

SPECIAL MEETING

**CAPISTRANO UNIFIED SCHOOL DISTRICT
BOARD OF TRUSTEES**

33122 Valle Road
San Juan Capistrano, CA 92675

August 3, 2010

7:00 p.m.

I. PRELIMINARY

Meeting was called to order by _____

Pledge of Allegiance to the Flag

Board consideration and adoption of the agenda.

Motion by _____ Seconded by _____

ROLL CALL:

Anna Bryson, President
Ken Lopez-Maddox, Vice President
Jack Brick, Clerk
Ellen M. Addonizio, Member
Larry Christensen, Member
Sue Palazzo, Member
Mike Winsten, Member

Present

Absent

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

CLOSED SESSION COMMENTS

**CLOSED SESSION
5:30 p.m.**

REPORT ON CLOSED SESSION ACTION

BOARD AND SUPERINTENDENT COMMENTS

PUBLIC COMMENTS TO AGENDA ITEMS ONLY

RECORDING OF SCHOOL BOARD MEETINGS

In accordance with Board Policy 9324, Board Minutes, all Regular School Board Meetings will be audio recorded.

II. INSTRUCTIONS FOR PRESENTATIONS TO THE BOARD BY PARENTS AND CITIZENS PRESENT AT THIS MEETING

We are pleased you can be with us at this meeting, and we hope you will return often. Your visit assures us of continuing community interest in our schools.

The members of the Board of Trustees of this District are locally elected state officials, who serve four-year terms of office, and who are responsible for the educational program of our community from grades kindergarten through twelve. They are required to conduct programs of the schools in accordance with the State of California Constitution, the State Education Code, and other laws relating to schools enacted by the Legislature, and policies and procedures which this Board adopts.

The Board is a policy-making body whose actions are guided by the school district's Mission and Goals. Administration of the District is delegated to a professional administrative staff headed by the Superintendent.

The agenda and its extensive background material are studied by each member of the Board for at least two days preceding the meeting. Board Members can call the administrative staff for clarification on any item, and many of the items on the agenda were discussed by the Board during previous meetings. These procedures enable the Board to act more effectively on agenda items than would otherwise be possible.

WHAT TO DO IF YOU WISH TO ADDRESS THE BOARD OF TRUSTEES

ITEMS ON THE AGENDA. Any person may address the Board concerning any item on the agenda and may, at the discretion of the Board, be granted three (3) minutes to make a presentation to the Board at the time a specific item is under discussion. However, the time assigned for individual presentations could be fewer than three (3) minutes depending upon the total number of speakers who wish to address a specific agenda topic. Prior to the opening of the meeting, a Request to Address the Board card (located in the foyer) should be completed and submitted to the Secretary of the Board. The total time devoted to presentations to the Board shall not exceed twenty (20) minutes, unless additional time is granted by the Board. All presentations shall be heard by the Board prior to the formal discussion of the agenda topic under consideration. Once an agenda item has been opened for public comment, no additional "Request to Address the Board of Trustees" cards shall be accepted for that topic.

ORAL COMMUNICATIONS (Non-Agenda Items). Citizens may address the Board on any item not appearing on the agenda. Individual presentations are limited to three (3) minutes per individual, with twenty (20) minutes in total being devoted for this purpose, but could be less if there are a large number of Oral Communication speakers. Legally, the Board may not take action on items raised by speakers under Oral Communications. However, at its discretion, the Board may refer items to the administration for follow-up or place topics on a future Board agenda.

PUBLIC HEARINGS. Anytime the Board schedules a separate public hearing on any given topic, it shall not hear speakers on that topic before the public hearing, except as to the scheduling of the hearing, nor shall it hear speakers after the hearing, except as to changes in the policy or recommended actions which are directed at the time of the hearing.

CLOSED SESSION. In accordance with Education Code Section 35146 and Government Code Section 54957, the Board may recess to Closed Session to discuss personnel matters which they consider inadvisable to take up in a public meeting.

REASONABLE ACCOMMODATION

In order to help ensure participation in the meeting of disabled individuals, appropriate disability-related accommodations or modifications shall be provided by the Board, upon request, in accordance with the Americans with Disabilities Act (ADA). Persons with a disability who require a disability-related accommodation or modification, including auxiliary aids and services in order to participate in a Board meeting, shall contact the Superintendent or designee in writing by noon on the Friday before the scheduled meeting. Such notification shall provide school district personnel time to make reasonable arrangements to assure accessibility to the meeting.

III. CONSENT CALENDAR

All matters listed under the Consent Calendar are considered by the Board to be routine and will be enacted by the Board in one motion in the form listed below. There will be no discussion of these items prior to the time the Board votes on the motion unless members of the Board, staff, or the public request specific items to be discussed and/or removed from the Consent Calendar. The Superintendent and staff recommend approval of all Consent Calendar items.

CURRICULUM & INSTRUCTION

PAGE #

1. REVISED 2010-2011 SCHOOL CALENDAR: Approval, revisions to the 2010-2011 School Calendar. 1
(Supporting Information)
Contact: Julie Hatchel Assistant Superintendent, Education
Michelle Benham, Executive Director, Assessment and Research
2. ~~PROPOSED 2011-2012 SCHOOL CALENDAR: Approval, adoption of the~~ 5
~~proposed 2011-12 School Calendar.~~ **ITEM PULLED ON 8-2-10**
~~(Supporting Information)~~
~~*Contact: Julie Hatchel Assistant Superintendent, Education*~~
~~*Michelle Benham, Executive Director, Assessment and Research*~~

BUSINESS & SUPPORT SERVICES

3. FACILITIES AGREEMENT RENEWAL: Approval, renewal of Use of Facilities 9
Agreement with Journey Charter School at Foxborough.
(Supporting Information)
Contact: Ron Lebs, Deputy Superintendent, Business & Support Services
4. SALARY REDUCTION: Approval, Capistrano Unified Management Association 19
(CUMA) 2010-2011 Salary Reductions.
(Supporting Information)
Contact: Ron Lebs, Deputy Superintendent, Business & Support Services
5. QUALIFICATIONS AND PROPOSALS: Approval, advertise for Request for 21
Qualifications and Proposals (RFQ-P) No. 2-1011, Construction
Manager/Owner's Representative.
(Supporting Information)
Contact: Ron Lebs, Deputy Superintendent, Business & Support Services

Motion by _____ Seconded by _____

ROLL CALL:

Trustee Addonizio _____	Trustee Palazzo _____
Trustee Brick _____	Trustee Lopez-Maddox _____
Trustee Christensen _____	Trustee Winsten _____
	Trustee Bryson _____

NOTE: BY USING A ROLL CALL VOTE FOR THE CONSENT CALENDAR, IT WILL MEET THE NEED FOR ACTION ITEMS WHICH REQUIRE A SIMPLE MOTION OR ROLL CALL VOTE.

IV. ADJOURNMENT

THE NEXT REGULAR MEETING OF THE GOVERNING BOARD WILL BE HELD ON TUESDAY, AUGUST 10, 2010, 7:00 P.M. AT THE CAPISTRANO UNIFIED SCHOOL DISTRICT OFFICE BOARD ROOM, 33122 VALLE ROAD, SAN JUAN CAPISTRANO, CALIFORNIA

For information regarding Capistrano Unified School District, please visit our website:

www.capousd.org

V. CLOSED SESSION

6. Closed Session (as authorized by law)

A. CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION

Number of cases: Three Cases

(Pursuant to Government Code §54956.9{a})

Case No. 1

Superior Court of the State of California

County of Orange

Case No. 00300788

Whispering Hills LLC v. Capistrano Unified School District

Case No. 2

Superior Court of the State of California

County of Orange – Central Justice Center

Case No. 00180049

Petition for Writ of Mandate Pursuant to the California Environmental Quality Act (CEQA), Public Resources Code Section 21000, et seq.

City of Mission Viejo, a municipal corporation v. CUSD

Case No. 3

Superior Court of the State of California

County of Orange – Central Justice Center

Case No. 00207543

Petition for Writ of Mandate Pursuant to the California Environmental Quality Act (CEQA), Public Resources Code Section 21000, et seq.

City of Rancho Santa Margarita, a municipal corporation, v. CUSD

B. CONFERENCE WITH LABOR NEGOTIATOR

Dr. Joseph M. Farley

Employee Organization:

1) Capistrano Unified Education Association (CUEA)

2) Capistrano School Employees Association (CSEA)

3) Teamsters

(Pursuant to Government Code §54957.6)

C. PUBLIC EMPLOYEE PERFORMANCE EVALUATION –

Superintendent

(Pursuant to Government Code §54957)

CAPISTRANO UNIFIED SCHOOL DISTRICT
San Juan Capistrano, California

August 3, 2010

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

FROM: Julie Hatchel, Assistant Superintendent, Education

SUBJECT: **PROPOSED REVISIONS TO 2010/2011 SCHOOL CALENDAR**

BACKGROUND INFORMATION

On March 31, 2010, Capistrano Unified School District Board of Trustees passed Resolution 0910-60, "Resolution to Implement Changes in the Terms and Conditions of the Certificated Bargaining Unit." Under the terms of this resolution, the Board implemented a four-day reduction in the **2009-2010** certificated work year (three instructional and one non-instructional) and a five-day reduction in the 2010-2011 certificated work year (two instructional and three non-instructional).

On April 16, 2010, the Board of Trustees approved the following revisions to the **2009-2010** calendar:

- May 28, 2010 instructional furlough
- June 1, 2010 instructional furlough
- June 11, 2010 instructional furlough
- June 24, 2010 non-instructional furlough (teacher post-service day)

On April 21, 2010, the Board of Trustees approved the revised **2010-2011** calendar (Exhibit A) establishing a 178 instructional days and 180 teacher work days to align with Resolution 0910-60. In order to maximize instructional continuity, there is not a 1:1 correspondence in the exchange/assignment of furlough days to the original calendar. Therefore, the following changes to the **2010-2011** calendar were approved:

- September 3, 2010 non-instructional furlough (teacher pre-service day)
- September 8, 2010 first day of instruction for students
- November 1, 2010 non-instructional furlough (corresponding to the elimination of one elementary conference day/student holiday and one secondary professional growth day/student holiday)
- February 17, 2011 instructional furlough day
- June 24, 2011 non-instructional furlough (post-service day)

On May 19, 2010, the Board of Trustees approved a tentative agreement between CUEA and CUSD, which included previously agreed upon "language items" approved on January 5 by the negotiating teams, including the addition of a minimum day on the first and last days of school at the elementary level, and the addition of a minimum day on the last day of school at the middle

school level. Past practice has assigned a minimum day to high schools at the end of each semester (including the last day of school) due to final exams.

CURRENT CONSIDERATIONS

Staff is proposing further revision and revision to the **2010-2011** calendar (Exhibit B) to incorporate the minimum days noted above, to changes in assigned furlough days, and realignment of non-instructional and instructional days. These changes still result in 178 student instructional days and 180 teacher work days. Again there is not a 1:1 correspondence. Proposed changes include:

- Declaring November 1, 2010, an elementary/parent conference day (elementary non-student day)
- Declaring November 2-4, 2010, as elementary minimum days for parent conferences (transferring one minimum day from spring conferences to fall conferences)
- Moving the secondary wrap-up activities day from February 4, 2011, to June 23, 2011 (secondary non-student day)
- Declaring May 27, 2011, as an instructional furlough day

Proposed furlough days for **2010-2011** would be:

- September 3, 2010 (non-instructional)
- February 17, 2011 (instructional day)
- May 27, 2011 (instructional day)
- June 24, 2011 (non-instructional)
- One elementary parent conference day and the secondary professional growth day have been eliminated resulting in the third non-instructional day.

A spreadsheet is attached (Exhibit C) to note the 178 instructional days by school level and month for all calendar proposals. The two additional work days for teachers include one pre-service day and one conference day (elementary)/wrap-up day (middle and high schools), resulting in a total of 180 teacher work days.

FINANCIAL IMPLICATIONS

Adoption of this second revision to the **2010-2011** calendar would have no fiscal impact. The estimated \$5.2 million savings associated with a reduction to the paid work year for teachers was calculated and recognized as part of the Resolution to Implement Changes in the Terms and Conditions of Employment of the Certificated Bargaining Unit approved by Trustees on March 31, 2010.

STAFF RECOMMENDATION

It is respectfully requested the Board approve the proposed revisions to the **2010-2011** school calendar (Exhibit B).

