

# Oakland Unified School District

*Board of Education  
Paul Robeson Building  
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Oakland, CA 94606-2212  
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## **Minutes (Long)**

**Tuesday, August 31, 2010**

**4:30 PM**

**Board Room, Paul Robeson Building, 1025 2nd Avenue, Oakland, CA  
94606-2212**

## **Facilities Committee**

***Noel Gallo, Chairperson  
Jody London, Vice Chairperson  
Alice Spearman, Member***

## A. Call to Order

*Chairperson Noel Gallo called the meeting to order at 4:31 P.M.*

## B. Roll Call

**Roll Call:** Present: Jody London, Alice Spearman and Noel Gallo

## C. Modification(s) To Agenda

*None.*

## D. Adoption of Committee Minutes



### [10-2164](#) Minutes - Facilities Committee - August 17, 2010

Approval by Facilities Committee of Its Minutes of August 17, 2010.

**Attachments:** [10-2164 - Minutes - Facilities Committee - August 17, 2010](#)

**A motion was made by Jody London, seconded by Alice Spearman, that this matter be Adopted. The motion carried by the following vote:**

**Votes:** Adv Aye: 0  
Adv Nay: 0  
Adv Abstain: 0  
Aye: 3 - Jody London, Alice Spearman and Noel Gallo  
Nay: 0  
Recused: 0  
Preferential Aye: 0  
Preferential Abstention: 0  
Preferential Nay: 0

## E. Adoption of the Committee General Consent Report



### [10-2120](#) Amendment No. 1 - Professional Services Agreement - American Consulting Engineers Electrical, Inc. - Downtown Educational Complex Project

Approval by the Board of Education of Amendment No. 1 to Professional Services Agreement between District and American Consulting Engineers Electrical, Inc., Santa Clara, CA, for the latter to provide additional engineering and design services for the installation of five (5) additional data racks and provide other services as described herein in conjunction with the Downtown Educational Complex, in an additional amount not to exceed \$6,000.00, increasing the Agreement from a not-to-exceed amount of \$35,800.00 to \$41,800.00. All other terms and conditions of the Agreement remain in full force and effect.

**Resource Code - 2525-121**

**Funding Source: Developer Fees**

**Attachments:**     [Document\(s\)](#)

**This Matter was Recommended Favorably on the Consent Agenda.**

**Votes:** Adv Aye: 0  
Adv Nay: 0  
Adv Abstain: 0  
Aye: 3 - Jody London, Alice Spearman and Noel Gallo  
Nay: 0  
Recused: 0  
Preferential Aye: 0  
Preferential Abstention: 0  
Preferential Nay: 0



**10-2121**

**Amendment No. 2 - Professional Services Agreement - Gary Doupnik  
Manufacturing - Cox New Classroom Building Project**

Approval by the Board of Education of Amendment No. 2 to Professional Services Agreement between District and Gary Doupnik Manufacturing, Loomis, CA, for the latter to provide Premium Portion of work at Holiday rates for the three (3) carpenters working at \$36.60 equal 24 Man Hours in conjunction with the Cox New Classroom Building Project in an amount not to exceed \$876.00, increasing the Agreement from a not-to-exceed amount of \$39,600.00 to \$40,476.00, and extending the contract date of July 1, 2009 to December 31, 2009 to December 31, 2010. All other terms and conditions of the Agreement remain in full force and effect.

**Resource Code - 2122-110**

**Funding Source: General Obligation Bond-Measure B**

**Attachments:**     [Document\(s\)](#)

**This Matter was Recommended Favorably on the Consent Agenda.**

**Votes:** Adv Aye: 0  
Adv Nay: 0  
Adv Abstain: 0  
Aye: 3 - Jody London, Alice Spearman and Noel Gallo  
Nay: 0  
Recused: 0  
Preferential Aye: 0  
Preferential Abstention: 0

Preferential Nay: 0

**10-2122****Amendment No.1 - Professional Services Agreement - Geosphere Consultants, Inc. - Lowell Middle School Modernization Project**

Approval by the Board of Education of Amendment No. 1 to Professional Services Agreement between District and Geosphere Consultants, Inc., Oakland, CA, amending Scope of Work with latter for addressing unforeseen conditions on site which required the consultant to perform a penetrating Radar survey on existing concrete to allow contractors to continue work without hitting power or high voltage lines underground that were encased in concrete, in conjunction with the Lowell Middle School Modernization Project, in an additional amount not to exceed \$1,600.00, increasing the Agreement from a not-to-exceed amount of \$9,580.00 to \$11,180.00. All other terms and conditions of the Agreement remain in full force and effect.

**Resource Code - 2122-204**

**Funding Source: General Obligation Bond-Measure B**

**Attachments:** [Document\(s\)](#)

**This Matter was Recommended Favorably on the Consent Agenda.**

**Votes:** Adv Aye: 0

Adv Nay: 0

Adv Abstain: 0

Aye: 3 - Jody London, Alice Spearman and Noel Gallo

Nay: 0

Recused: 0

Preferential Aye: 0

Preferential Abstention: 0

Preferential Nay: 0

**10-2123****Amendment No. 5 - Professional Services Agreement - HY Architects - Urban Promise Academy New Multi-Purpose Building Project**

Approval by the Board of Education of Amendment No. 5 to Professional Services Agreement between District and HY Architects, Oakland, CA, for the latter to provide additional design services to include installation of exterior lights in conjunction with the Urban Promise Academy New Multi-Purpose Building Project, in an additional amount not to exceed \$2,225.00, increasing the Agreement from a not-to-exceed amount of \$832,324.15 to \$834,549.15. All other terms and conditions of the Agreement remain in full force and effect.

