Court reporters and transcript fees	Actual costs incurred
Court filing fees	Actual costs incurred
Attorney service, messenger, overnight delivery	Actual costs incurred
Document reproduction	Actual costs incurred
Experts and consultants, where required	Actual costs incurred

Consultant Name: George Cooper Rudolph Attorney & Counselor at Law
Contract No: CI011103



Hold Harmless and Indemnification

Attorney agrees to and shall defend, indemnify and hold harmless the District, its Governing Board, officers, agents, employees and volunteers from all claims, including active and passive claims, losses, costs, attorney fees and expenses arising out of any liability or claim of liability for personal injury, bodily injury to persons or death, furnishing or use of any copyrighted or uncopyrighted matter, contractual liability, and damage to property sustained or claimed to have been sustained arising out of the activities services rendered by Attorney, its officers, agents and employees or its subcontractors, whether authorized by this Agreement or not. Attorney further agrees to waive all rights of subrogation against the District. The provisions of this article do not apply to any damage or losses caused solely by the negligence or willful misconduct of District or any of its agents or employees.

EXHIBIT B



Insurance

Attorney shall procure and maintain, during the term of this Agreement, policies of insurance with insurers and coverage forms satisfactory to the District and with a minimum A.M. Best rating of A/VII as follows:

- Professional Liability: \$1,000,000 minimum limit per occurrence
 (Errors & Omissions) \$2,000,000 minimum general aggregate
- Automobile Liability: \$1,000,000 minimum limit per occurrence
- Workers' Compensation: As required by the California Labor Code

Attorney shall provide to the District evidence of the required insurance by issuance of an original Certificate of Insurance at least ten days prior to the beginning of the term of this Agreement. Such certificate shall contain a 30 days written notice of cancellation or reduction in coverage. Any lapse of insurance coverage required by this Agreement shall be a breach of the Agreement and grounds for immediate termination of this Agreement by District.

The Capistrano Unified District, its Board, officers, agents and employees shall be named an Additional Insured, by separate endorsement, to Attorney's Commercial General Liability (not Professional Liability) and Automobile Liability policies. Any insurance or self-insurance maintained by Attorney shall be primary and any insurance or self-insurance maintained by District shall be non-contributing.

The insurance coverage's and limits required shall not in any way limit the liability of Attorney.

Governing Law

This Agreement shall be governed by the laws of the State of California with venue to Orange County, California.

Severability

If any provisions of this Agreement are held by a court of law to be illegal, invalid or unenforceable, the remaining provisions of the Agreement shall be legal, valid and enforceable.

Waiver

The waiver by District of a breach of any provision of the Agreement by Attorney shall not operate or be construed as a waiver of any other or subsequent breach by Attorney.

CAPISTRANO UNIFIED SCHOOL DISTRICT

GEORGE COOPER RUDOLPH ATTORNEY & COUNSELOR AT LAW

CONTRACT NO. C1011103

SPECIAL CONDITIONS

11. **Insurance:** *Delete original wording. Section 11 to read as follows:*

Pursuant to Section 10, CONSULTANT agrees to carry automobile liability insurance with limits of One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage in a form mutually acceptable to both parties to protect CONSULTANT and DISTRICT against liability or claims of liability, which may arise out of the AGREEMENT. "Such insurance as is afforded by this policy shall be primary, and any insurance carried by DISTRICT shall be excess and noncontributory." No later than the actual start date, CONSULTANT shall provide DISTRICT with certificates of insurance evidencing all coverage's and endorsements required hereunder.

12. **Assignment:** *Delete original wording. Section 12 to read as follows:*

The obligations of the CONSULTANT pursuant to this AGREEMENT shall not be assigned by the CONSULTANT, except as specified in Exhibit A.

16. **Entire Agreement/Amendment:** Delete original wording. Section 16 to read as follows:

This AGREEMENT and any exhibits attached hereto constitute the entire agreement among the parties to it and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated, and may be amended only by a written amendment executed by both parties to the AGREEMENT. In the event of any inconsistency, Exhibit A shall govern.

EXHIBIT D