CAPISTRANO UNIFIED SCHOOL DISTRICT
San Juan Capistrano, California

SCHOOL CALENDAR 2010/2011 – ADOPTED April 21, 2010

INDEPENDENCE DAY HOLIDAY (Local Holiday)	Mon., July 5, 2010
LABOR DAY (Legal Holiday)	Mon., Sept. 6, 2010
<i>All Teachers – Preservice Day</i>	Tuesday, Sept. 7, 2010
<u>OPENING DAY OF SCHOOL</u>	Weds., Sept. 8, 2010
Back to School Week, Middle School (Minimum day, date of Back-to-School Night only)	Tues.-Thurs., Sept. 21-23, 2010
Back to School Week, High School (Minimum day, date of Back-to-School Night only)	Tues.-Thurs., Sept. 28-30, 2010
Back to School Week, Elementary (Minimum day, date of Back-to-School Night only)	Tues.-Thurs., Oct. 5-7, 2010
End of First Progress Reporting Period (High School)	Fri., Oct. 15, 2010
Mid-Trimester Progress and Goal Setting Parent Conferences, Elementary (Minimum Days)	Thurs.-Fri., Oct. 28-29, 2010
<u>Non-student/Non-teacher day</u>	Mon., Nov. 1, 2010
Parent Conferences, Elementary (Student Holiday)	Tues., Nov. 2, 2010
<u>End of First Quarter – Middle School</u>	Fri., Nov. 5, 2010
VETERANS DAY (Legal Holiday)	Thurs., Nov. 11, 2010
FALL RECESS (Recess for Students and Teachers)	Fri., Nov. 12, 2010
THANKSGIVING RECESS (Recess for Students and Teachers)	Mon.-Fri., Nov. 22-26, 2010
THANKSGIVING HOLIDAYS (Legal and Local Holiday)	Thurs.-Fri., Nov. 25-26, 2010
<u>SCHOOL RESUMES</u>	Mon., Nov. 29, 2010
End of Second Progress Reporting Period (High School)	Fri., Dec. 3, 2010
<u>End of First Trimester – Elementary</u>	Fri., Dec. 10, 2010
WINTER RECESS (Recess for Students and Teachers)	Mon.-Fri., Dec. 20-31, 2010
CHRISTMAS HOLIDAYS (Legal and Local Holiday)	Thurs.-Fri., Dec. 23-24, 2010
Holiday to Replace Admission Day	Thurs., Dec. 30, 2010
NEW YEAR'S DAY (Legal Holiday)	Fri., Dec. 31, 2010
<u>SCHOOL RESUMES</u>	Mon., Jan. 3, 2011
DR. MARTIN LUTHER KING, JR. DAY (Legal Holiday)	Mon., Jan. 17, 2011
Final Exam Days, High School (Minimum Days, High School)	Tues.-Thurs., Feb. 1-3, 2011
<u>End of First Semester</u>	Thurs., Feb. 3, 2011
First Semester Wrap-up Activities, Middle & High Schools (Secondary Student Holiday)	Fri., Feb. 4, 2011
Elementary Mid-Trimester Progress Report	Fri., Feb. 4, 2011
<u>SECOND SEMESTER BEGINS</u>	Mon., Feb. 7, 2011
<u>Non-student/Non-teacher day</u>	Thurs., Feb. 17, 2011
LINCOLN DAY (Legal Holiday)	Fri., Feb. 18, 2011
WASHINGTON DAY (Legal Holiday)	Mon., Feb. 21, 2011
End of First Progress Reporting Period (High School)	Fri., Mar. 18, 2011
<u>End of Second Trimester – Elementary</u>	Wed., Mar. 23, 2011
Parent Conferences, Elementary (Minimum Days, Elementary Schools)	Mon.-Fri., Mar. 28-Apr. 1, 2011
SPRING RECESS (Recess for Students and Teachers)	Mon.-Fri., Apr. 4-8, 2011
SPRING HOLIDAY (Local Holiday)	Fri., Apr. 8, 2011
<u>SCHOOL RESUMES</u>	Mon., Apr. 11, 2011
<u>End of Third Quarter – Middle School</u>	Wed., Apr. 20, 2011
End of Second Progress Reporting Period (High School)	Fri., May 6, 2011
MEMORIAL DAY (Legal Holiday)	Mon., May 30, 2011
Final Exam Days, High School (Minimum Days, High Schools)	Tues.-Thurs., June 21-23, 2011
<u>LAST DAY OF SCHOOL FOR STUDENTS/TEACHERS</u> (End of Second Semester)	Thurs., June 23, 2011

NOTE: Additional student days may be added during the winter or spring recesses, or at the end of the June school month, because of lost teaching days due to emergency school-closing days.

Open House: Schools will set individual Open House dates in the spring.

Board Approved: 4/21/10

mwb 04/10

CAPISTRANO UNIFIED SCHOOL DISTRICT
San Juan Capistrano, California

PROPOSED REVISION TO SCHOOL CALENDAR 2010/2011 – August 3, 2010

INDEPENDENCE DAY HOLIDAY (Local Holiday)

New Teacher – Pre-service Day

Non-teacher day (Non-instructional Furlough Day)

LABOR DAY (Legal Holiday)

All Teachers – Pre-service Day

OPENING DAY OF SCHOOL (Minimum day, Elementary only)

Back to School Week, Middle School

(Minimum day, date of Back-to-School Night only)

Back to School Week, High School

(Minimum day, date of Back-to-School Night only)

Back to School Week, Elementary

(Minimum day, date of Back-to-School Night only)

End of First Progress Reporting Period (High School)

Parent Conferences, Elementary (Student Holiday)

Parent Conferences, Elementary (Minimum Days)

End of First Quarter – Middle School

VETERANS DAY (Legal Holiday)

FALL RECESS (Recess for Students and Teachers)

THANKSGIVING RECESS (Recess for Students and Teachers)

THANKSGIVING HOLIDAYS (Legal and Local Holiday)

SCHOOL RESUMES

End of Second Progress Reporting Period (High School)

End of First Trimester – Elementary

WINTER RECESS (Recess for Students and Teachers)

CHRISTMAS HOLIDAYS (Legal and Local Holiday)

Holiday to Replace Admission Day

NEW YEAR'S DAY (Legal Holiday)

SCHOOL RESUMES

DR. MARTIN LUTHER KING, JR. DAY (Legal Holiday)

Final Exam Days, High School (Minimum Days, High School)

End of First Semester

SECOND SEMESTER BEGINS

Non-student/Non-teacher day (Instructional Furlough Day)

LINCOLN DAY (Legal Holiday)

WASHINGTON DAY (Legal Holiday)

End of First Progress Reporting Period (High School)

End of Second Trimester – Elementary

Parent Conferences, Elementary (Minimum Days, Elementary Schools)

SPRING RECESS (Recess for Students and Teachers)

SPRING HOLIDAY (Local Holiday)

SCHOOL RESUMES

End of Third Quarter – Middle School

End of Second Progress Reporting Period (High School)

Non-student/Non-teacher day (Instructional Furlough Day)

MEMORIAL DAY (Legal Holiday)

Final Exam Days, High School (Minimum Days, High Schools)

LAST DAY OF SCHOOL FOR SECONDARY STUDENTS

Minimum Day for Secondary/Graduation Ceremonies

Second Semester Wrap-up Activities, Middle & High School

(Secondary Student Holiday)

LAST DAY OF SCHOOL FOR ELEMENTARY STUDENTS Minimum day

LAST DAY OF SCHOOL FOR ALL TEACHERS

(End of Second Semester)

All Teachers - Post-Service Day (Non-instructional Furlough Day)

Mon., July 5, 2010

Thurs., Sept. 2, 2010

Friday, Sept. 3, 2010

Mon., Sept. 6, 2010

Tues., Sept. 7, 2010

Weds., Sept. 8, 2010

Tues.-Thurs., Sept. 21-23, 2010

Tues.-Thurs., Sept. 28-30, 2010

Tues.-Thurs., Oct. 5-7, 2010

Fri., Oct. 15, 2010

Mon., Nov. 1, 2010

Tues.-Thurs., Nov. 2-4, 2010

Fri., Nov. 5, 2010

Thurs., Nov. 11, 2010

Fri., Nov. 12, 2010

Mon.-Fri., Nov. 22-26, 2010

Thurs.-Fri., Nov. 25-26, 2010

Mon., Nov. 29, 2010

Fri., Dec. 3, 2010

Fri., Dec. 10, 2010

Mon.-Fri., Dec. 20-31, 2010

Thurs.-Fri., Dec. 23-24, 2010

Thurs., Dec. 30, 2010

Fri., Dec. 31, 2010

Mon., Jan. 3, 2011

Mon., Jan. 17, 2011

Weds.-Fri., Feb. 2-4, 2011

Fri., Feb. 4, 2011

Mon., Feb. 7, 2011

Thurs., Feb. 17, 2011

Fri., Feb. 18, 2011

Mon., Feb. 21, 2011

Fri., Mar. 18, 2011

Weds., Mar. 23, 2011

Tues.-Fri., Mar. 29-April 1, 2011

Mon.-Fri., Apr. 4-8, 2011

Fri., Apr. 8, 2011

Mon., Apr. 11, 2011

Weds., Apr. 20, 2011

Fri., May 6, 2011

Fri., May 27, 2011

Mon., May 30, 2011

Mon.-Weds., June 20-22, 2011

Weds., June 22, 2011

Weds., June 22, 2011

Thurs., June 23, 2011

Thurs., June 23, 2011

Thurs., June 23, 2011

Fri., June 24, 2011

NOTE: Additional student days may be added during the winter or spring recesses, or at the end of the June school month, because of lost teaching days due to emergency school-closing days.

Open House: Schools will set individual Open House dates in the spring.

Instructional Days by School Level and Month

2010-2011 Approved on April 21, 2010

	July	August	September	October	November	December	January	February	March	April	May	June	Total
Elem	0	0	17	21	13	13	20	17	23	16	21	17	178
MS	0	0	17	21	14	13	20	16	23	16	21	17	178
HS	0	0	17	21	14	13	20	16	23	16	21	17	178

2010-2011 Proposed on August 3, 2010

	July	August	September	October	November	December	January	February	March	April	May	June	Total
Elem	0	0	17	21	14	13	20	17	23	16	20	17	178
MS	0	0	17	21	15	13	20	17	23	16	20	16	178
HS	0	0	17	21	15	13	20	17	23	16	20	16	178

CAPISTRANO UNIFIED SCHOOL DISTRICT
San Juan Capistrano, California

August 3, 2010

THIS ITEM WAS PULLED FROM THE AGENDA ON
8/2/10 AND WILL BE BROUGHT BACK TO A
FUTURE MEETING.

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

FROM: Julie Hatchel, Assistant Superintendent, Education

SUBJECT: PROPOSED ADOPTION OF 2011/12 SCHOOL CALENDAR

BACKGROUND INFORMATION

In November 2006, a Calendar Task Force was established. The Task Force was composed of members representing all of the school district's major constituent groups. The Task Force meets annually to reach consensus on recommended school calendars for upcoming school years.

The committee utilizes the following tenets in making recommendations for school calendars:

- The calendar should support the educational purpose of the school district.
- Student holidays, aside from legal holidays, should be minimized and placed strategically in order to optimize learning.
- To the extent possible, the calendar should follow a consistent pattern from year to year to plan for instruction and families can make long-range plans.

The Calendar Task Force reconvened in June 2010 to design a proposed calendar for the 2011/12 academic year, which reflects these tenets.

CURRENT CONSIDERATIONS

This item presents for Board consideration a proposed school calendar for the 2011/12 school year (Exhibit A).

The recommended calendar maintains consistency with the second revision of the 2010/11 calendar, specifically:

- Students return to school on the Wednesday after Labor Day.
- The only fall recess day is Veterans Day, per Education Code 79020.
- Schools will be closed for a five-day Thanksgiving holiday recess.
- Spring Recess is scheduled the second week in April.
- The final secondary student/graduation day is a Wednesday.

- The final teacher/elementary student day is a Thursday.
- The calendar maintains 178 instructional days for all students and 180 paid work days for teachers.

FINANCIAL IMPLICATIONS

It is anticipated that adoption of this calendar will increase first week student attendance and reduce high student and teacher absenteeism immediately preceding the Thanksgiving, Presidents' Day, and Memorial Day holidays, thus enhancing the general fund through increased revenue via the state's ADA funding model.


STAFF RECOMMENDATION

It is respectfully requested the Board approve the proposed school calendar for the 2011/12 school year (Exhibit A).

CAPISTRANO UNIFIED SCHOOL DISTRICT
San Juan Capistrano, California

August 3, 2010

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

FROM: Ronald N. Lebs, Deputy Superintendent, Business and Support Systems 

SUBJECT: **RENEWAL OF USE OF FACILITIES AGREEMENT WITH JOURNEY CHARTER
SCHOOL AT FOXBOROUGH CAMPUS**

BACKGROUND INFORMATION

On January 8, 2007, the Foxborough Elementary School site in the City of Aliso Viejo was repurposed by the Board of Trustees with students reassigned to Wood Canyon Elementary School. Subsequently, the Journey Charter School (JCS) occupied most of the Foxborough campus and is currently operating under a "Use of Facilities Agreement" approved by the Board on June 8, 2009. The current JCS agreement allows the use of 18 portable classrooms, one restroom facility, play areas, and 25 parking spaces to operate its K-8 charter school program. Additionally, JCS pays for utilities at the site, including electrical, telephone, waste disposal, water and sewer, and security. Terms of the agreement allow an option to renew for an additional three years subject to approval from both parties. Rental payments are currently calculated at \$0.59 per square foot of building area with a total of 18,900 square feet of space being used by JCS equating to \$11,151 per month.

Since occupying the campus, JCS has had a very successful program and would now like to continue their operations at the Foxborough campus. JCS is requesting another one-year extension of their current agreement with one change – they would like to remove from the lease one of the vacant portable classrooms in the rear of the campus. The proposed new total building area is 17,940 square feet equating to \$10,584.60 per month.

CURRENT CONSIDERATIONS

This agenda item pertains to the approval of "Addendum and Renewal to Journey School Lease 2010-2011" with the JCS for the use of facilities at the Foxborough campus. Exhibit A shows the current agreement as approved by the Board on June 8, 2009. Exhibit B is the Addendum, as prepared by the District's legal counsel for the 2010-2011 school year.

FINANCIAL IMPLICATIONS

This agenda item will impact the District's General Fund. Although monthly payments from JCS will be reduced by \$566.40 (for the exclusion of one classroom), the continued rental payments of \$10,584.60 per month will be available for unrestricted General Fund expenditures through June 30, 2011.

STAFF RECOMMENDATION

It is respectfully requested that the Board of Trustees approve the "Addendum and Renewal to Journey School Lease 2010-2011" for the Journey Charter School use of facilities on the Foxborough campus.

**CAPISTRANO UNIFIED SCHOOL DISTRICT
JOURNEY CHARTER SCHOOL AGREEMENT 2009-10
FOR USE OF FACILITIES AT FOXBOROUGH ELEMENTARY SCHOOL**

THIS AGREEMENT is made and entered into this 8th day of June, 2009, by and between the CAPISTRANO UNIFIED SCHOOL DISTRICT (hereinafter referred to as "CUSD"), and the JOURNEY CHARTER SCHOOL, a non-profit public benefit corporation (hereinafter referred to as JCS). This lease is for the period July 1, 2009 to June 30, 2010.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, INTENDING TO BE LEGALLY BOUND HEREBY, CUSD and Journey Charter School (collectively, the "Parties") agree as follows:

1. Grant of Lease to JCS to Use Facilities: CUSD hereby grants to JCS the lease of, and right to enter onto and use, 18 portable classrooms, at the Foxborough Elementary School campus specified in Section 2 below (the "Facilities") to operate its K-8 charter school program, and for no other use without the prior written consent of CUSD, which consent may be withheld in CUSD's sole and absolute discretion. JCS shall be solely responsible for determining the suitability of the Facilities for its intended use and JCS shall fully meet all governmental laws, regulations and rules concerning JCS's use of the Facilities. In addition, CUSD shall make available and JCS shall be permitted nonexclusive use of one restroom facility located adjacent to Portable 15, play areas (Kindergarten play area may be shared with a future Mommy & Me program and coordinated with JCS kindergarten schedule), shared use of the south portion of the grass field play area (coordinated with Niguel Child Center) and existing parking spaces (together, the "Related Facilities").
2. Location of Facilities: The Facilities consist of the Office, staff lounge, K-1, K-2, Portables 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 21/22, 29 (preschool room), 30 and one of the existing portables located at the rear of the campus previously occupied by the YMCA.
3. Utilities and Services: JCS shall pay for utilities at the site, including electrical utility service, waste disposal, water and sewer, security. In regard to telephone service, CUSD has installed telephone lines in each of the classrooms to be used by JCS. JCS shall provide its own telephones and pay for its own telephone services.
4. Alterations, Improvements: JCS, at its own expense, shall have the right, upon obtaining the written consent of CUSD, which consent may be withheld in CUSD's sole and absolute discretion, prior to beginning work, to construct alterations and improvements to the Facilities. If requested by CUSD in writing at least thirty (30) days prior to the termination of this Agreement, JCS agrees to remove any alterations, additions or improvements upon the termination of this Agreement and restore the premises to their prior condition at JCS sole cost and expense.
5. Maintenance of Building: JCS at its sole cost shall maintain the interior and exterior of the Facilities in good repair, including painting of walls and ramps, replacement of broken glass in windows, and prompt removal of graffiti. JCS may use CUSD maintenance services by mutual consent, to perform the work at cost. CUSD will have responsibility for structural repairs, such as roofing.