**Resource Code - 2122-236**

**Funding Source: General Obligation Bond-Measure B**

**Attachments:** [Document\(s\)](#)

**This Matter was Recommended Favorably on the Consent Agenda.**

**Votes:** Adv Aye: 0

Adv Nay: 0

Adv Abstain: 0

Aye: 3 - Jody London, Alice Spearman and Noel Gallo

Nay: 0

Recused: 0

Preferential Aye: 0

Preferential Abstention: 0

Preferential Nay: 0

**10-2125****Amendment No. 1 - Professional Services Agreement - Marvin Saltzberg - Fremont High School Modernization Project**

Approval by the Board of Education of Amendment No. 1 to Professional Services Agreement between District and Marvin Saltzberg, Hercules, CA, for the latter to provide additional Division of State Architect (DSA) inspection services, due to project extension and addition of fire devices, in conjunction with the Fremont High School Modernization Project, at no additional cost, and extending the contract period of March 1, 2005 to January 31, 2006 to October 31, 2009. All other terms and conditions of the Agreement remain in full force and effect.

**Resource Code - 2122-302**

**Funding Source: General Obligation Bond-Measure A**

**Attachments:** [Document\(s\)](#)

**This Matter was Recommended Favorably on the Consent Agenda.**

**Votes:** Adv Aye: 0

Adv Nay: 0

Adv Abstain: 0

Aye: 3 - Jody London, Alice Spearman and Noel Gallo

Nay: 0

Recused: 0

Preferential Aye: 0

Preferential Abstention: 0

Preferential Nay: 0

**10-2126****Amendment No. 1 - Professional Services Agreement - PMC - Downtown Educational Complex Project**

Approval by the Board of Education of Amendment No. 1 to Professional Services Agreement between District and PMC, Oakland, CA, amending the Scope of Work with the latter to provide additional budget for coordination time with City of Oakland, project description revisions, traffic report and Air Quality Threshold discussions in conjunction with preparation of the Initial Study/Mitigated Negative Declaration for the Downtown Educational Complex, in an additional amount not to exceed \$6,905.00, increasing the Agreement from a not to exceed amount of \$74,841.00 to \$81,746.00. All other terms and conditions of the Agreement remain in full force and effect.

**Resource Code - 0000-121**

**Funding Source: Developer Fees**

**Attachments:** [Document\(s\)](#)

**This Matter was Recommended Favorably on the Consent Agenda.**

**Votes:** Adv Aye: 0  
Adv Nay: 0  
Adv Abstain: 0  
Aye: 3 - Jody London, Alice Spearman and Noel Gallo  
Nay: 0  
Recused: 0  
Preferential Aye: 0  
Preferential Abstention: 0  
Preferential Nay: 0

**10-2127****Award of Bid and Construction Contract - Del Monte Electric Company, Inc. - Redwood Heights Elementary School Project**

Approval by the Board of Education of Resolution No. 1011-0009 - Award of Bid and Construction Contract between District and Del Monte Electric Company, Inc., Dublin, CA, for the latter as the lowest responsive, responsible bidder and rejecting all other bids, if any, demolish existing fire alarm devices and cabling, and the installation of a new Simplex fire alarm system including conduits, cables, devices, and access panels and provide other services as described herein in conjunction with the Redwood Heights Elementary School Project for the period commencing September 9, 2010 and ending December 28, 2010 in the amount of \$292,000.00.

**Resource Code - 2122-148**

**Funding Source: General Obligation Bond-Measure B**

**Attachments:** [Document\(s\)](#)

**This Matter was Recommended Favorably on the Consent Agenda.**

**Votes:** Adv Aye: 0  
Adv Nay: 0  
Adv Abstain: 0  
Aye: 3 - Jody London, Alice Spearman and Noel Gallo  
Nay: 0  
Recused: 0  
Preferential Aye: 0  
Preferential Abstention: 0  
Preferential Nay: 0

**10-2128****Project Budget, Key Code and Project Number - Cole Portable Installation Project**

Approval by the Board of Education of Resolution No. 1011-0009 - Authorizing and approving the New Project Budget, Key Code and Project Number for Cole Portable Installation Project in the amount of \$135,500.00.

**Resource Code - 0000-109**

**Funding Source: Developer Fees**

**Attachments:** [Document\(s\)](#)

**This Matter was Recommended Favorably on the Consent Agenda.**

**Votes:** Adv Aye: 0  
Adv Nay: 0  
Adv Abstain: 0  
Aye: 3 - Jody London, Alice Spearman and Noel Gallo  
Nay: 0  
Recused: 0  
Preferential Aye: 0  
Preferential Abstention: 0  
Preferential Nay: 0

**10-2129****Professional Services Agreement - Logic Domain - Division of Facilities Planning and Management Project**

Approval by the Board of Education of Professional Services Agreement between District and Logic Domain, Irvine, CA, for the latter to supply and install complete web based capital project controls program; items to be included in the system are tracking of budgets, project accounts, scheduling, forecasting and projects status reports in conjunction with the Division of Facilities Planning and Management Project for the period commencing September 9, 2010 and concluding no later than September 9, 2011 in an amount not to exceed \$82,000.00.

