



# Santa Barbara School Districts

Date: June 10, 2007

To: Dr. J. Brian Sarvis, Superintendent

From: David J. Hetyonk, Director of Facilities and Operations

Subject: Approval of Proposal From Spectrum Management Solutions for Measure V and Measure I-98 Bond Fund Accounting Support Services and Preparation of Office of Public School Construction Reporting Requirements Documentation

Bond Fund Consent Agenda: XX

Background:

The Districts have requested the attached proposal from Spectrum Management Solutions (SMS). On June 27, 2006 and May 22, 2007 the board approved similar proposals from SMS..

Issue:

The preparation of State required reports on projects with matching funds and assistance with the audits of these reports is a major project in itself. SMS has been responsible for these functions. Numerous districts have been required to return matching funds based on improper spending and record keeping discovered during the auditing process. Attached is a list of bond fund projects that have received matching funds. The Districts have had clean audits on all projects.

Fiscal Impact:

Not to Exceed \$30,000

Funding Source:

Measure V bond funds (fund 21, \$20,000) and measure I-98 Bond funds (fund 24, \$10,000)

Recommendation:

It is recommended that the Board Approve the Proposal From Spectrum Management Solutions for Measure V and Measure I-98 Bond Fund Accounting Support Services and Preparation of Office of Public School Construction Reporting Requirements Documentation

<b>Attachment(s)?</b>	x	<b>Yes</b> (if so, please attach)	<b>No</b>	Powerpoint	Overhead	Consultant
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## SPECTRUM MANAGEMENT SOLUTIONS

### CONTRACT AGREEMENT

This Contract Agreement (“**Agreement**”) dated July 1, 2008 (“**Effective Date**”) is by and between Spectrum Management Solutions, whose principal place of business is 5642 Melvin Avenue, Tarzana, California 91356 (“**SMS**”) and Santa Barbara School District (“**District**”) whose principal place of business is 720 Santa Barbara Avenue, Santa Barbara, CA 93101.

Description of Services. SMS will provide ADR services as follows:

- Monthly data input and updates of various reports on the budgets and expenditures of projects in Measure V and I-98 bond programs
- Reconciliation of expenditures with FAST reports and District financial activity reports
- Preparation of state reports as required, including necessary follow-up with state agencies
- Assistance with OPSC requests for documentation during closeout audits
- Negotiations of closeout audits as needed
- Staff support at BOC meetings

District shall be responsible for providing access to the sources mentioned above in order for SMS to complete these tasks. SMS is not responsible for the accuracy of the data as found in the district documentation. However, as data is input into the software, SMS will consult with District representatives as to the accuracy of where the data will appear within the software reports.

1. Fees. In consideration for the Services, District agrees to pay SMS the fees set forth on Exhibit A (“Fees”). The fees will commence on the Effective Date. SMS shall invoice the District per the schedule outlined in Exhibit A. Past due invoices shall accrue interest at a rate of one and one-half percent (1.5%) per month, or the highest amount allowed by law, whichever is lower, until the invoice and such interest is paid in full.

2. Taxes. District shall be responsible for and pay any and all applicable use, sales or other taxes on or related to the Services, whether or not pre-identified by SMS, except any taxes on SMS’s income.

3. Indemnity. District agrees to defend, indemnify and hold SMS, and its subsidiaries, affiliates, officers, agents, partners, and employees (collectively, the “**Spectrum Indemnitees**”), harmless from and against any damages, costs, or expenses in any form (including attorneys’ fees) claims incurred by or assessed against the Spectrum Indemnitees arising out of or in any way related to the District Content, District’s violation of this Agreement, or District’s violation of any laws or the rights of any third party. SMS agrees to defend, indemnify and hold District, and its subsidiaries, affiliates, officers, agents, partners, and employees (collectively, the “**District Indemnitees**”), harmless from and against any damages, costs, or expenses in any form (including attorneys’ fees) claims incurred by or assessed against

the District Indemnitees arising out of or in any way related to the SMS's violation of this Agreement, or SMS's violation of any laws or the rights of any third party.

4. Termination.

4.1 For Convenience. Either party may terminate this Agreement upon written notice given at least sixty (60) days prior to the termination of the Initial Term or any Renewal Term and effective upon the conclusion of such term.

4.2 For Insolvency. In the event either party: (i) becomes insolvent, (ii) voluntarily files a petition in bankruptcy or has such a petition involuntarily filed against it (which petition is not discharged within thirty (30) days after filing) or (iii) is placed in a receivership or reorganization proceeding or is placed in a trusteeship involving an insolvency, the other party may terminate this Agreement upon written notice to the defaulting party.

4.3 For Curable Breach. In the event of any material breach of any term or provision of this Agreement, by either party, the non-breaching party may send a written notice explaining the nature of the breach to the breaching party. If the breach is not cured within sixty (60) days after the giving of the notice of breach, the non-breaching party may terminate this Agreement upon written notice to the breaching party. Notwithstanding the foregoing, excepting any payment obligations, if the cure would reasonably take greater than sixty (60) days to complete, neither party shall be considered in breach of this Agreement if it immediately commences the cure and diligently pursues such cure to completion within a reasonable time thereafter.