EXHIBIT A
(1 of 6)

6. Maintenance Notification: CUSD shall provide notice to JCS in advance of routine maintenance procedures involving pesticides, herbicides, or other chemicals to Foxborough Elementary School buildings or playgrounds that are in close proximity to the Facilities. The JCS calendar will be provided to CUSD Department of Maintenance and Operations for planning purposes. The M & O department will consider the JCS calendar in scheduling above procedures.

7. As-is Condition of Facilities and Related Facilities: JCS acknowledges that the Facilities and the Related Facilities are being made available to JCS in an "As Is" "Where Is" condition, and neither CUSD nor any agent of CUSD has made any representation or warranty with respect to the Facilities, the Related Facilities or the condition thereof, or any improvement located on the Foxborough campus. Entering onto the Foxborough campus by JCS shall be at JCS's sole risk and JCS acknowledges that it has assumed the risk of entry upon the Foxborough campus for JCS's person, invitees, users, guests, clients, contractors and property, and shall conclusively establish that the Facilities and Related Facilities at Foxborough are in satisfactory condition for JCS activities.

8. Furniture and Equipment: JCS shall be permitted to continue to utilize the current furniture located in the Facilities. As the Facilities are being accepted by JCS in an "As Is" and "Where Is" condition and neither CUSD nor any agent of CUSD has made any representation or warranty with respect to such furniture, JCS shall provide any additional furniture and equipment required for operation of its program. All furniture used by JCS will meet state legal requirements.

9. Student Safety: JCS students, staff and visitors will comply with all applicable laws, regulations and procedures concerning or related to JCS's use of the Facilities and Related Facilities, including, but not limited to, CUSD and Foxborough emergency procedures, safety and supervision policies and procedures while on school grounds.

10. Operating Schedule: The education program to be operated on CUSD property by JCS will operate on a schedule that will minimize traffic congestion at the beginning and end of the school day. JCS agrees to offset start and end times by at least 20 minutes from Aliso Niguel High School for the 2009-10 school year bell schedule.

11. Independent Contractor: JCS shall be an independent contractor under this agreement, and at no time shall JCS represent itself to be an agent of CUSD.

12. Right of Entry by CUSD: CUSD shall have the right, at reasonable times, to enter the Facilities for the purpose of inspecting them. Reasonable courtesy notice to the Administrator of JCS shall be provided except in case of emergency. The right and authority hereby reserved in this paragraph does not impose any responsibility or liability for any acts, omissions or negligence of JCS, JCS staff, guests, clients, and contractors on said Facilities.

13. Rental Payments charged to JCS by CUSD: JCS shall pay CUSD rental payments ("Rental Payments") for the lease of the Facilities calculated at \$0.59 per square foot of leased building space based on the assumption that 18,900 square feet of space is leased by JCS for a total of \$133,812 for one year or \$11,151 per month for twelve months for the Facilities. Rental Payments shall include contract services and security services not covered under Section 3 of this Agreement. Payment shall be made to CUSD, without

demand, in advance on or before the first day of each month beginning July 1, 2009 throughout the term of this Agreement. Rental Payments shall be negotiated annually.

14. Term of Agreement: This Agreement shall be from July 1, 2009, through June 30, 2010, or until another agreement is entered into by the Parties that supersedes this Agreement with the understanding that all insurance liability requirements will be fulfilled by July 1, 2009 (attached). Either party may terminate this Agreement for and "Event of Default", as defined below, by giving thirty (30) days prior written notice specifying the effective termination date. An Event of Default is defined as any material default under this Agreement and may include, but is not limited to, failure for any reason of either party to fulfill in a timely manner its obligations under the Agreement. It is the intention of both parties that this Lease Agreement be renewable for an additional three years with adjustments as written in this Agreement, subject to annual negotiation of the Rental Payments. Such extension shall be granted at least 6 months prior to the expiration of this Lease Agreement. CUSD shall notify JCS six months prior to expiration if this Lease shall not be extended.

15. Compliance with the Law: JCS shall comply with the requirements of all applicable municipal, state, and federal statutes, ordinances, rules, orders, regulations and laws in effect or which may hereafter be in effect during the term of the Agreement pertaining to the operation of an education program and the use and occupancy of the program facilities. JCS shall not commit or suffer to be committed on said premises any nuisance or other act which may disturb the quiet enjoyment of adjoining property owners or occupants.

16. Indemnity: CUSD shall assume no liability for any use of the Facilities and Related Facilities or the Foxborough campus by JCS. JCS waives and releases all claims against CUSD for death, injuries, or damage to property sustained by JCS, its agents and employees, in, upon, or about said premises, and JCS agrees to defend and hold CUSD and its officers, agents and employees harmless from any claim or action or liability for injury, wrongful death, or property damage sustained by any person arising out of the use of the premises by JCS, or arising out of any act or omission by JCS, its employees, agents, and contractors, including failure of JCS to keep the premises in good condition and repaired as provided in the Agreement. The obligations of JCS under this paragraph 16 shall survive the termination or expiration of this Agreement with respect to any claims or liability arising prior to such termination or expiration.

17. Comparative Indemnity: Notwithstanding any other provision of the Agreement, the obligations of JCS to indemnify and hold harmless CUSD shall not extend to any claim, loss, damage, liability, cost or expense arising out of the gross negligent or willful misconduct of CUSD, any of their respective agents or employees or other parties.

18. Liability Insurance: JCS shall provide and shall maintain in force, during the term of this Agreement, comprehensive personal injury and property damage liability insurance, with minimum personal injury liability limits of \$1,000,000 per person and \$2,000,000 per occurrence. The policy or policies of liability insurance shall name CUSD (CAPISTRANO UNIFIED SCHOOL DISTRICT), its officers, agents, and employees as additional insured under the terms of such policy or policies. Further, such policy shall not be cancelled without thirty (30) days prior written notice to CUSD. (Insurance Certificates attached).

19. Workers Compensation and other Employee Insurance: JCS shall provide workers' compensation insurance, unemployment insurance, and disability insurance for all its employees, as required by law.

20. Certificates of Insurance: Current certificates for all types of insurance and an additional insured endorsement for the liability coverage shall be on file with CUSD before the opening of school indicating the name of the carrier, the policy number and the expiration date. Such Certificates of Insurance shall not be cancelled without thirty (30) days prior written notice to CUSD.

21. Assignment and Sublease: Neither this Agreement nor any interest therein, whether legal or equitable, shall be assigned, subleased, transferred, alienated, pledged, or hypothesized, voluntarily or by operation of law by JCS without the prior written consent of CUSD, which consent may be withheld in its sole and absolute discretion. Any such assignment, sublease, transfer, alienation, pledge, or hypothecation shall be void and shall, at CUSD's option, terminate this Agreement.

22. Exemption of CUSD from Liability: CUSD shall not be liable for any damage or injury to the person, business (including loss of business profits or loss of income derived from JCS's business or for damage to the improvements, trade fixtures, contents or other property of JCS), JCS's employees, invitees, customers or any other person in or about the Facilities and the Related Facilities, whether such damage or injury is caused by or results from : (a) fire, steam, electricity, water, gas or rain; (b) breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause; or (c) conditions arising in or about the Facilities or elsewhere, except to the extent caused by CUSD's gross negligence or willful misconduct. CUSD shall have no liability for consequential or special damages.

23. Hazardous Substance: The term "Hazardous Substance" as used in this Agreement shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials is either: (i) potentially injurious to the public health, safety or welfare, the environment, or the Facilities; (ii) regulated or monitored by any government authority, or (iii) a basis for potential liability of CUSD to any governmental agency or third party under any applicable statute or common law theory. If JCS knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Facilities, JCS shall immediately give written notice of such fact to CUSD, and provide CUSD with a copy of any report, notice, claim, or other documentation which it has concerning the presence of such Hazardous Substances. JCS shall not cause or permit any Hazardous Substances to be spilled or released in, on, under, or about the Facilities and shall promptly, at JCS's expense, comply with all requirements, laws, ordinances, regulations, or orders having to do with the public safety, welfare, the environment, or any other matters, as such may be promulgated by any federal, state, or local governmental body or agency and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security, and/or monitoring of the Facilities or neighboring properties, that was caused or materially contributed to by JCS, or pertaining to or involving any Hazardous Substance brought onto the Facilities during the term of this Agreement by any agent of JCS. JCS shall indemnify, defend and hold CUSD, its agents, employees, and lenders, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and

the cleanup of any contamination of, and for the maintenance, security, and/or monitoring of the Facilities or neighboring properties, that was caused or materially contributed to by JCS, or pertaining to or involving any Hazardous Substance brought onto the Facilities during the term of this Agreement by any agent of JCS. JCS shall indemnify, defend and hold CUSD, its agents, employees, and lenders, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Facilities by or for JCS, or any agent of JCS. JCS' obligations shall include, but not be limited to, the effects of any contamination or injury to person, property, or the environment created or caused by JCS, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Agreement.

24. Actions Upon Dissolution: Should JCS cease operation, all assets secured from the appropriation of public funds shall be returned to CUSD. All other assets will be distributed in accordance with laws and regulations in force that govern the dissolution of non-profit public benefit corporations. The JCS charter will comply with all portions of EC 47605(b)(5)(P), including the requirement that there shall be "a final audit of the school to determine the disposition of all assets and liabilities of the Charter School, including plans for disposing of any net assets and for the maintenance and transfer of pupil records." Further, the school will notify parents, students, the California Department of Education, districts affected by the closure, and the Orange County Office of Education.

25. Amendments: This Agreement may only be amended by the mutual written consent of the parties hereto. No oral understanding or agreement not incorporated in this contract shall be binding on either party.

26. Applicable Law: This Agreement shall be governed by the laws of the State of California.

27. Complete and Exclusive Statement: This Agreement is the complete and exclusive statement of the mutual understanding of the Parties. This Agreement supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

28. Severability: If any section, subsection, sentence, clause or phrase of this Agreement, or the application thereof to any of the Parties, is for any reason held invalid or unenforceable, the validity of the remainder of the Agreement shall not be affected thereby and may be enforced by the Parties to this Agreement."

29. Applicable Law: This agreement shall be governed by the laws of the State of California.

30. Contact Person: Each party to this Agreement shall name one individual to be the representative contact person for matters related to this Agreement. At the date of this agreement, the addresses of the Parties are as follows:

32. Headings: The headings of the paragraphs or sections of this Agreement are for convenience of reference only and are not to be used to interpret or construe any provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto agree to the terms above and have executed this Amendment on the day and year set forth below:

JOURNEY CHARTER SCHOOL	CAPISTRANO UNIFIED SCHOOL DISTRICT
By: _____ Journey Council President	By: _____ Superintendent or Superintendent's Designee
Date: _____	Date: _____

**ADDENDUM AND RENEWAL TO JOURNEY SCHOOL LEASE
2010-2011**

THIS ADDENDUM AND RENEWAL ("Renewal") to the Facilities Use Agreement entered into between Journey Charter School ("JCS") and the Capistrano Unified School District ("CUSD") on or about June 8, 2009, for the use of CUSD facilities at 27102 Foxborough, Aliso Viejo, California 92656 ("Facilities Use Agreement") is made and entered into, effective as of _____, 2010 ("Effective Date"), by and between JCS and CUSD.

JCS and CUSD hereby agree as follows:

1. Pursuant to and consistent with Section 14 of the Facilities Use Agreement, the term of the Facilities Use Agreement is hereby extended to June 30, 2011.
2. Section 2 of the Facilities Use Agreement is hereby modified to reflect that facilities leased under the Facilities Use Agreement shall consist of the Office, staff lounge, K-1, K-2, Portables 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 21/22, 29 (preschool room), and 30. The portable described as "one of the existing portables located at the rear of the campus previously occupied by the YMCA" ("Removed Portable") shall be stricken from the Facilities Use Agreement as of the Effective Date of this Renewal. This modification shall not release JCS from any liability or obligations arising under the Facilities Use Agreement in connection with its use of the Removed Portable prior to the Effective Date of this Renewal, or any damages resulting to the Removed Portable after the Effective Date caused by JCS's operations on the leased premises. CUSD shall have the right, at its sole discretion, to enter the leased premises for the purpose of removing the Removed Portable from the premises, provided CUSD provides JCS with reasonable notice of its intention to do so.
3. Section 13 of the Facilities Use Agreement is hereby modified to reflect that JCS shall be leasing, as of the Effective Date of this Renewal, approximately 17,940 square feet of space.
4. The rental payment due pursuant to Section 13 of the Facilities Use Agreement shall be modified to reflect, as of the Effective Date of this Renewal, a required payment of \$10,584.60 per month, calculated at \$0.59 per square foot of leased building space based on the assumption that 17,940 square feet of space is leased by JCS. Rental payments shall be negotiated annually.
5. Except as expressly provided herein, the remaining provisions of the Facilities Use Agreement shall remain in full force and effect.

IN WITNESS OF THE FOREGOING, the undersigned execute this Renewal to the Facilities Use Agreement on behalf of JCS and CUSD.