**Resource Code - 2122-918**

**Funding Source: General Obligation Bond-Measure B**

**Attachments:**     [Document\(s\)](#)

**This Matter was Recommended Favorably on the Consent Agenda.**

**Votes:** Adv Aye: 0  
Adv Nay: 0  
Adv Abstain: 0  
Aye: 3 - Jody London, Alice Spearman and Noel Gallo  
Nay: 0  
Recused: 0  
Preferential Aye: 0  
Preferential Abstention: 0  
Preferential Nay: 0

**10-2130****Professional Services Agreement - Simplex Grinnell - Laurel Elementary School Fire Alarm Project**

Approval by the Board of Education of Professional Services Agreement between District and Simplex Grinnell, Livermore, CA, for the latter to provide supervision to the electrical contractor and/or low voltage installer of the fire alarm system during the critical path periods of conduit installation, wire pulling, wire continuity, review testing and termination/trimming of devices in conjunction with the Laurel Elementary School Fire Alarm Project for the period commencing September 9, 2010 and concluding no later than December 31, 2011 in an amount not to exceed \$5,940.00.

**Resource Code - 2122-131**

**Funding Source: General Obligation Bond-Measure B**

**Attachments:**    [Document\(s\)](#)

**This Matter was Recommended Favorably on the Consent Agenda.**

**Votes:** Adv Aye: 0  
Adv Nay: 0  
Adv Abstain: 0  
Aye: 3 - Jody London, Alice Spearman and Noel Gallo  
Nay: 0  
Recused: 0  
Preferential Aye: 0  
Preferential Abstention: 0  
Preferential Nay: 0



**10-2131**

**Change Order No. 1 - Riverview Construction - Prescott Middle School Modernization Project**

Approval by the Board of Education of Change Order No. 1 to Construction Contract between District and Riverview Construction, West Sacramento, CA, for the latter to provide paving for the entire main yard (from Peralta Street to main building be re-paved) in conjunction with the Prescott Middle School Modernization Project, in the additional amount of \$205,000.00, increasing the Agreement from \$2,150,000.00 to \$2,355,000.00.

**Attachments:**    [Document\(s\)](#)

**This Matter was Recommended Favorably on the Consent Agenda.**

**Votes:** Adv Aye: 0  
Adv Nay: 0  
Adv Abstain: 0  
Aye: 3 - Jody London, Alice Spearman and Noel Gallo  
Nay: 0  
Recused: 0  
Preferential Aye: 0  
Preferential Abstention: 0  
Preferential Nay: 0

**Passed The Committee General Consent Report**

**A motion was made by Alice Spearman, seconded by Jody London, including all the preceding items marked as having been adopted on the Consent Agenda. The motion carried by the following vote:**

**Votes:** Adv Aye: 0  
Adv Nay: 0  
Adv Abstain: 0  
Aye: 3 - Jody London, Alice Spearman and Noel Gallo  
Nay: 0  
Recused: 0  
Preferential Aye: 0  
Preferential Abstention: 0



Preferential Pay: 0

## F. Unfinished Business



### 10-2037

#### **Report - Disposition Requirements - Surplus School, Playground, Playing Field and Recreational Property**

A report by the Assistant Superintendent of Facilities Planning Management regarding the Disposition of Surplus School, Playground, Playing Field and Recreational Property pursuant to Education Code Section 17485, et seq.

**Attachments:**    [10-2037 - Checklist - Surplus School, Playground, Playing Field and Recreational Property.pdf](#)  
[10-2037 - Surplus Property Checklist.pdf](#)

*Cate Boskoff, Facilities Counsel, said at the last Facilities Committee meeting Committee Members asked for an overview of the process for Surplus Property Disposition. Ms. Boskoff distributed a Checklist with the steps involved in property disposition. She said she prepared a memo for the General Counsel and she will provide the memo at the next Facilities Committee meeting.*

*Chairperson Gallo said he will give Ms. Boskoff five minutes to review the Checklist with Committee Members and the discussion will be continued at the next Facilities Committee meeting.*

*Ms. Boskoff reviewed the steps toward Surplus Property Disposition:*

- 1. The appointment of a "Seven Eleven Committee". She said the Checklist gives some guidance on the composition of the Committee and a narrative of the typical duties the Board would charge the committee with.*
- 2. The Committee will develop a report and report back to the Board with respect to specific properties the Board is considering, certain dispositions and if the Board will be relying entirely on the Asset Management Plan. She said last week Director London indicated the Board might move quicker on some properties as opposed to looking at the whole Asset Management Plan and that might be something the Board may include in the duties if there was a priority.*
- 3. Once the committee comes back with their report, the District looks at how the property can be disposed. The property first has to be offered to public entities. Prior to that if there is a desire to make an offer to a charter school, it is discretionary, but that would be the time the District could offer the property to a charter in advance of making it open to other public entities. Within the public entity category, there are child care development agencies and a requirement that recreational property be offered to other public entities in advance of any other leasing to outside non-profits or the general public.*
- 4. Page four goes through the criteria for the Naylor Act. She said within the guidelines you can see how you get to the fair market value, ascertainment of value, lease rates and various sub criteria under the Education Code.*