CAPISTRANO UNIFIED SCHOOL DISTRICT

Date: _____, 2010

By: _____

Print Name: _____

Title: _____

JOURNEY CHARTER SCHOOL

Date: _____, 2010

By: _____

Print Name: _____

Title: _____

CAPISTRANO UNIFIED SCHOOL DISTRICT
San Juan Capistrano, California

August 3, 2010

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

FROM: Ron Lebs, Deputy Superintendent Business & Support Services

SUBJECT: **2010/11 SALARY REDUCTIONS: CAPISTRANO UNIFIED
MANAGEMENT ASSOCIATION**

BACKGROUND INFORMATION

On June 29, 2010, the Board of Trustees and the members of the District's management team, Capistrano Unified Management Association (CUMA), reached agreement on a salary reduction/benefits cap/compensation package for fiscal year 2010/11. The terms of the compensation package herein were proposed and approved as part of the 2010/11 budget adoption to help offset the projected deficit and balance the 2010/11 fiscal year budget.

CURRENT CONSIDERATION

CUMA has agreed to take a compensation reduction through a combination of furlough days, salary reduction, and benefits cap as described below:

1. Furlough Days – All management and confidential (CUMA) employees will take eight mandatory furlough days with a corresponding reduction in salary.
2. Salary Reduction – For fiscal year 2010/11, the management and confidential (CUMA) salary schedules will be based on the 2008/09 salary schedules with a 3.7% reduction.
3. Benefits Cap – Effective January 1, 2011, the District will implement a maximum contribution for all HMO health insurance plans (currently Kaiser and Anthem Blue Cross) based upon 2010 Anthem Blue Cross HMO contribution rates at each tier of coverage as follows: (a) for employees electing Employee only coverage, the District will pay for the actual cost of insurance up to a maximum of \$4,901.90 per year; (b) for employees electing Employee plus one coverage, the District will pay for the actual cost of insurance up to a maximum of \$10,132.40 per year; and (c) for employees electing Employee plus two or more coverage (family coverage), the District will pay for the actual cost of insurance up to a maximum of \$14,412.20 per year. Insurance premium costs that exceed the tier of coverage elected by an employee shall be paid by the employee through equal monthly payroll deductions.

Effective January 1, 2011, the District will implement a maximum contribution for any POS or PPO health insurance plan based upon the 2010 District contribution rates for the Anthem Blue Cross POS plan at each tier of coverage as follows: (a) for employees electing Employee only coverage, the District will pay for the actual cost of insurance up to a maximum of \$6,005.30 per year; (b) for employees electing Employee plus one coverage, the District will pay for the actual cost of insurance up to a maximum of \$12,454.40 per year; and (c) for employees electing Employee plus two or more coverage (family

coverage), the District will pay for the actual cost of insurance up to a maximum of \$17,730.90 per year. Insurance premium costs that exceed the tier of coverage elected by an employee shall be paid by the employee through equal monthly payroll deductions.

The District contributions for the life, dental, and vision plans shall be frozen at the 2009 benefit year levels effective January 1, 2011. Any premium costs that exceed the 2009 contribution levels for a particular life, vision, or dental plan and tier of coverage (i.e. employee only, employee plus one dependent, or family coverage) shall be paid by the employees electing such tier and plan through equal monthly payroll deductions.

The six dollar per participant per month MEBA fee has been included in the maximum contribution amounts set forth above.

4. Create Uniformity of Service Days – All principals will work a positive work-year calendar (no vacation accrual). Principal work years will be defined in Board Policy 4313 which will be revised to reflect this change. Seventeen elementary principals will have their salaries Y-Rated at their 2009/10 classification for 2010/11 to include the salary schedule decrease as part of their 3.7% salary rollback.
5. Affected Employees – This salary reduction and additional furlough day adjustment applies to all management and confidential employees (excluding Teaching Assistant Principals II).
6. Duration – This salary reduction and mandatory furlough days apply to the 2010/11 fiscal year; the benefit caps are ongoing.
7. Implementation of Furlough Days - Collaborating with his or her supervisor, each employee will develop a work year calendar and schedule furlough days in order to minimize the inconvenience and impact to the District.

FINANCIAL IMPLICATIONS

The estimated general fund savings resulting from this salary reduction is \$1,470,000.

STAFF RECOMMENDATION

It is respectfully recommended the Trustees approve the proposed CUMA salary reduction outlined herein.

CAPISTRANO UNIFIED SCHOOL DISTRICT
San Juan Capistrano, California

August 3, 2010

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

FROM: Ronald N. Lebs, Deputy Superintendent, Business & Support Services

SUBJECT: **APPROVAL: ADVERTISE FOR REQUEST FOR QUALIFICATIONS
AND PROPOSALS (RFQ-P) NO. 2-1011 – CONSTRUCTION
MANAGER/DISTRICT’S REPRESENTATIVE**

BACKGROUND INFORMATION

The District is seeking qualified construction manager/District’s representative services to administer possible construction projects over the next 12-24 months on an as needed basis. The construction manager/District’s representative would administer onsite construction serving as the District’s representative. The duties would include preconstruction support, administration of the project, acquisitions required for the construction of the project, management and scheduling of the project, cost control management and project close-out.

The ideal candidate would be experienced and familiar with the principals and practices of general building construction. Experience as a general building contractor or project manager in large scale commercial or school construction projects is required.

This RFQ-P is not a formal request for bids, nor an offer by the District to contract with any party responding to this RFQ-P. This RFQ-P does not commit the District to award a contract or to reimburse any applicant for costs incurred in submitting a proposal. The District, in its sole discretion, reserves the right: to reject any or all proposals submitted; to choose any combination of proposals; to interview any, all, or none of the respondents; to negotiate with any respondent; to extend the deadline to submit a proposal; or to amend or cancel in part or in its entirety this RFQ-P.

The RFQ-P is included as Exhibit A. The District intends to enter into a one-year contract. This contract may be extended annually, by mutual agreement, and upon Board approval, for a term not to exceed a total of two additional years.

CURRENT CONSIDERATIONS

This agenda item pertains to advertising for Request for Qualifications and Proposals RFQ-P No. 2-1011 Construction Manager/District’s Representative for the District.

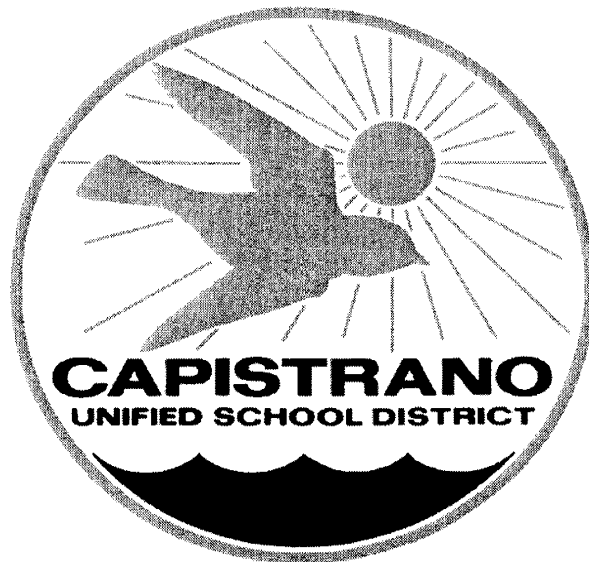
Approval – Advertise for RFQ-P No. 2-1011
Construction Manager/District's Representative
August 3, 2010
Page 2

FINANCIAL IMPLICATIONS

Funds for this service will come from the appropriate accounts.

STAFF RECOMMENDATION

It is respectfully recommended that the Board of Trustees approve the attached RFQ-P and authorize advertising for RFQ-P No. 2-1011 – Construction Manager/District's Representative for Capistrano Unified School District.



REQUEST FOR QUALIFICATIONS AND PROPOSALS

CONSTRUCTION MANAGER/DISTRICT'S REPRESENTATIVE
RFQ-P No. 2-1011

Contact: **Terry Fluent, Director, Purchasing**
(949) 234-9436

RFQ-P Deadline: **TBD**
Capistrano Unified School District
Education Center
Attention: Terry Fluent, Director, Purchasing
33122 Valle Road
San Juan Capistrano, CA 92675

CAPISTRANO UNIFIED SCHOOL DISTRICT
Purchasing Department
33122 Valle Road
San Juan Capistrano, CA 92675
(949) 234-9438

The Capistrano Unified School District ("District") is soliciting qualifications and proposals from qualified persons, firms, partnerships, corporations, associations, or professional organizations for construction manager/District's representative services with respect to the District's possible construction projects at the following locations over the next 12-24 months:

San Juan Hills High School 30 Meter Pool/Support Buildings
Capistrano Valley High School Performing Arts Theater
Dana Hills High School Performing Arts Theater
Other Professional Services as Requested

Each construction location shall be referred to as a "Site" and with the construction upon the Site, shall be referred to collectively as a "Project."

The District will select an individual from a firm to work on an hourly/monthly basis as the District's construction manager/District's representative. Any construction manager/District's representative retained as a result of this RFQ-P shall be required to work in conjunction with the architect retained by the District for the Project as well as other entities retained by the District.

PROCESS FOR SUBMISSION OF PROPOSALS

Proposals must be received at Capistrano Unified School District Education Center, 33122 Valley Road, San Juan Capistrano, CA 92675, ATTN: Terry Fluent, Director, Purchasing, by TBD. Proposal must be in a sealed envelope addressed to the Director, Purchasing and identify the name of the respondent submitting the proposal. Any inquiries should be directed to Terry Fluent at (949) 234-9436. The selected respondent will be required to sign an agreement prepared by the District.

LIMITATIONS

This RFQ-P is neither a formal request for bids, nor an offer by the District to contract with any party responding to this RFQ-P. This RFQ-P does not commit the District to award a contract or to reimburse any applicant for costs incurred in submitting a proposal. The District, in its sole discretion, reserves the right: to reject any or all proposals submitted; to choose any combination of proposals; to interview any, all, or none of the respondents; to negotiate with any respondent; to extend the deadline to submit a proposal; or to amend or cancel in part or in its entirety this RFQ-P.

PROPOSAL REQUIREMENTS

Scope of Work – Performance Expectations

An individual will be selected to administer onsite construction management services for the District and serve as the District's representative reporting directly to the Executive Director I of Facilities and Plant Operations, with additional reporting responsibilities directly to the District Superintendent. The selected individual will be experienced and familiar with the principals and practices of general building construction. Previous experience as a general building contractor or project manager in large scale commercial or school construction project is required.

Firms are welcomed to submit proposals to this RFQ-P. The District will select an individual to provide construction management services on an as needed basis for several current and upcoming projects over the next 12-24 months. The selected individual will work on an hourly/monthly basis as the District's construction manager/District's representative.

The District's construction manager/District's representative must have the ability to work independently with minimal direction; function effectively in an ever-changing environment; align revenue resources to make recommendations regarding project/priority; analyze situations and problems accurately and adopt an effective course of action for successful results; plan, organize, direct, and administer multiple construction projects and personnel; read, interpret, evaluate, and prepare construction documents including but not limited to; building plans, blueprints, specifications, schedules, and bid packages; prepare recommendations, programs, and forms; operate at an advanced level a personal computer with modern construction-related software with speed and accuracy; develop complex records related to school construction; estimate labor and material costs of the major projects; manage, direct, and supervise the construction project, establish and maintain effective organization, community, and public relationships; communicate effectively in oral and written form; comply with the District's customer service standards, as outlined in board policy.

The duties of the construction manager can best be summarized under six general operational areas and are provided below as an example of what the respondent should anticipate in terms of performance expectations.

Preconstruction Services support

- Preparing a deliverable schedule relative to bidding practices
- Assisting with estimates during plan review
- Preparing a preliminary construction schedule
- Delineating project requirements and general conditions
- Constructability reviews

Administration of the project

- Managing the District's contract

- Communications of issues, and coordination of activities
- Document control
- Teaming with the architect on the project

Acquisitions required for the construction of the project

- Refinement of scope
- Identifying items that have delivery dates that impact the schedule
- Purchasing of trades and materials

Management and scheduling of the project

- Understanding manpower operations
- Materials applications
- Building code issues
- Site logistics

Cost control management

- Issues resolution
- Managing and verification of subcontractor change orders
- Preparation of cost documents for submission and resolution
- Building code issues
- Value Engineering

Project close-out

- Achieving substantial completion
- Aggressive punch list completion
- Submission of recoded drawings, maintenance manuals &
- Warranties

1. Qualifications of Consultant

Respondent must submit a cover letter signed by a managing Principal that is authorized to represent the firm's interests throughout the evaluation process. Respondent must state its qualifications for the anticipated scope of work and performance expectations and its experience with projects of comparable size and complexity. In particular, respondent shall provide any experience applicable to public school projects. Each proposal must also include evidence that the respondent is properly licensed. Respondent shall identify and provide resumes for the key personnel that will staff the Project, including any sub-consultants anticipated to be needed to meet the Project requirements.

2. Relationship with Outside Governmental Agencies

Depending upon the scope of work, respondent may be required to assist the District in working with various outside governmental agencies, in particular, the applicable City or County Planning Commissions, the regional air quality control district, the State Department of Education, the Division of the State Architect,

and the Office of Public School Construction. Respondent shall discuss its experience with each of these agencies.

3. References

Respondent shall describe its work in the past five (5) years that is similar or comparable to the District's Project, and include copies of reports and other applicable documents. Respondent shall provide as references a primary contact person, with current address and telephone number, for each project of equivalent size on which applicant has provided consulting services within the past three (3) years. Respondent shall have no less than five (5) relevant references of past clients. Not all references need to be within the past three (3) years, but a reference must be provided for each project within the past three (3) years. References may be contacted to attest to the respondent's ability to perform the described services.

4. Indemnification

The District will require each respondent to indemnify the District for all acts arising out of that respondent's work pursuant to the contract between the District and that respondent. The selected respondent will be required to and does hereby defend, indemnify and save harmless the District, its employees, officers, agents, from any and all claims, demands, damages, costs, expenses, judgments or liability of any nature whatsoever which may result from the contract between the District and the respondent except for claims, demands, damages, costs, expenses or judgments resulting solely from the negligence or willful misconduct of the District.

5. Insurance

The selected respondent will be required to provide insurance coverage in the amount of \$1,000,000 of Comprehensive General Liability Insurance with coverage of owned and non-owned vehicles included, \$500,000 of Professional Liability Insurance to cover all services provided and Workers' Compensation coverage. This amount of insurance coverage shall be reflected in the respondent's professional fee.

6. Time for Performance

Respondent shall include a proposed schedule for performing scope of work.

7. Fees

Each respondent shall include a fee proposal. As noted above, the District will select an individual to work on an hourly/monthly basis as the District's construction manager/District's representative. The fee proposal may include a monthly fee, an hourly rate, or a combination of both. The final construction management fees for each component of the Project will be negotiated. Please

provide a separate fee schedule for each Site/Project or indicate if the proposed fee schedule is applicable for each Site/Project. Include a comprehensive list of services to be provided. Note all services that ARE NOT a part of the proposed construction management fee.

RESPONSES MUST BE LIMITED TO FIVE (5) PAGES.

REQUIRED FORMS/CERTIFICATIONS

- A. **Certification** - Complete, sign, and date the enclosed "Certification" with this RFQ-P.
- B. **Certification by Contractor of Criminal Records Check** – Pursuant to Education Code 45125.1, complete, sign, and date the enclosed form AB 16160, 1612, and 2102 included with this RFQ-P.
- C. **W-9 Form** – All contractors must provide the following documentation to the District: IRS W-9 Form (Taxpayer Identification Number)
Revised October 2007
- D. **Conflict of Interest Certification** – Complete, sign and date the enclosed "Certification" with this RFQ-P.
- E. **DVBE Certification** – Complete, sign and date the enclosed "Certification" with the RFQ-P.

AWARD CRITERIA

Award of Proposal

Proposals are limited to five (5) pages and should be brief and concise but provide sufficient clarity to meet the criteria to be used in the evaluation process. Award will be made to the firm offering the most advantageous proposal. The District shall not be obligated to accept the lowest priced proposal, but will make an award in the best interest of the District after all factors have been evaluated.

Criteria for selection of each respondent will include the following without limitation:

- 1. Experience with similar school construction projects of comparable scope and complexity;
- 2. Satisfactory references from school districts for projects of similar size and type;
- 3. Qualifications and experience of key personnel that will staff Project;

4. Demonstrated ability to perform value engineering and constructability reviews for projects of similar size and type;
5. Experience with outside governmental agencies;
6. Fees

The Evaluation Committee may also contact and evaluate the firm's references; contact any vendor representative to clarify any response; contact any current users of the firm's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process. The Evaluation Committee shall not be obligated to accept the lowest priced proposal, but shall make an award in the best interest of the District.

Discussions may, at the District's sole option, be conducted with responsible representatives who submit proposals determined to be reasonably susceptible of being selected for an award. Discussions may be for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Firms shall be given fair and equal treatment with respect to any opportunity for discussion and written revision of proposals. Revisions may be permitted after submissions and before award for obtaining best and final proposals. In conducting discussions, the District will not disclose information derived from proposals submitted by competing firms.

Award Selection Process

Selection of qualified firms will be based on the following: quality and completeness of submitted proposal; understanding of objectives; project approach; experience and expertise with public agencies and similar types of efforts; and references. Additional questions may be asked of firms and interviews may be conducted.

Additional Information **KEY ACTION DATES**

The anticipated schedule for completion of this procurement is shown below. The dates are subject to change.

Milestone	Date
RFQ/P Release/Advertise	TBD
Mandatory Proposal Conference	TBD
Deadline for Clarifications/addendums	TBD
Proposal Due Date	TBD
Interviews	TBD
Board Approval	TBD

All questions and requests for information must be made in writing and sent to:

Terry Fluent
Director, Purchasing
tfluent@capousd.org
Fax: (949) 493-4083

CONTACT WITH ANYONE OTHER THAN THE INDIVIDUAL NAMED
HEREIN IS STRICTLY PROHIBITED.

The proposal must be received by TBD and addressed to:

Terry Fluent
Director, Purchasing
Capistrano Unified School District
33122 Valle Road
San Juan Capistrano, CA 92675

Solicitation Disclaimer: All proposals received as part of this solicitation become the property of the District upon submission. The cost to prepare and submit the proposals becomes the sole expense of each firm.

The emphasis of your proposal should be on completeness and clarity of content. RFQ-P's may be rejected if not prepared in the format described, if submitted without all required information and signatures, or by failing to adhere to all requirements as stated in the RFQ-P.

All materials submitted in response to this RFQ-P shall become the property of the District and shall be considered a part of public record.

The District reserves the right to reject any or all responses and proposals to this RFQ-P.

Thank you for your participation!

CERTIFICATION

RFQ-P No. 2-1011 Construction Manger/District's Representative

I certify that I have read the attached **Request for Qualifications and Proposals – Construction Manager/District's Representative**, and the instructions for submitting an RFQ-P. I further certify that I must submit one (1) original and three (3) copies of the firm's proposal in response to this request along with one (1) electronic copy in Word or PDF format on CD labeled with the firm's name, completed Certification by Contractor Criminal Records Check, Certification Participation of Disabled Veterans Business Enterprises, Conflict of Interest Certification, W-9 Form, and that I am authorized to commit the firm to the proposal submitted.

_____ Signature	_____ Typed or Printed Name
_____ Title	_____ Company
_____ Address	_____ Address
_____ Telephone	_____ Fax
_____ Date	<div style="border: 1px solid black; padding: 10px;"><p>If you are bidding as a corporation, please provide your corporate seal here:</p></div>
_____ E-Mail Address	

NOTICE TO CONTRACTORS REGARDING CRIMINAL RECORDS CHECK
(EDUCATION CODE SECTION 45125.1)

Education Code Section 45125.1 provides that if the employees of any entity that has a contract with a school district may have any contact with pupils, those employees shall submit or have submitted their fingerprints in a manner authorized by the Department of Justice together with a fee determined by the Department of Justice to be sufficient to reimburse the Department for its costs incurred in processing the application.

The Department of Justice shall ascertain whether the individual whose fingerprints were submitted to it has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the Department. When the Department of Justice ascertains that an individual whose fingerprints were submitted to it has a pending criminal proceeding for a violent felony listed in Penal Code Section 1192.7(c), or has been convicted of such a felony, the Department shall notify the employer designated by the individual of the criminal information pertaining to the individual. The notification shall be delivered by telephone and shall be confirmed in writing and delivered to the employer by first-class mail.

The contractor shall not permit an employee to come in contact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a violent or serious felony. The contractor shall certify in writing to the governing board of the school district that none of its employees who may come in contact with pupils have been convicted of a violent or serious felony.

Penal Code Section 667.5(c) lists the following "violent" felonies: murder; voluntary manslaughter; mayhem; rape; sodomy by force; oral copulation by force; lewd acts on a child under the age of 14 years; any felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant inflicts great bodily injury on another; any robbery perpetrated in an inhabited dwelling; arson; penetration of a person's genital or anal openings by foreign or unknown objects against the victim's will; attempted murder; explosion or attempt to explode or ignite a destructive device or explosive with the intent to commit murder; kidnapping; continuous sexual abuse of a child; and carjacking.

Penal Code Section 1192.7 lists the following "serious" felonies: murder; voluntary manslaughter; mayhem; rape; sodomy by force; oral copulation by force; a lewd or lascivious act on a child under the age of 14 years; any felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant personally inflicts great bodily injury on another, or in which the defendant personally uses a firearm; attempted murder; assault with intent to commit rape or robbery; assault with a deadly weapon on a peace officer; assault by a life prisoner on a noninmate; assault with a deadly weapon by an inmate; arson; exploding a destructive device with intent to injure or to murder, or explosion causing great bodily injury or mayhem; burglary of an inhabited dwelling; robbery or bank robbery; kidnapping; holding of a hostage by a person confined in a state prison; attempt to commit a felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant personally uses a dangerous or deadly weapon; selling or furnishing specified controlled substances to a minor; penetration of genital or anal openings by foreign objects against the victim's will; grand theft involving a firearm; carjacking; and a conspiracy to commit specified controlled substances offenses.

CERTIFICATION BY CONTRACTOR
CRIMINAL RECORDS CHECK
AB 1610, 1612 and 2102

To the Governing Board of Capistrano Unified School District:

I, _____, certify that:
Name of Contractor

1. I have carefully read and understand the Notice to Contractors Regarding Criminal Record Checks (Education Code Section 45125.1) required by the passage of AB 1610, 1612 and 2102.
2. Due to the nature of the work I will be performing for the District, my employees may have contact with students of the District.
3. None of the employees who will be performing the work have been convicted of a violent or serious felony as defined in the Notice and in Penal Code Section 1192.7 and this determination was made by a fingerprint check through the Department of Justice.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at _____, California on _____.
Date

Signature

Typed or printed name

Title

Address

Telephone

**CERTIFICATION – PARTICIPATION OF
DISABLED VETERAN BUSINESS ENTERPRISES
IN ACCORDANCE WITH EDUCATION CODE 17076.11**

In accordance with Education Code Section 17076.11, the Capistrano Unified School District has a participation goal for Disabled Veteran Business Enterprises of at least three percent (3%) per year of the overall dollar amount of funds allocated by the District by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act of 1998 for construction or modernization of school buildings and expended each year by the District. At the time of execution of the contract, the Contractor will provide a statement to the District of anticipated participation of Disabled Veteran Business Enterprises in the contract. Prior to, and as a condition precedent for final payment under the contract, the Contractor will provide appropriate documentation to the District identifying the amount paid to Disabled Veteran Business Enterprises pursuant to the contract, so that the District can assess its success at meeting this goal.

The Contractor may provide the anticipated participation of Disabled Veteran Business Enterprises in terms of percentage of its total contract or the dollar amount anticipated to be paid to Disabled Veteran Business Enterprises or by providing the names of the Disabled Veteran Business Enterprises that will participate in the contract. If there is a discrepancy between the anticipated goals and the actual goals at completion of the contract or a failure to meet the anticipated goal or dollar amounts, the District will require the Contractor to provide, at the completion of the contract, a detailed statement of the reason(s) for the discrepancy or failure to meet the anticipated goals or dollar amounts.

I certify that I have read the above and will comply with the anticipated participation of Disabled Veteran Business Enterprises in this contract.

_____ Signature	_____ Typed or Printed Name
_____ Title	_____ Company
_____ Address	_____ City, State, Zip
_____ Telephone	_____ Fax
_____ E-mail	

Proposer: _____

CONFLICT OF INTEREST CERTIFICATION

All proposers/firms shall respond to each of the following questions to determine whether any actual or perceived conflict of interest exists.

PRINT NAME _____
SIGNATURE AND DATE _____
TITLE OF OFFICER _____
NAME OF COMPANY _____

As part of your Certification, please respond to the following questions listed below:

1. Have you or any of your team member(s) or consultant(s) been employed by the DISTRICT in the last three years? [Yes] [No]. If your answer is "Yes", please provide the following information:

a.	Were you a full-time employee?	[Yes]	[No]
	Part-Time employee?	[Yes]	[No]
	As-Needed employee?	[Yes]	[No]
	Consultant?	[Yes]	[No]
	Or other, please		

Explain: _____

- b. What were the date(s) of your employment/employment contract/consulting contract?

- c. In which department(s) of DISTRICT did you work?

- d. Who was/were your Supervisor(s)?

- e. Please describe your job duties and responsibilities for each DISTRICT position held?

- f. What was your last date of employment?

2. Do any Board of Education Member(s) or District employee(s) have a business position or serve as an Officer(s), Partner(s) or Shareholder(s) in your company? [Yes] [No]. If the answer is "Yes", please provide the following information:

- a. What is the name of the Board Member(s) or employee(s)?

b. What is his/her position with your company?

c. If a Board of Education Member(s) or employee(s)/Shareholder(s) - what percentage of your company's shares does he/she own?

3. Are any of your former employee(s), (Consultants) presently employed by the DISTRICT? [Yes] [No]. If the answer is "Yes", please provide the following information for each such employee(s).

a. What is the name of the former employee(s)?

b. What was his/her title at your company?

If he/she held more than one position(s) with your company, please provide the title of each positions) held.

c. Please describe his/her duties and responsibilities for each position(s) held at your company?

d. What were the date(s) of his/her employment?

I declare under the Penalty of Perjury under the laws of the State of California that the abovementioned statements are true and correct to the best of my knowledge, and this declaration was executed on this day _____, _____, 20____; in the
(Month)

(City) (State)

(Signature)

(Printed Name)

(Title)

AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES (PROJECT MANAGEMENT)

This Agreement for Construction Management Services ("Agreement") is made as of _____, 2010, between the Capistrano Unified School District a California public school district ("District") and _____, a California _____ ("Construction Manager") (both collectively "Parties"), for the projects described below, which shall be referred to herein as the "Project" or "Projects":

Construction management services during design and construction administration of the following projects:

[LIST PROJECTS]

See **Exhibit "A"** for detailed Project scopes.

The Parties agree that Construction Manager will provide **[Insert CM Staff Name]** to the District for work on the Project on an hourly/monthly basis as well as any personnel identified in Section 3.2 on an as-needed basis to be determined by the District.

The Project may include multiple components. Any one of the components or a combination thereof may be changed, including terminated, in the same manner as the Project, as indicated herein, without changing in any way the remaining component(s). The provisions of this Agreement shall apply to each component without regard to the status of the remaining component(s). Construction Manager shall invoice for each component separately and District shall compensate Construction Manager for each component separately on a proportionate basis based on the level and scope of work completed for each component.

That for and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

Article 1. Definitions

1.1. In addition to the definitions above, the following definitions for words or phrases shall apply when used in this Agreement, including all Exhibits:

1.1.1. **Agreement**: The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.

1.1.2. **Architect**: The architect(s) that the District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s).

1.1.3. **Construction Manager**: The entity listed in the first paragraph of this Agreement, including all Consultant(s) to the Construction Manager.

1.1.4. **Construction Budget**: The total amount indicated by the

District for the Project plus all other costs, including design, construction, administration, financing, and all other costs.

- 1.1.5. **Construction Cost Budget**: The total cost to District of all elements of the Project designed or specified by the Architect, as adjusted at the end of each design phase in accordance with this Agreement. The Construction Cost Budget does not include the compensation of the Program Manager, the Architect and the Architect's consultants, the Construction Manager, the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District.
- 1.1.6. **Consultant(s)**: Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Construction Manager.
- 1.1.7. **Design Team**: The Architect(s) that the District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s), plus all engineer(s) or other designer(s), who have a responsibility to the District to design all or a portion of the Project either directly or as a subconsultant or subcontractor.
- 1.1.8. **DSA**: The Division of the State Architect.
- 1.1.9. **Extra Services**: Extra Services are defined in Article 7 and **Exhibit "B."**
- 1.1.10. **Fee**: The Construction Manager's Fee is defined in Section 6.1, payable as set forth in Article 6 and in **Exhibit "D."**
- 1.1.11. **Program Manager**: Any program manager hired to perform program management services for the District, including all Consultant(s) to the Program Manager. If no Program Manager is hired by the District for the Project(s), then all references to "Program Manager" shall be read and interpreted as the District.
- 1.1.12. **Service(s)**: All labor, materials, supervision, services, tasks, and work that the Construction Manager is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of the Project.