5. *After offers to public entities, you can then offer the property by public bidding to the general public for sale or lease. Before that happens, the Board needs to adopt a "Declaration of Intent to Sell" that has to be passed by at least two-thirds of the voting members of the Board of Education. At that point, you can enter into negotiations to sell the property or lease to the highest bidder. There are certain conditions spelled out on page seven.*

6. *She said the Checklist is a step-by-step process for wherever you are in the process of disposition and the criteria.*

*Committee Discussion*

*Director London said she was curious how other districts handled disposition of property. She asked if most districts that anticipate having surplus property have a standing "Seven Eleven Committee" or do you establish one each time? She said it seemed like it would make more sense to have a standing committee that would be able to look at the entirety of what the District may have as surplus property.*

*Ms. Boskoff said she thinks it is appropriate depending on certain needs and if the District is anticipating that it now has capacity and will have surplus property.*

*Director London asked Ms. Boskoff if she knew how other districts handled this.*

*She said the "Seven Eleven Committee" is convened when there is a specific property or a plan. She said she did not know any reason why the District could not have a standing "Seven Eleven Committee" other than committee appointments are needed to recirculate with a term and reappointment of members.*

*Chairperson Gallo said if the District were to identify several properties at one time, the "Seven Eleven Committee" could entertain the discussions on those properties if the District chose to.*

*She said whoever is appointed to the "Seven Eleven Committee" for the District is going to have a lot of material and information coming out of the District's Asset Management Plan that will guide the process.*

*Secretary Rakestraw said in terms of the Legislative History on surplus property, in the past when the Board has appointed a "Seven Eleven Committee", it has been for a specific duration to handle whatever properties were identified.*

*Director Spearman said it shouldn't be necessary to have a standing committee if the District is only going to identify one or two properties at the most. She said Oakland usually does not sell anything.*

*Mr. White asked if there was the possibility that the Board could designate the committee's purpose to a standing committee such as the Citizens' Oversight Committee if they reached the statutory requirements?*

*Ms. Boskoff said it has to be a separate Body.*

*Chairperson Gallo said the law is very clear when it comes to surplus property being declared. He said the law is very clear on what you can and cannot do. He said you really have to follow the process.*

*Director Spearman said in the Checklist it does talk about charter schools being able to get facilities for lease. She asked if that was applicable to a charter school who wishes to buy property?*

*Ms. Boskoff said the charter school would only be able to buy the property once there has been a determination that the property was appropriate for surplus. She said there is an optimal point and time when the property can be offered to a charter school before going through the offers to public entities in advance of declaring the property surplus for the purposes of selling. She said that is the Board's discretion. Charter schools have to go along with everybody else at that point and time to make the best bid, they don't get an advantage in the process.*

*Director Spearman wanted clarification on whether or not charter schools got an advantage.*

*Ms. Boskoff said they would not.*

*Director Spearman said the District would have to go through the offers of the public entities. She asked if recreation have a higher priority than a charter school that wants to buy the property?*

*Ms. Boskoff said an offer made to public entities for recreational properties are superior to an offer made to a charter school at the point the property is deemed surplus property.*

**Discussed**

## G. New Business



### [10-2117](#)

#### **Presentation: Measure B (Fund 2122) - Budget to Actual Expenditures, and Cash Projections**

Presentation to the Board of Education of the Measure B (Fund 2122) - Budget to Actual Expenditures, and Cash Projections as of August 18, 2010.

**Funding Source: General Obligation Bond-Measure B**

**Attachments:**    [Document\(s\)](#)

*Prior the presentation of the Measure "B" Report, Committee Members commented on Measure "B" improvements and summer maintenance projects in their respective District.*

*Chairperson Gallo said he wanted to take the opportunity to commend Mr. White and his staff for getting the schools ready for the opening day of school. He said the schools looked great, there were many improvements made and many facilities had construction completed.*

*Director London said big kudos to Facilities Staff for getting the restrooms completed at Claremont Middle School. She said the Principal thought the restrooms would not be ready until the second or third week of school. She said she asked a student how she liked the restrooms and the student said "I twirled it was so beautiful". She said the restrooms made the kids happy.*

*Director Spearman said she toured Reach Academy yesterday and she was disappointed that the cafeteria was so small. She said the cafeteria is "cute and the new building is gorgeous." She said Reach Academy has three lunch periods and the charter school on the same campus has the larger cafeteria. She said she does not like the District playing second fiddle to someone that is renting. She suggested the next time the District constructs a new building to particular attention to make sure the cafeteria is size appropriate.*

*Chairperson Gallo again thanked the Facilities Staff and especially the voters in Oakland that provided the Bond Funds for the District to be able to make all the improvements to our schools. He said the District is extremely grateful. He said if we are to attract more families, the environment and the presentation has to make people take a second look asking if they want to send their child to that school.*

*Director Spearman noted the Facilities Department just outfitted Barack Obama Academy saying "the school looks marvelous".*