Article 2. Scope, Responsibilities And Services Of Construction Manager

- 2.1. **Scope**: Construction Manager shall provide the Services described herein and under **Exhibit "A"** for the Project. The parties agree that the Construction Manager's Services described herein are based on a construction manager / multiple-prime structure on the Project(s). The District reserves the right to change this structure including, without limitation, utilizing a construction manager / general contractor structure, a design-build structure, or a lease-leaseback structure, each of which the Parties agree may require the Construction Manager's Fee and Scope as well as certain terms and conditions of this Agreement to be adjusted by an amendment, in writing and signed by both Parties.

- 2.2. Coordination: In the performance of Construction Manager's services under this Agreement, Construction Manager agrees that it will maintain such coordination with District personnel and/or its designated representatives as may be requested and desirable. This shall include, without limitation, coordination with all members of the District's design team, and the persons responsible for operation of the District's Labor Compliance Program, if any. If the Construction Manager employs sub-consultant(s), the Construction Manager shall ensure that its contract(s) with its sub-consultant(s) include language notifying the sub-consultant(s) of the District's Labor Compliance Program, if any.
- 2.3. Construction Manager's Services: Construction Manager shall act as the District's agent to render the services and furnish the work as described in **Exhibit "A,"** which will commence upon the receipt of a Notice to Proceed signed by the District representative. Construction Manager's services will be completed in accordance with the schedule attached as **Exhibit "C."**

Article 3. Construction Manager Staff

- 3.1. The Construction Manager has been selected to perform the work herein because of the skills and expertise of key individuals.
- 3.2. The Construction Manager agrees that the following key people in Construction Manager's firm shall be associated with the Project in the following capacities:

Principal In Charge:	_____
Project Director:	_____
Construction Manager:	_____
Asst. Construction Manager:	_____
Other:	_____
Other:	_____
Other:	_____

- 3.3. The Construction Manager shall not change any of the key personnel listed above without prior written approval by District, unless said personnel cease to be employed by Construction Manager. In either case, District shall be allowed to interview and approve replacement personnel.
- 3.4. If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice the Construction Manager shall immediately remove that person from the Project and provide a temporary replacement. Construction Manager shall within seven (7) days provide a permanent replacement person acceptable to the District. All lead or key personnel for any Consultant must also be designated by the consultant and are subject to all conditions previously stated in this paragraph.

- 3.5. Construction Manager represents that the Construction Manager has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of services required under this Agreement and that no person having any such interest shall be employed by Construction Manager.

Article 4. Schedule Of Work

The Construction Manager shall commence work under this Agreement upon receipt of a Notice to Proceed, and shall prosecute the work diligently as described in **Exhibit "A"** in accordance with the schedule attached as **Exhibit "C"** for a term of up to five (5) years, renewable at the District's sole discretion. Time is of the essence and failure of Construction Manager to perform work on time as specified in this Agreement is a material breach of this Agreement.

Article 5. Construction Cost Budget

- 5.1. The Construction Manager shall have responsibility to develop, review, and reconcile the Construction Cost Budget with the Architect and the District throughout the design process and construction.
- 5.2. The Construction Cost Budget shall be the total cost to District of all elements of the Project designed or specified by the Project design professional(s). The Construction Cost Budget does not include the compensation of the Construction Manager, the Project design professional(s), sub-consultants, the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District.
- 5.3. Construction Manager shall work cooperatively with the Project design professional(s) during the Schematic Design Phase, Design Development Phase, and Construction Documents Phase, as described in **Exhibit "A,"** so that the construction cost of the work designed by the Project design professional(s) will not exceed the Construction Cost Budget, as may be adjusted subsequently with the District's written approval. The Construction Manager shall notify the District if it believes the construction cost of the work by the Project design profession(s) will exceed the Construction Cost Budget. The Construction Manager, however, shall not perform or be responsible for any design or architectural services.
- 5.4. Evaluations of the District's Construction Budget, and preliminary and detailed cost estimates prepared by the Construction Manager, represent the Construction Manager's best judgment as a professional familiar with the construction industry.
- 5.5. If the Bidding Phase has not commenced within ninety (90) days after DSA approval, the Construction Cost Budget shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the District and the date on which proposals are sought.

- 5.6. If any of the following events occur:
- 5.6.1. If the lowest responsive base bid received is in excess of ten percent (10%) of the Construction Cost Budget, or
 - 5.6.2. If the combined total of base bid and all additive alternates come in fifteen percent (15%) or more under the Construction Cost Budget, or
 - 5.6.3. If the Construction Cost Budget increases in phases subsequent to the Schematic Design Phase due to reasonably foreseeable changes in the condition of the construction market in the county in which the District is located, in so far as these have not been caused by Acts of God, earthquakes, strikes, war, or energy shortages due to uncontrollable events in the world economy, then the District, in its sole discretion, has one or a combination of the following alternatives:
 - 5.6.3.1. Give the Construction Manager written approval on an agreed adjustment to the Construction Cost Budget.
 - 5.6.3.2. Authorize the Construction Manager to re-negotiate, where appropriate, re-bid on or more Projects within three (3) months time (exclusive of District and other agencies' review time) at no additional cost to the District.
 - 5.6.3.3. Terminate this Agreement if the Project is abandoned, without further obligation by either party.
 - 5.6.3.4. Instruct the Project design professional(s) to revise the drawings and specifications to bring the Project within the Construction Cost Budget for re-bidding, with Construction Manager's performing cost estimating, value engineering, and/or bidding support at no additional cost to the District.
- 5.7. The Construction Cost Budget shall be reconciled at the completion of each design phase.

Article 6. Fee And Method Of Payment

- 6.1. District shall pay Construction Manager

an amount equal to _____
dollars (\$ _____) per hour

[OR]

an amount equal to _____
dollars (\$ _____) per month

for all services contracted for under this Agreement and based on the Fee Schedule attached to **Exhibit "D."**

- 6.2. District shall pay Construction Manager the Fee pursuant to the provisions herein and in **Exhibit "D."**
- 6.3. Construction Manager shall bill its work under this Agreement on a monthly time and materials basis in accordance with **Exhibit "D."**
- 6.4. No increase in fee will be due from change orders generated during the construction period to the extent caused by Construction Manager's error.
- 6.5. The Construction Manager's fee set forth in this Agreement shall be full compensation for all of Construction Manager's Services incurred in the performance hereof as indicated in **Exhibit "D"**, including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Project location, offices, per diem expenses, printing, providing, or shipping of deliverables in the quantities set forth in **Exhibit "A."**

Article 7. Payment for Extra Services

- 7.1. District-authorized Services outside of the scope in **Exhibit "A"** or District-authorized reimbursables not included in Construction Manager's fee are "Extra Services." Any charges for Extra Services shall be paid by the District as described in **Exhibit "B"** only upon certification that the claimed Extra Services were authorized in writing in advance by the District and that the Extra Services have been satisfactorily completed.
- 7.2. A written proposal describing the proposed scope of services and listing the personnel, labor duration, rates, and cost shall be submitted by the Construction Manager to the District for written approval before proceeding with any Extra Services.

Article 8. Ownership Of Data

After completion of the Project or after termination of this Agreement, Construction Manager shall deliver to District a complete set of Project records, including without limitation all documents generated by Construction Manager, copies of all documents exchanged with or copied to or from all other Project participants, and all closeout documents. Said Project records shall be indexed and appropriately organized for easy use by District personnel. All Project records are property of the District, whether or not those records are in the Construction Manager's possession.

Article 9. Termination Of Contract

- 9.1. If Construction Manager fails to perform Construction Manager's duties to the satisfaction of the District, or if Construction Manager fails to fulfill in a timely and professional manner Construction Manager's material obligations under this Agreement, or if Construction Manager shall violate any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement effective immediately upon the District giving written notice thereof to the Construction Manager. In the event of a termination pursuant to this subdivision, Construction Manager may invoice District for all work performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of Construction Manager's actions, errors, or omissions that caused the District to terminate the Construction Manager.
- 9.2. District shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Construction Manager may invoice District and District shall pay all undisputed invoice(s) for work performed until the notice of termination. This shall be the only amount(s) potentially owing to Construction Manager's if there is a termination for convenience.
- 9.3. The Construction Manager has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement and fails to cure such material default within sixty (60) days, or if the default cannot be cured within sixty (60) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from Construction Manager. Such termination shall be effective after receipt of written notice from Construction Manager to the District.
- 9.4. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 9.5. If, at any time in the progress of the Project, the governing board of the District determines that the Project should be terminated, the Construction Manager, upon written notice from the District of such termination, shall immediately cease work on the Project. The District shall pay the Construction Manager only the fee associated with the services satisfactorily provided, since the last invoice that has been paid and up to the notice of termination.
- 9.6. If the Project is suspended by the District for more than one hundred and eighty (180) consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the schedule shall be adjusted and the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Construction Manager's services. Upon resumption of the

Project after suspension, the Construction Manager will take all reasonable efforts to maintain the same Project personnel.

Article 10. Indemnity

- 10.1. To the furthest extent permitted by California law, Construction Manager shall defend, indemnify and hold free and harmless the District, its agents, representative, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claims"), to property or persons, including personal injury and/or death, directly or indirectly arising out of, connected with, or resulting from the performance of the services, the Project, or this Agreement unless a Claim is caused by the sole negligence or sole willful misconduct of the indemnified parties.
- 10.2. Construction Manager shall pay and satisfy any judgment, award or decree that may be rendered against the indemnified parties in any Claim. Construction Manager shall also reimburse District for the cost of any settlement paid by District arising out of any Claim. Construction Manager shall reimburse the indemnified parties for any and all legal expenses and costs, including attorneys' fees, expert witness fees and consultant fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided to the extent caused by the above agreement to indemnify. Construction Manager's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the indemnified parties. District shall have the right to accept or reject any legal representation that Construction Manager proposes to defend the indemnified parties.

Article 11. Fingerprinting

- 11.1. Unless the District has determined pursuant to Education Code section 45125.2 that on the basis of scope of work in this Agreement that Construction Manager and its subcontractors and employees will have only limited contact with pupils, the Construction Manager shall comply with the provisions of Education Code section 45125.01 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Construction Manager shall not permit any employee to have any contact with District pupils until such time as the Construction Manager has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Construction Manager's responsibility shall extend to all employees, agents, and employees or agents of its subcontracts regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Construction Manager. Verification of compliance with this section and the Criminal Background Investigation Certification (**Exhibit "E"**) shall be provided in writing to the District prior to each individual's commencement of employment or participation on the Project and prior to permitting

contact with any student.

- 11.2. No drugs, alcohol and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, or contractors are to use drugs on these sites.
- 11.3. Unacceptable and/or loud language will not be tolerated. "Cat calls" or other derogatory language toward students or public will not be allowed.

Article 12. Responsibilities Of The District

- 12.1. The District shall examine the documents submitted by the Construction Manager and shall render decisions so as to avoid unreasonable delay in the process of the Construction Manager's services.
- 12.2. The District shall provide to the Construction Manager complete information regarding the District's requirements for the Project.
- 12.3. The District shall retain design professional(s) whose services, duties and responsibilities shall be described in written agreement(s) between the District and design professional(s).
- 12.4. The District shall, in a timely manner, and with Construction Manager's assistance, secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, subject to Construction Manager's and/or the design professional(s) duties to recommend or provide same.
- 12.5. The District, its representatives, and consultants shall communicate with the contractor either directly or through the Construction Manager.
- 12.6. During the Construction Phase of the Project, the District may require that the contractors submit all notices and communication relating to the Project directly to the Construction Manager.
- 12.7. The District shall designate an officer, employee and/or other authorized representatives to act on the District's behalf with respect to the Project. The District's representative for the Project shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

Article 13. Liability Of District

- 13.1. Other than as provided in this Agreement, District's obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not

limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

- 13.2. Any and all costs incurred by District, or for which District may become liable, to the extent caused by negligent delays of Construction Manager in its performance hereunder, shall be paid to District by Construction Manager as provided for herein and/or under California law.
- 13.3. District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Construction Manager, or by its employees, even though such equipment be furnished or loaned to Construction Manager by District.
- 13.4. The Construction Manager hereby waives any and all claim(s) for recovery from the District under this Agreement, which loss or damage is covered by valid and collectible insurance policies. Construction Manager agrees to have its required insurance policies endorsed to prevent the invalidation of insurance coverage by reason of this waiver. This waiver shall extend to claims paid, or expenses incurred, by Construction Manager's insurance company on behalf of the District.

Article 14. Insurance

- 14.1. Construction Manager shall procure prior to commencement of the work of this Agreement and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Construction Manager, their agents, representatives, employees and sub-consultant(s).
- 14.2. **Minimum Scope and limits of Insurance:** Coverage shall be at least as broad as the following scopes and limits:
 - 14.2.1. **Commercial General Liability.** One million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - 14.2.2. **Commercial Automobile Liability, Any Auto.** One million dollars (\$1,000,000) per accident for bodily injury and property damage.
 - 14.2.3. **Workers' Compensation.** Statutory limits required by the State of California and

- 14.2.4. **Employer's Liability.** One million dollars (\$1,000,000) per accident for bodily injury or disease.
- 14.2.5. **Professional Liability.** This insurance shall cover the Construction Manager and his/her sub-consultant(s) for One million dollars (\$1,000,000) aggregate limit subject to no more than _____ dollars (\$_____) per claim deductible, coverage to continue through completion of construction plus two years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.
- 14.3. The District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.
- 14.4. **Deductibles and Self-Insured Retention:** Any deductibles or self-insured retention exceeding \$_____ must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers; or the Construction Manager shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 14.5. **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
- 14.5.1. All policies except for the professional insurance policy shall be written on an occurrence form
- 14.5.2. The District, the Construction Manager, their representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Construction Manager; instruments of service and completed operations of the Construction Manager; premises owned, occupied or used by the Construction Manager; or automobiles owned, leased, hired or borrowed by the Construction Manager. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.
- 14.5.3. For any claims related to this project, the Construction Manager's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Construction Manager's insurance and

shall not contribute with it.

- 14.5.4. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.
- 14.5.5. The Construction Manager's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 14.5.6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.
- 14.6. **Acceptability of Insurers:** Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A:VII.
- 14.7. **Verification of Coverage:** Construction Manager shall furnish the District with:
 - 14.7.1. Certificates of insurance showing maintenance of the required insurance coverage;
 - 14.7.2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before work commences.

Article 15. Nondiscrimination

Construction Manager agrees that no discrimination shall be made in the employment of persons under this Agreement because of the race, national origin, ancestry, religion, age, physical disability, sex, or sexual orientation of such person. Construction Manager shall comply with any and all regulations and laws governing nondiscrimination in employment.

Article 16. Covenant Against Contingent Fees

Construction Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Construction Manager, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Construction Manager, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the

award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage fee, gift, or contingency.

Article 17. Entire Agreement/Modification

This Agreement, including the Exhibits hereto, supersedes all previous contracts and constitutes the entire understanding of the parties hereto. Construction Manager shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Construction Manager specifically acknowledges that in entering this Agreement, Construction Manager relies solely upon the provisions contained in this Agreement and no others.

Article 18. Non-Assignment Of Agreement

In as much as this Agreement is intended to secure the specialized services of the Construction Manager, Construction Manager may not assign, transfer, delegate or sublet any interest therein without the prior written consent of District and any such assignment, transfer, delegation or sublease without the District's prior written consent shall be considered null and void. Likewise, District may not assign, transfer, delegate or sublet any interest therein without the prior written consent of Construction Manager and any such assignment, transfer, delegation or sublease without Construction Manager's prior written consent shall be considered null and void.

Article 19. Law, Venue

- 19.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.
- 19.2. The county in which the District administration office is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

Article 20. Alternative Dispute Resolution

All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. If this method proves unsuccessful, then all claims, disputes or controversies as stated above may be decided through arbitration, if agreed to by all Parties.

Article 21. Severability

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

Article 22. Employment Status

- 22.1. Construction Manager shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which the Construction Manager performs the services which are the subject matter of this Agreement; provided always, however, that the services to be provided by Construction Manager shall be provided in a manner consistent with all applicable standards and regulations governing such services.
- 22.2. Construction Manager understands and agrees that the Construction Manager's personnel are not and will not be eligible for membership in or any benefits from any District group plan for hospital, surgical or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a District employee.
- 22.3. Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Construction Manager is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Construction Manager which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 22.4. Should a relevant taxing authority determine a liability for past services performed by Construction Manager for District, upon notification of such fact by District, Construction Manager shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Construction Manager under this Agreement (again, offsetting any amounts already paid by Construction Manager which can be applied as a credit against such liability).

- 22.5. A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Construction Manager shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Construction Manager is an employee for any other purpose, then Construction Manager agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Construction Manager was not an employee.
- 22.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 23. Warranty Of Construction Manager

- 23.1. Construction Manager warrants that the Construction Manager is properly licensed and/or certified under the laws and regulations of the State of California to provide all the services that it has herein agreed to perform.
- 23.2. Construction Manager certifies that it is aware of the provisions of the Labor Code of the State of California, that require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with those provisions before commencing the performance of the work of this Agreement.
- 23.3. Construction Manager certifies that it is aware of the provisions of California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Since the Construction Manager is performing work as part of an applicable "public works" or "maintenance" project, and since the total compensation is \$1,000 or more, the Construction Manager agrees to fully comply with and to require its sub-consultant(s) to fully comply with all applicable prevailing wage requirements of the California Labor Code.

Article 24. Cost Disclosure - Documents And Written Reports

Construction Manager shall be responsible for compliance with California Government Code section 7550, if the total cost of the contract is over five thousand dollars (\$5,000).

Article 25. Communications / Notice

If notice is given by registered or certified mail with postage prepaid, return receipt requested, it shall be considered delivered on the day the notice is signed for

If to District:

Capistrano Unified School District
Education Center
Attention: Terry Fluent, Director,
Purchasing
33122 Valle Road
San Juan Capistrano, CA 92675

Telephone: (949) 234-9436
Facsimile:

With a copy to:

Dannis Woliver Kelley
301 E. Ocean Blvd., Suite 1750
Long Beach, CA 90802
Attention: Samuel R. Santana

Telephone: (562) 366-8500
Facsimile: (562) 366-8505

If to Construction Manager:

Telephone:
Facsimile:

Telephone:
Facsimile:

The Construction Manager and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

Article 26. Disabled Veteran Business Enterprise Participation

Pursuant to section 17076.11 of the Education Code, the District has a participation goal for disabled veteran business enterprises (DVBES) of at least three (3) percent, per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the Act). This Project may use funds allocated under the Act. Therefore, to the extent feasible, the Construction Manager shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBEs in conjunction with the contract, and documentation demonstrating the Construction Manager's good faith efforts to meet these goals.

Article 27. Other Provisions

- 27.1. The Construction Manager shall be responsible for the cost of construction change orders caused directly by the Construction

Manager's willful misconduct or negligent acts, errors or omissions. Without limiting Construction Manager's liability for indirect or consequential cost impacts, the direct costs for which the Construction Manager shall be liable shall equal its proportionate share of the difference between the cost of the change order and the reasonable cost of the work had such work been a part of the originally prepared construction documents.

- 27.2. Neither the District's review, approval of, nor payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Construction Manager shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Construction Manager's failure to perform any of the services furnished under this Agreement to the standard of care of the Construction Manager for its Services, which shall be, at a minimum, the standard of care of construction managers performing similar work for California school districts at or around the same time and in or around the same geographic area of the District.
- 27.3. Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.

Dated: _____, 2010

Dated: _____, 2010

Capistrano Unified School District

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

EXHIBIT A
(31 of 48)

EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER

1.	BASIC SERVICES	A-1
2.	GENERAL PROGRAM SERVICES	A-3
3.	PRECONSTRUCTION PHASE	A-4
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EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER

Construction Manager shall provide professional services necessary for completing the following on an as-needed basis to be determined by the District:

1. BASIC SERVICES

- 1.1. Provide work which shall comply with professional standards and applicable requirements of federal, state, and local law.
- 1.2. Advise the District as to the regulatory agencies that have jurisdiction over the project(s), and as to coordination with and implementation of the requirements of the regulatory agencies, including without limitation the Division of the State Architect.
- 1.3. Contract for or employ, at Construction Manager's expense, sub-consultant(s) to the extent deemed necessary for Construction Manager's Services. Nothing in the foregoing shall create any contractual relationship between the District and any sub-consultant(s) employed by the Construction Manager under terms of this Agreement.
- 1.4. Cooperate with other professionals employed by the District for the design, coordination or management of other work related to the Project.
- 1.5. Chair, conduct and take minutes of periodic meetings between the District and its design professional(s) of the Site Committee meetings and of construction meetings during the course of the Project. Construction Manager shall invite the District and/or its representative to participate in these meetings. Construction Manager shall keep meeting minutes to document comments generated in these meetings, but shall not be responsible for analyzing design issues raised in said meetings.
- 1.6. Be responsible for the professional quality and technical accuracy of all cost estimates, constructability reviews, studies, reports, projections, opinions of the probable cost of construction, and other services furnished by Construction Manager under this Agreement as well as coordination with all Master Plans, studies, reports and other information provided by District to Construction Manager. Construction Manager shall, without additional compensation, correct or revise any errors or omissions in materials it generates.
- 1.7. Maintain a log of all meetings, site visits or discussions held in conjunction with the work of this Project, with documentation of major discussion points, observations, decisions, questions or comments. These shall be furnished to the District and/or its representative for inclusion in the overall Project documentation.
- 1.8. At the request of the District, develop a Management Information System ("MIS") to assist in establishing communications between the District, Construction Manager, design professional(s), construction contractor(s) and other parties on the Project. In developing the MIS, the Construction

Manager shall interview the District's key personnel and others in order to determine the type of information to be managed and reported, the reporting format, the desired frequency for distribution of the various reports, the degree of accessibility by potential users, and the security protocol for the system.

- 1.9. Coordinate transmittal of documents to regulatory agencies for review and shall advise the District of potential problems in completion of such reviews.
- 1.10. Prepare a bidders list for each bid package for approval by the District.
- 1.11. Assist the District in pre-qualifying bidders if prequalification is permitted by the District. This service shall include the following:
 - 1.11.1. Preparation and distribution of prequalification questionnaires;
 - 1.11.2. Receiving and analyzing completed questionnaires;
 - 1.11.3. Interviewing possible bidders, bonding agents and financial institutions; and
 - 1.11.4. Preparing recommendations for the District.
- 1.12. Conduct a telephonic and correspondence campaign to attempt to increase interest among qualified bidders.
- 1.13. Assist the District in preparing and placing notices and advertisements to solicit bids for the Project.
- 1.14. Coordinate the delivery of Bid Documents to the bidders. The District shall obtain the District-approved Contract Documents from the design professional(s) and the Construction Manager shall arrange for printing, binding, wrapping, and delivery to the bidders. The Construction Manager shall not be responsible for the cost of printing Bid Documents. The Construction Manager shall maintain a list of bidders receiving Contract Documents.
- 1.15. Prepare an estimate of costs for all addenda and shall submit the estimate to the District for approval. The Construction Cost Estimate and other Project costs shall be adjusted as indicated in the Agreement.
- 1.16. Provide and maintain a management team on the Project site(s).
- 1.17. Provide documentation, pictures, and other information and assistance to the District for the District's use on a website for public access to show Project status.
- 1.18. Cooperate and coordinate with the persons responsible for operation of the District's labor compliance program, if applicable.
- 1.19. Comply with any storm water management program that is approved by the District and applicable to the Project, at no additional cost to the District.

- 1.20. Ensure that all Project contractor(s), Project sub-contractor(s) and Construction Manager's sub-consultant(s) comply with any District-approved storm water management program that is applicable to the Project, at no additional cost to the District.
- 1.21. Provide direction and planning to ensure Project adherence to applicable environmental requirements such as those emanating from the Environmental Protection Agency (EPA), Cal/EPA, the California Environmental Quality Act ("CEQA"), Air Quality Management District and State of California and Regional Water Quality Control Board laws, regulations and rules. The Construction Manager shall comply with, and ensure that all contractors and their subcontractors and Design Professionals and their sub-consultants comply with, any storm water pollution prevention plans, other storm water management program and other environmental impact mitigation requirements that are approved by the District and applicable to the Project, at no additional cost to the District.
- 1.22. Construction Manager is NOT responsible for:
- 1.22.1. Ground contamination or hazardous material analysis.
 - 1.22.2. Any asbestos testing, design or abatement; however, it shall coordinate and integrate its work with any such information provided by District.
 - 1.22.3. Compliance with the California Environmental Quality Act ("CEQA"), except that Construction Manager agrees to coordinate its work with that of any CEQA consultants retained by the District, and to provide current information for use in CEQA compliance documents.
 - 1.22.4. Historical significance report.
 - 1.22.5. Soils investigation.
 - 1.22.6. Geotechnical hazard report.
 - 1.22.7. Topographic survey, including utility locating services.
 - 1.22.8. Other items specifically designated as the District's responsibilities under this Agreement.
 - 1.22.9. As-built documentation from previous construction projects.

2. GENERAL PROGRAM SERVICES

- 2.1. **General:** Monitor and advise the District as to all material developments in the Project. Construction Manager shall develop and implement with the District approval reporting methods for schedules, cost and budget status, and projections for each project in the District's construction program ("Program"). The Construction Manager shall be the focal point of all communication to and from construction contractor(s) and shall be copied on all communications between the District and its design professional(s).

- 2.2. **Scheduling:** Prepare methods to track and report on schedule status for each project and for the overall Program. The Construction Manager shall develop master schedules and milestone schedules for each project, and shall report on same each month to the District.
- 2.3. **Cost Controls:** Prepare and implement methods to budget and track all expenditures on each Project. The Construction Manager shall generate monthly reports to the District reflecting this information.
- 2.4. **Communications to Board:** The Construction Manager may be required to attend each monthly meeting of the District's Board of Education, and to provide updates at each meeting.

3. PRECONSTRUCTION PHASE

- 3.1. Provide overall coordination of the Project; serve as the focal point of communication, transmitting information to the District and Project team on general aspects of the Project, including planning, scheduling, cost management, progress reporting, design review, dispute resolution, and documentation. Communications from the construction contractor(s) to the District and Project design team shall be through the Construction Manager. The Construction Manager shall receive simultaneous copies of all written communications from the District or the Project design team to the construction contractor(s).
- 3.2. Develop and implement District-approved implementation procedures, forms, and reporting requirements for the Project that involve all members of the Project teams, including the District, design professional(s), and construction contractor(s).
- 3.3. Provide value engineering at the Schematic Design and/or 100% Design Development Phase. This evaluation will consist of a review of the proposed materials, equipment, systems and other items depicted in the Design Documents and shall be coordinated with the District's design guidelines and design professional(s). The Construction Manager will prepare a value engineering report will document the results of the evaluation and make recommendations to the District with respect to alternatives, deletions, or amendments of such proposed items that pertain to the anticipated construction costs, useful life, maintenance and operational costs and efficiencies. The Construction Manager shall provide to the District value engineering recommendations and cost/benefit analysis of those recommendations.
- 3.4. Perform or subcontract for constructability reviews of each Project at the Design Development Phase and at 90% Construction Documents. The Construction Manager shall review the Design Documents for clarity, consistency, constructability and coordination. The results of the review shall be provided in writing and as notations on the documents to the District. The Construction Manager shall also make recommendations to the District with respect to constructability, construction cost, sequence of construction, construction duration and separation of the contracts for various portions of the Project into categories of the work and separate bid trade packages. However, the Construction Manager is not responsible for providing, nor does the

Construction Manager control, the Project design or the contents of the Design Documents. The Construction Manager's actions in reviewing the Project design and the Design Documents and in making recommendations as provided herein are advisory only to the District. The design professional(s) are not third party beneficiaries of the Construction Manager's work described in this paragraph and the design professional(s) remains solely responsible for the contents of design drawings and the Design Documents.