#### *Measure "B" Report*

*Charles Love, Facilities Department, made the presentation of the Measure "B" Expenditure Report as of August 18, 2010. Mr. Love said for this report there were no new projects added since the last report. He said the Facilities Department will start to track expenditures for salaries and consultants. Salaries have a budget of \$2 million dollars and consultants have a budget of \$5.5 million dollars for the 2010-2011 fiscal year. The Board approved projects remain at \$403.8 million dollars.*

*Chairperson Gallo asked Mr. Love what is it the consultants do?*

*Mr. Love said these are the Project Managers primarily and all the other consultants.*

*Chairperson Gallo asked Mr. Love to provide a listing of what is considered a consultant under Measure "B".*

*Mr. Love said the salaries are mainly of the support staff for Capital Projects. He said this includes his staff, the Accounting Department, Projects Managers and Facilities Legal Staff.*

*Director Spearman requested a list of all Amendments and Change Order by company. She said she would like to know why the District is approving these Amendments and what the extra costs are. She said it seems once you get passed Amendment No. 2, you are doing a cost overrun. She said had they low bided using the Amendments, the contract is increased.*

*Mr. White said Change Orders and Amendments are two different names representing the same thing for two different types of work. He said the report Director Spearman*

*requested can be provided to Committee Members. He said the report will also provide a brief explanation of what the Amendment was for and the justification of the Amendment.*

*Chairperson Gallo said what Director Spearman would like to know was the Amendment the District's call? Was it the District's responsibility in terms of requesting the additional work, the additional change, or was it something that the contractor did or did not perform that the District had to make the Change Order?*

*Mr. White said that information can be provided. He said the department tracks expenditures according to classification. He said in some cases the reason could be an oversight by the consultant in terms of something they missed. In other cases it may be something the District requested in addition to the Scope of Work or another agency requested the work.*

*Mr. Love said the Measure "B" Bond balance as of August 18, 2010 including the Year to Date Expenditures is \$30.9 million dollars. This includes the Year to Date Facilities Staff cost of \$177,000 and Year to Date Facilities Consultant expenses of \$101,000. The total expenditure for projects starting with the beginning of this fiscal year is \$2.9 million dollars. He said with the addition of staff's salaries and consultant's salaries of \$279,000, the total in project expenditures for this year is \$3.2 million dollars. The majority of this spending, \$2.6 million dollars is in construction.*

*Director Spearman asked if Measure "B" Funds were used for the new McClymonds Field?*

*Mr. White said "Yes".*

*Mr. White said the committee looked at some plans for the Fremont High School field.*

*Director Spearman asked Mr. White when would that item come back to the committee for a decision?*

*Mr. White said there is a current allocation of about \$10 million dollars that has been approved by this committee. The department is going forward doing Master Planning using those funds and will come back to this committee to ask for the remaining necessary funds to do the actual construction.*

*Director Spearman asked if the cost will include buying the surrounding properties?*

*Mr. White said it did not include the property purchase. He said the scheme that seemed to be a consensus did not require the property purchase. He said the issue associated with the property purchase created some difficulties for the District in terms of going out and ultimately encountering situations where homeowners may or may not want to sell their property. If the District had landed on that option, and property owners did take that position, the District would have to declare some type of Eminent Domain and that creates a lot of tension with the homeowner's, the community and the Board.*

**Discussed**



Adoption by Board of Education of Resolution No. 1011-0023 - Implementation of Construction Contractor Bonding Assistance Program.

**Attachments:**    [Document\(s\)](#)  
                          [10-2154 - Implementation of Construction Contractor Bonding Assistance Program.pdf](#)  
                          [10-2154 - Bond Assistance Program.pdf](#)

*Mr. White said before the representative from Merriwether & Williams addresses the committee, he will give a little context to the Bond Assistance Program and Ms. Merriwether will speak to the program as it relates to the District's Capital Development Program, the value the program will bring in terms of the District allowing for broader and greater participation of small and local vendors, as well as some local vendors who may not necessarily be very small. He said bonding after a broad community outreach effort by the Facilities Department, was one of the highest rated issues in terms of impediments for contracts, particularly for local contractors. He said as the District ultimately pays for the bonding through one form or another, bonding is part of the overhead the department writes into individual contracts.*

*Chairperson Gallo asked if the District pays for the Sub-contractor and not the Prime Contractor?*

*Ingrid Merriwether, President of Merriwether & Williams Insurances Services said the District pays for the Prime Contractor.*

*Chairperson Gallo asked why the District pays for the Prime Contractor?*

*Mr. White said ultimately in determining how best to feed our own economic system in the community, a Bond Assistance Program does allow for that and the District wants to make sure that as responsibly as possible, to hear from this committee as well as the Full Board on how the District spends the public's money. He said in many cases this includes allowing the public to participate in the program.*

*Background on Merriwether & Williams Insurance Services*  
*Ms. Merriwether distributed a handout containing general information about Merriwether & Williams Bonding Program. She said the firm has been managing a Contractor Bonding Assistance Programs for 15 years starting with the San Francisco Airport when they had the Master Plan Expansion in 1975. The airport expansion project had a goal of \$750 million dollars they wanted to award to minority businesses. Recognizing that bonding was going to be an impediment to achieving their goal, Merriwether & Williams were retained to develop a program to address that issue. Since that time Merriwether & Williams have had ten other public agencies adopt this program throughout the State of California including the City and County of San Francisco, the City of Los Angeles, Los Angeles Unified School District, Los Angeles Community Colleges and some airports.*