- 3.5. Develop master bid/award schedule(s) including construction milestones for the Project through the completion of construction, as directed by the District, in coordination with design professional(s) and advise and consult with the District. Construction Manager shall review and approve construction contractor(s)' schedules, but shall not dictate any construction contractor(s)' means and/or methods of performance.
- 3.6. Establish schedules for the soils consultant, for any hazardous materials testing and other consultants, and review costs, estimates, and invoices of each.
- 3.7. Develop and implement a management control system to support such functions as planning, organizing, scheduling, budgeting, reporting progress and identifying and documenting problems and solutions for the Project. The system will allow for monthly progress reports to the District regarding the schedule for the Project.
- 3.8. Organize an initial planning workshop to create baseline parameters for the Project, to define overall building requirements, Project strategy, conceptual budget and schedule. Pursuant to understandings reached at these meetings, the Construction Manager will develop an implementation plan that identifies the various phases of the Project, coordination among phases, and budget and time constraints for each phase of the Project. The plan will include a detailed strategy, master budget and master schedule as well as identification of critical events and milestone activities.
- 3.9. Attend all planning, programming and master site planning meetings relating to the Project.
- 3.10. Provide updated cost estimates for the Project at the Schematic Design, Design Development, and Construction Documents Phase as directed by District; coordinate with design professional(s) and reconcile cost estimates with design professional(s)' estimates.
- 3.11. Advise District regarding "green building" technology and lifecycle costing, when applicable.

4. PRE-BID PHASE

- 4.1. Develop a master schedule and a construction milestone schedule for the Project.
- 4.2. Construction Manager shall in consultation with the District and according to District-approved policies, procedures, and standards, implement procedures, forms, and reporting requirements for the Project. Establish, accordingly, a communications procedure for the Project that allows for decision making at appropriate levels of responsibility and accountability.
- 4.3. Work with the design professional(s) to modify or add to standard, special, or general conditions for Contract Documents that might be needed for unique Project or bid package conditions, for the District's approval.
- 4.4. Work with the design professional(s) to separate the Construction Phase for the Project into bid packages.

5. BIDDING PHASE

- 5.1. Conduct pre-bid conferences to familiarize bidders with the bidding documents, and any special systems, materials or methods and with Project procedures. Field questions from bidders, referring questions to design professional(s) and District as required. Coordinate with design professional(s)' to respond to bidder questions by addenda.
- 5.2. Prepare bid analyses and advise the District on compliance of bidders with District requirements and bid requirements. Report and recommend to the District after review and evaluation. Make recommendations to the District for prequalification of bidders and award of contracts or rejection of bids.
- 5.3. Conduct pre-award conferences with successful bidders.
- 5.4. Schedule and conduct preconstruction meetings. Maintain, prepare, and distribute minutes.

6. CONSTRUCTION PHASE

- 6.1. Administer the construction contract(s).
- 6.2. Monitor the construction contractor(s) to verify that tools, equipment, and labor are furnished and work performed and completed within the time as required or indicated by the plans and specifications, under the direction and to the satisfaction of the District. The Construction Manager expressly agrees to verify that the specifications are met, observed, performed, and followed in accordance with the professional standards of care for construction management. The Construction Manager shall not, however, be responsible for directing construction contractor(s)' means and methods.
- 6.3. Coordinate work of the construction contractor(s) and effectively manage the project to achieve the District's objectives in relation to cost, time and quality. Construction Manager shall not, however, be responsible for directing construction contractor(s)' means and methods.

- 6.4. Conduct construction meetings for the Project to discuss and resolve such matters as progress, quality and scheduling. Said meetings shall be weekly unless Project conditions do not require that frequency. Prepare and promptly distribute minutes. When required by field or other conditions, construction progress, or the quality of workmanship, conduct special construction meetings; record, prepare, and distribute minutes of these meetings to the District, the affected construction contractor(s), and design professional(s).
- 6.5. Ensure that construction contractor(s) provide construction schedules as required by their construction contracts, including activity sequences and durations, submittal schedule, or procurement schedule for products that require long lead time. The Construction Manager shall review construction contractor(s)' construction schedules for conformity with the requirements of the construction contract(s) and conformity with the overall schedule for the Project. Where construction contractor(s)' construction schedules do not so conform, the Construction Manager will take appropriate measures to secure compliance, subject to District approval.
- 6.6. Ensure construction contractor(s)' compliance with the requirements of their respective construction contracts for updating, revising, and other obligations relative to their respective construction schedules. The Construction Manager shall incorporate construction contractor(s)' construction schedule updates and revisions into the Project construction schedule.
- 6.7. Continually monitor whether construction contract requirements are being fulfilled and recommend courses of action to the District when contractor(s) fails to fulfill contractual requirements.
- 6.8. The Construction Manager may authorize minor variations in the work from the requirements of the contract documents that do not involve an adjustment in the contract price or the contract time or design and which are consistent with the overall intent of the contract documents. The Construction Manager shall provide to the design professional(s) and the District copies of these authorizations.
- 6.9. Develop, implement, and coordinate with assistance from the District, the design professional(s), and the Project Inspector(s) ("Inspector"), procedures for the submittal, review, verification and processing of applications by contractor(s) for progress and final payments for all construction contracts.
- 6.10. Verify that safety programs are developed and submitted by each of the construction contractor(s) as required by the contract(s). Neither Construction Manager nor District shall be responsible for or have any liability for contractor(s) failure to provide, comply with, or enforce said safety programs.
- 6.11. Record the progress of the Project by a daily log.
- 6.12. Monitor ongoing Project costs to verify that projected costs do not exceed approved budget and provide the District timely notice of any potential

increase in costs in excess of approved budgets provided to Construction Manager.

- 6.13. Negotiate contractor's proposals and review change orders prepared by design professional(s), with design professional(s)' input as needed, for approval by the District's governing board.
- 6.14. Maintain a change order log for the Project and implement procedures to expedite processing of change orders.
- 6.15. Implement procedures for issues identification and resolution of actual or potential claims of construction contractor(s) and take actions to mitigate all claims against the District and attempt to eliminate and/or settle all claims.
- 6.16. Assist the District in selecting and retaining special consultants and testing laboratories and coordinate their services.
- 6.17. In conjunction with the Inspector and the design professional(s), monitor work of the construction contractor(s) to determine that the work is being performed in accordance with the requirements of the respective Construction Documents. As appropriate, with assistance of design professional(s) and the Inspector, make recommendations to the District regarding special inspection or testing of work that is not in accordance with the provisions of the Contract Documents.
 - 6.17.1. To guard District against defects in the work of the construction contractor(s), the Construction Manager shall establish and implement a quality control program to monitor the quality and workmanship of construction for conformity with:
 - 6.17.1.1. Accepted industry standards;
 - 6.17.1.2. Applicable laws, rules, or ordinances; and
 - 6.17.1.3. The Design Documents and Contract Documents;
 - 6.17.2. Where the work of a construction contractor does not conform as set forth above, the Construction Manager shall, with the input of design professional(s):
 - 6.17.2.1. Notify the District of any non-conforming work observed by the Construction Manager;
 - 6.17.2.2. Reject the non-conforming work; and
 - 6.17.2.3. Take any and all action(s) necessary to compel the construction contractor(s) to correct the work.
- 6.18. Maintain logs of requests for information ("RFI") from construction contractor(s), based on information obtained from the design professional(s).
- 6.19. Establish and implement procedures, in collaboration with the District and design professional(s), for expediting the processing and approval of shop

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drawings, product data, samples, and other submittals for each contract. Receive and transmit all submittals from the construction contractor(s) to the design professional(s) for review and approval. Maintain submittal and shop drawing logs.

- 6.20. Record the progress of work at the Project. When present, prepare daily reports for the Project containing a record of weather, construction contractor(s) present and their number of workers, work accomplished, problems encountered, and other relevant data.
- 6.21. Prepare and distribute monthly project status reports for each active project and the Program, including updates on project activities, progress of work, outstanding issues, potential problems, schedule, and status of RFIs, change orders, and submittals.
- 6.22. Maintain at the Project site and, if necessary, at the Construction Manager's office, a current copy of all approved documents, drawings, specifications, addenda, change orders and other modifications, and drawings marked by the construction contractor(s) to record all changes made during construction. These shall include shop drawings, product data, samples, submittals, applicable handbooks, maintenance and operating manuals and instructions, and other related documents and revisions which are relevant to the contract work. Maintain records of principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations as provided by the construction contractor(s). At the completion of the Project, deliver all such records to District. Construction contractor(s) and design professional(s) share responsibility to prepare "Record Drawings" and "As-Built" documents.

7. PROJECT COMPLETION

- 7.1. The Construction Manager shall observe, with the District's maintenance personnel, the construction contractor's check-outs of utilities, operational systems and equipment, and start-up and testing. The Construction Manager shall maintain records of start-up and testing as provided by the construction contractor(s) and shall ensure the District of compliance with applicable provisions of the contract(s), that all work has been performed and accepted, and that all systems are complete and operative.
- 7.2. At the punch list phase of the Project or designated portions thereof, the Construction Manager, in consultation with the Architect(s) and Inspector, shall ensure the preparation of a list of incomplete or unsatisfactory work or work which does not conform to the requirements of the Contract Documents ("punch list work") and a schedule for the completion of the punch list work. The Construction Manager shall provide this list to the construction contractor(s). The Construction Manager shall coordinate construction contractor(s)' performance and completion of punch list work. The Construction Manager shall review, with the Architect(s) and District, the completed punch list work. The Construction Manager shall ensure, with input of the Architect(s), that the completed punch list work complies with applicable provisions of the construction contract(s).
- 7.3. The Construction Manager shall determine, with the Architect(s) and District, when the Project or designated portions thereof are complete.
- 7.4. The Construction Manager shall conduct, with the Architect(s) and District, final inspections of the Project or designated portions thereof. The Construction Manager shall notify the District of final completion.
- 7.5. The Construction Manager shall consult with the Architect(s), Inspector and District and shall determine when the Project and the construction contractor(s)' work are finally completed. The Construction Manager shall assist with the issuance of a Certificate of Final Completion, and shall provide to the District a written recommendation regarding payment to the contractor(s).

8. FINAL DOCUMENTS

The Construction Manager shall review and monitor all as-built drawings, maintenance and operations manuals, and other closeout documents to be sure that all required documents meeting contract requirements are provided, and shall secure and transmit to the District those documents and all required guarantees, keys, manuals, record drawings, and daily logs. The Construction Manager shall also forward all documents and plans to the District upon completion of the project and ensure all such plans and documents are well organized for any appropriate audit or review of the project.

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9. WARRANTY

The Construction Manager shall implement a Warranty Inspection and Warranty Work procedure that all contractors are to follow. The procedure shall include a twelve (12) month call back period and a final warranty inspection eleven (11) months after Project completion to inspect the Project and identify any outstanding warranty work.

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EXHIBIT "B"

CRITERIA AND BILLING FOR EXTRA SERVICES

The following Extra Services to this Agreement shall be performed by Construction Manager if needed and requested by District as indicated in the Agreement:

- 1.** Providing services required because of significant documented changes in the Project initiated by the District, including but not limited to size, quality, complexity, the District's schedule, or method of bidding or negotiating and contracting for construction.
- 2.** Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing services required in connection with replacement of such work.
- 3.** Providing services made necessary by the default of contractor(s), or by major defects or deficiencies in the work of the contractor, or by failure of performance of the District's consultants, or in the absence of a final Certificate of Payment, more than sixty (60) days after the date of completion of work on the project involved.
- 4.** The selection, layout, procurement or specification at the District's request of movable furniture, furnishings, equipment or other articles that is not included in the Contract Documents.
- 5.** Providing surveys relative to future facilities, systems or equipment which are not intended to be constructed during the Construction Phase.
- 6.** Preparation of applications and supporting documents for governmental grants and permits other than as required in this Agreement.
- 7.** Seeking variances or changes to agency guidelines on behalf of the District when so directed by the District.
- 8.** Providing coordination of Services or providing services related to Services performed by the District's own forces.
- 9.** Preparing to serve or serving as a witness in connection with any public hearing, dispute resolution proceeding or legal proceeding, other than that necessitated by the negligent acts, errors or omissions of Construction Manager or where the Construction Manager is party thereto, except for a contractor's hearing necessitated by its request to substitute a subcontractor.
- 10.** Performing technical inspection and testing.
- 11.** Providing additional construction administration services necessitated by changes in the design professional(s)' firm or key personnel.
- 12.** Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted scope of program or project management practice.

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The rates identified in the Fee Schedule attached to **Exhibit "D"** include overhead, administrative cost and profit and shall be utilized in arriving at the fee for Extra Services.

EXHIBIT "C"

SCHEDULE OF WORK

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EXHIBIT "D"

FEE SCHEDULE

Compensation

1. The Construction Manager's fee set forth in this Agreement shall be full compensation for all of Construction Manager's Services incurred in its performance, including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Project location, offices, per diem expenses, printing, providing, or shipping of deliverables in the quantities set forth in **Exhibit "A."**
2. The amount of compensation shall be the amount set forth in the Agreement, including all billed expenses, without advance written approval of the District.

Method of Payment

1. Construction Manager shall submit monthly invoices on a form and in the format approved by the District.
2. Construction Manager shall submit these invoices in duplicate to the District via the District's authorized representative.
3. Construction Manager shall submit to District on a monthly basis documentation showing proof that payments were made to his/her/its sub-consultants.
4. Upon receipt and approval of Construction Manager's invoices, the District agrees to make payments on all undisputed amounts within sixty (60) days of receipt of the invoice.

Hourly Rates

1. The following rates, which include overhead, administrative cost and profit, shall be utilized in arriving at the fee for Extra Services and shall not be changed for the term of the Agreement. Construction Manager shall bill in quarter-hour increments for all Extra Services.

<u>Job Title</u>	<u>Hourly Rate</u>
Principal In Charge:	\$ _____ .00
Project Director:	\$ _____ .00
Construction Manager (s):	\$ _____ .00
Assistant Construction Manager	\$ _____ .00
Other	
Other	
Other	

2. The mark-up on any approved item of Extra Services performed by sub-consultant(s) or subcontractor(s) shall not exceed ten percent (10%).

EXHIBIT "E"

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

(Contractor)

(To be executed and submitted by the successful bidder within 10 days after notice of award.)

The undersigned does hereby certify to the governing board of the Capistrano Unified School District ("District") as follows:

1. That I am a representative of _____ (Contractor), currently under contract ("Contract") with the District; that I am familiar with the facts herein certified and am authorized and qualified to execute this certificate on behalf of Contractor.

2. Contractor certifies that it has taken at least one of the following actions with respect to the construction project, which is the subject of the Contract (check all that applies):

_____ The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and that the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Contractor's employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

_____ Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of work, a physical barrier at the work site, which will limit contact between Contractor's employees and District pupils at all times; and/or

_____ Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees is:

Dated: _____

CONTRACTOR

By: _____

Title: _____

Note: Failure to provide a signed copy of this document is cause for termination.