*Who Pays for Bonding?*

*Bonding is a requirement by all public agencies of contractor's bidding and contracting with them on projects over \$100,000. She said it is considered a cost of work just as the purchasing of materials and equipment. Bond premiums that are paid by the contractor to the bonding company are going to be included in contractor's bids, therefore covering that cost in the payment to the contractor for services. She said just as you are paying their*

*insurance pass through their bids, you are paying their bond premium pass through to their bids as well. She said given this is a cost incurred by the District, there are ways in which the District can also enable more small local contractors Access Bonding so they can also bid and participate on District construction projects.*

#### *Overview of How the Program Works*

*Ms. Merriwether said her company gets at the heart of what has contributed to why bonding has been an impediment for small minority and emerging contractors. Bonding companies are looking for the contractors to have a track record of having done public work as part of qualifying them for bonding. She said you can't access public work if you can't get the bonds necessary to bid for public works.*

#### *Key Components of the Programs Administered by Merriwether & Williams*

*Merriwether & Williams provide through the program on a contract by contract basis and a contractor by contractor basis collateral support where the owner provides collateral to enable the bonding company to write bonds for contractors who may not otherwise qualify.*

*Chairperson Gallo asked if The District is the owner?*

*Ms. Merriwether said the District is the owner. She said on a case by case basis, with appropriate underwriting providing direct collateral to a bonding company at some level. Most of the programs are usually at 40% of the bond amount or a fixed dollar amount, whichever is less. That gets posted with the bonding company in the form of an "Irrevocable Letter of Credit". The bonding company holds the collateral and if they provide the contract to the contractor successfully, the contractor is awarded the work with the District. The bonding company holds that collateral through the completion of the contract. Upon successful completion of the contract, the bonding company returns the collateral, the collateral goes back to the pool and it gets re-used towards another transaction. She said it is a revolving pool that is used over and over again because it is being leveraged out, but it is getting returned as contracts are completed. At the end of the Capital Program it would be anticipated whatever you started with in the pool will still be there at the end of the program. She said what you would be doing is leveraging the District's resources in exchange for securing "Surety Credit" for contractors who would otherwise not meet the rigid criteria that Surety companies have as underwriting requirements for contractors. She said to date the company has done about \$433 million dollars worth of activity through these programs with various public agencies. Contractors have been successful low bid awardees to close to \$150 million dollars. She said in 15 years they have only had one contractor default, a loss ratio of two tenths of one percent. She said the industry's loss ratio is about thirty five percent. She said there is the perception that minority and small contractors are a risk, the experience of their program has been a direct contradiction. She said they put a lot of risk management in place to protect the collateral and to protect the Surety Company. One of the Risk Management considerations is the company monitors the successful completion of the contract. They stay engaged with the Contractor and the Project Manager to make sure things are going smoothly and address any issue where things have gotten off course. Another risk management tool they use is called "Funds Administration". Most contractor defaults or claims on bonds is not the contractor's failure to perform the contract, it is the contractor's failure to keep the bills paid, to pay his sub-contractors and material suppliers timely. Merriwether & Williams mitigate that risk with any contractor who participates in the District's program where collateral support is provided and the contractor has to agree to*

*third party Funds Administration. This means for that contract, the contractor progress payments are going to a third party, not the contractor. The third party will pay all the sub-contractors and all material suppliers out of each progress payment before the contractor gets paid. That way they know contract funds are paying contract obligations leaving no room for claims or payment default allegations from material suppliers and sub-contractors. Through those mechanisms they have been able to keep a low loss ratio.*

*Chairperson Gallo said the District has gone through a lot of local minority participation efforts from the Project Labor Agreement down the line. He said since the District requests local participation, don't we currently ask the contractor in terms of facilitating the bonding effort?*

*Chairperson Gallo asked the question "If I am a contractor in Oakland and I have to reach down to the sub-contractors, is there a practice that I need to assist those sub-contractors to get bonded for them to be on my team and able to bid?"*

*Mr. White said currently the Sub-contractors don't receive bonding assistance. It is a General Contractor's prerogative whether or not they are going to provide some type of support for a Sub-contractor, and in many cases it more frequently does not happen. He said General Contractors many times pass that risk down because they don't want to absorb a significant portion of the risk.*

*Chairperson Gallo asked Mr. White if the District has a policy to say to Contractor A, you are going to bid on rebuilding this school and in your bid you must have participation from the Sub-contractors that are Oakland Based, Minority Based, Women Based etc.?*

*Mr. White said the District has a policy of a 20% minimum participation for Local Vendors, but the policy doesn't speak to supporting them in their bonding needs.*

*Chairperson Gallo asked if there was a reason the District has not piggyback with Alameda County since they have a similar program?*

*Ms. Merriwether said Merriwether & Williams administers Alameda County's program.*

*Chairperson Gallo said Alameda County did not follow that program because of the cost. He said Alameda County is trying to manage their community's minority participation through their policy efforts. Chairperson Gallo said he is simply trying to understand the investment that he is about to make.*

*Mr. White said it is a balance point in terms of being criticized for not providing the tools necessary to allow participation levels to increase and being stuck at a plateau in terms of what that participation is. He said currently the participation level is about 40%. He said in the local business community there is always the question of how serious is the District about the program and encouraging participation, not just encouraging and putting together a policy that says you have to bring someone to the table in terms of the 20%. He said the District doesn't have one project where it hasn't achieved 20% or greater local participation. There is still a significant portion of the small and local business community that is disenfranchised and can't participate because of the hurdles that Ms. Merriwether is talking about. He said there is a cost to the District to go out and provide the tools for that segment of the local community. He said there are some very serious vendors in the*



community, if they take advantage of a program like this, ultimately they don't necessarily need the support of a majority firm after they participate in these types of programs. He said the District has two or three joint ventures where the Local Business Policy has partnered with large majority firms and small local firms. He said the maximum participation the District has seemed to get is sub-contract relationship between large prime and sub-contractors given the fact bonding companies do want to spread the risk, they do not want absorb that risk in its entirety. He said the Facilities Department wants to create and bring to the Committee for some discussion, the opportunity to extend participation in the District's program.

Chairperson Gallo said the Committee just received a Measure "B" Expenditure Report and the monies are pretty much spoken for. He said maybe the District will start thinking of finding ways of going to the voters again. He said for him he needs to know the cost to the District and the risk to the District to pursue the path being recommended?

Mr. Merriwether said in terms of the cost, there are two sources.

1. The Guaranteed Pool - The pool that will be used to provide the "Letters of Credit". These are funds that have to be identified or leveraged. She said in many cases program sponsors do not fund the pool, they just execute an "Unsecured Line of Credit" with their banking relationship.

2. The Administrative Cost of the Program - The cost includes the actual program administration which is something Merriwether & Williams would provide to the District. Ms. Merriwether said they propose to leverage off of the Alameda County Program because they also administer that program. She said given the universal contractors the District is trying to support are pretty much included in the pool Alameda County is also trying to support, they can leverage and benefit some economies of scale and using the resources in place for Alameda County to benefit the District. She said they were able to substantially reduce the administrative cost to the District by leveraging that.

Chairperson Gallo asked if the estimated annual Consultant Fee was \$200,000?

Ms. Merriwether said that was a reduced cost where they are leveraging Alameda County and the District. The other cost element will be a couple of other third party service providers.

Funds Administrator - The fee Merriwether & Williams will charge for this service is one percent of the contract amount they are managing. The services include all of the contract expenses on behalf of the contractor. Merriwether & Williams oversees the tasks but do not conduct the tasks. She said the way the Funds Administrator works is the funds are sent to a third party, not to Merriwether & Williams. The third party opens an Escrow Account in the name of the contractor and those funds get deposited into that Escrow Account. The third party pays the contractor's suppliers or sub-contractors and the check issued is from the contractor. She said what is happening in the process is helping the contractor build trade credit. By paying the suppliers timely that material supplier may give the contractor favorable credit terms.

The Cost of Letters of Credit - This is where Merriwether & Williams encourages sponsors to leverage the District's banking relationship. The District has a relationship with Union

*Bank and it would be Union Bank they suggest the District goes to create the Program Line of Credit. The District leverages its overall banking relationship to get the most favorable terms for Letters of Credit Fees from Union Bank.*

*Committee Member Comments*

*Director London said the District would take \$10 million dollars out of the Measure "B" Funds reserving it for the Line of Credit. She said the District reduces its current availability of \$30 million dollars still to be allocated and used for cost overruns or additional work that comes up. Director London asked if that was correct?*

*Mr. White said Measure "B" Funds or some other funds would be used?*

*Director London asked what other funds?*

*Mr. White said it would be a reduction of some funds in the Capital Program. He said the District does have other funds in terms of reimbursements from State Eligible Projects the District is hoping to receive. He said as these funds come in, they get added to the available fund pool.*

*Director London asked Mr. White where was Vernon Hal, Deputy Superintendent for Business Operations, on this issue?*

*Mr. White said the contract will not go forward unless Mr. Hal blesses it.*

*Director Spearman asked Ms. Merriwether where was Merriwether & Williams located?*

*Ms. Merriwether said the company is head quartered in San Francisco, but they have offices in Oakland, Los Angeles and San Diego.*

*Director Spearman said this contract will enable the District to offer more contracts to local sub-contractors ensuring the District's participation in a larger scale than anticipated before.*

*Mr. White said based on extensive outreach, local contractors were asked what were the major impediments in terms of them being able to do business with public agencies? He said the major issue was bonding as well as other things. He said based on that, the District can expand it's participation to something greater than what the District has plateaued at.*

*Director Spearman asked if this will include the Highland Elementary School project?*

*Mr. White said the Highland Elementary School and Lowell Middle School projects they specifically want to target this program for those projects.*

*Chairperson Gallo said to be clear, who does the District plan to help?*

*Ms. Merriwether said that is at the District's discretion. She said the District will define who is eligible to participate in the program.*

*Chairperson Gallo said his concern is the District has other practices and policies in place*

*to accomplish what is being discussed today and sometimes the District falls short. Chairperson Gallo said to Mr. White when this comes to presenting this to the Board level be very clear who are we trying to help, the market we are trying to reach, what certification and describe what a Bond Program is so the public hears what the District is trying to do.*

*Ms. Merriwether said in terms of the qualifications of the contractors, they do a diligent underwriting process, different from the bonding company. The qualification for the Contractor is they have to pass Merriwether & Williams underwriting and the bonding company's underwriting. Contractors not appropriate for the program will be screened out through the underwriting process and may be helped in another way.*

*Director London asked if the District's RFP Documents would include information about the availability of this program?*

*Ms. Merriwether said this would be included in all District Bid Specifications Documents. She said they participate in all the outreach events and they do their own outreach to ensure the contractor pool knows about the resource.*

**A motion was made by Alice Spearman, seconded by Jody London, that this matter be Recommended Favorably. The motion carried by the following vote:**

**Votes:** Adv Aye: 0  
Adv Nay: 0  
Adv Abstain: 0  
Aye: 3 - Jody London, Alice Spearman and Noel Gallo  
Nay: 0  
Recused: 0  
Preferential Aye: 0  
Preferential Abstention: 0  
Preferential Nay: 0

## **H. Public Comments on All Non-Agenda Items Within the Subject Matter Jurisdiction of the Committee**

*Sam Pasarow, Principal, Edna Brewer Middle School, said he is requesting that a Memorandum of Understanding be drafted between the District and the East Bay Alliance Church located across the street from the school. He said the Church has indicated they will let the school use their parking lot to ease the dangerous congestion on 13th Avenue. 011127*

*Mr. White said he was aware of the need for parking at Edna Brewer. He said there was a document circulated at the committee meeting.*

*Cate Boskoff said she could include the points in the letter to a Brief Right of Entry that will have the appropriate indemnifications language the Church is looking for.*

*Director Spearman requested the MOU be brought back to the Committee no later than one month.*

## I. Superintendent of Schools or Designee's Committee Liaison Report

*Timothy White, Assistant Superintendent for Facilities Planning and Management thanked the Facilities Committee and the voters of Oakland for the passage of the Measure "B" Bond and what the District was able to responsibility do in terms of turning those dollars into quality school facilities. He said this past year the Facilities Department focused on about \$70 million dollars in projects of which about \$50 million dollars was completed supervised by Tadashi Nakadegawa, Director of Facilities Planning. Many of the projects were talked about today and that was a small snapshot of the work that was accomplished.*

*Director Spearman noted the work at Barack Obama which no Bond Funds were spent, but it is one of the most beautiful projects ever done.*

*Mr. White thanked Leroy Stokes, Director of Buildings and Grounds, who did a herculean job across the city making school improvements under the Deferred Maintenance Program. Sites that had work done this summer under the Deferred Maintenance Program include Barack Obama Academy, Brookfield Elementary, Martin Luther King Elementary, Joaquin Miller Elementary and Sobrante Park Elementary. Mr. White described the work as "gorgeous". He said the deep cleaning efforts were led by Roland Broach, Director of Custodial Services.*

*Highlights of Facilities Summer Construction Projects*

*Completion - Chabot Elementary new two story building project*

*Completion - Claremont Middle School restrooms*

*Completion - Reach Academy @ Cox new two story facility project*

*In progress - McClymonds Football Field*

*On-going - Montera, massive work*

*Mr. White said there are many, many more projects to come before the District exhausts the remaining funds under Measure "B".*

*Director Spearman asked Mr. White were Measure "B" Funds used to renovate the Phillip Reeder Auditorium at Castlemont High School?*

*Mr. White said "Yes", in 2008-2009. Mr. White cited other Measure "B" projects: Prescott Modernization, Oakland High School two story building, UPA multi-purpose building, a lot of work in East Oakland and West Oakland trying to bring up the level of expectations in those communities. He said we want to think differently about our facilities and behave differently in those facilities in terms of making sure there is quality teaching and learning. He noted an article in the Bay Area Insider by Reporter Katy Murphy, who did a balanced job of reporting the success of the opening of school. Ms. Murphy visited Reach @ Cox Elementary and said there is a video posting on her website.*

*Director London said parking is an issue at many school sites. Director London requested a status report on informal discussions that the Facilities Committee initiated with the City of Oakland around several schools (Bret Harte, Lincoln and Claremont). She said she has teachers who have to leave their classrooms to move their cars. She said the City informally committed to the District to provide Residential Parking Permits along some of*

*the streets. She said school has started the Parking Permits have not been issued.*

*Director Spearman said Street Sweeping by the City needs to be looked at. She said at some of the schools where staff is able to park on the streets, staff has to scramble for parking on Street Sweeping Days. She said this issue was supposed to have been resolved a long time ago.*

*Chairperson Gallo said he would contact the City Representatives and set up a meeting with Mr. White and Director London. He said the Resolution has already been written for Claremont and the City Council has to say "Yes" and it is done. He said the Committee needs to follow up.*

*Director London said she is willing to go to the City Council Meeting and speak to what is happening at the schools.*

## **J. Introduction of New Legislative Matter**

### *Parking Issues*

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## **K. Adjournment**

*Chairperson Gallo adjourned the meeting at 5:54 P.M.*

Prepared By: \_\_\_\_\_

Approved By: \_\_\_\_\_