4.4 Effect of Termination. District further acknowledges and agrees that upon termination of this Agreement for any reason, SMS may immediately delete the Data and/or bar any further access to such files. Further, District agrees that SMS shall not be liable to District or any third party for reliance on any District Content. SMS shall make all reasonable efforts (at District's expense) to transfer the Data to District or to its chosen alternative service provider.

5. Spectrum Proprietary Rights. SMS has, shall have and shall retain all rights, title and interest, including, without limitation, all intellectual property rights, (collectively, "**Rights**") in and to the Service and any and all products, software, documents, and other materials related thereto. District acknowledges and agrees that the Service and any software used in connection therewith contains proprietary and confidential information of SMS that is protected by applicable intellectual property and other laws.

6. Warranty Disclaimer. SPECTRUM MAKES NO REPRESENTATION OR WARRANTY THAT THE SERVICE WILL BE ERROR-FREE OR WITHOUT INTERRUPTION, NOR DOES SPECTRUM REPRESENT OR WARRANT ANY SUCCESS, RESULT OR OUTCOME FROM DISTRICT'S USE OF THE SERVICE. DISTRICT EXPRESSLY AGREES THAT USE OF THE SERVICE IS AT DISTRICT'S SOLE RISK. NEITHER SPECTRUM NOR ANY OF ITS EMPLOYEES, OR AGENTS WARRANT THE ACCURACY OF THE RESULTS TO BE OBTAINED FROM USE OF THE SERVICE. THE SERVICE IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR OTHERWISE.

7. Limitation of Liability.

7.1 NEITHER SPECTRUM NOR ANY OF ITS EMPLOYEES OR AGENTS SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO DAMAGES ARISING OUT OF (A) ANY ACCESSING, ALTERING, OR DESTROYING OF DATA; (B) DAMAGES FROM THE INACCURACY OF THE SERVICE; OR (C) LOST DATA OR OPPORTUNITIES. THESE LIMITATIONS APPLY EVEN IF SPECTRUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 IN NO EVENT SHALL SPECTRUM BE LIABLE TO DISTRICT, IN THE AGGREGATE, IN AN AMOUNT IN EXCESS OF ALL OF THE FEES ACTUALLY RECEIVED BY SPECTRUM FROM DISTRICT UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM. ANY CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICE SHALL BE FILED WITHIN ONE (1) YEAR OF THE DATE THE PARTY ASSERTING THE CLAIM KNEW, OR REASONABLY SHOULD HAVE KNOWN, OF THE EXISTENCE OF THE CLAIM AGAINST THE OTHER PARTY.

8. General Terms.

8.1 Waiver or Delay. Any waiver of any kind or character by either party of a breach of this Agreement must be in writing, shall be effective only to the extent set forth in such writing, and shall not operate or be construed as a waiver of any subsequent breach by the other party. No failure of either party to insist upon strict compliance by the other with any obligation or provision hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms of this Agreement. Nor shall either party's delay or omission in exercising any right, power or remedy upon a breach or default by the other party impair any such right, power or remedy. The exercise of any right or remedy provided in this Agreement shall be without prejudice to the right to exercise any other right or remedy provided by law or equity.

8.2 Force Majeure. If by reason of labor disputes, strikes, lockouts, riots, war, inability to obtain labor or materials, earthquake, fire or other action of the elements, accidents, governmental restrictions, appropriation or other causes beyond the control of a party hereto, either party is unable to perform in whole or in part its obligations as set forth in this Agreement (other than the payment of fees), then such party shall be relieved of those obligations to the extent it is so unable to perform and such inability to perform shall not make such party liable to the other party. Neither party shall be liable for any loss, injury, delay or damages suffered or incurred by the other party due to the above causes, to the extent such obligations are excused thereby.

8.3 Survival of Obligations. The parties agree that any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement shall survive any expiration or termination of this Agreement.

8.4 Severability. The provisions of this Agreement are severable and if any one or more such provisions shall be determined to be invalid, illegal or unenforceable, in whole or in part, the validity, legality and enforceability of any of the remaining provisions or portions

thereof shall not in any way be affected or impaired thereby and shall nevertheless be binding between the parties hereto. Any such invalid, illegal or unenforceable provision or portion thereof shall be changed and interpreted so as to best accomplish the objectives of such provision or portion thereof within the limits of applicable law or applicable court decisions.

8.5 Governing Law. This Agreement shall be construed in accordance with and all disputes hereunder shall be governed by the laws of the State of California as applied to transactions taking place wholly within California between California residents without reference to that state's choice of law provisions. The Superior Court of Sacramento County and/or the United States District Court for the Northern District of California shall have jurisdiction and venue over all controversies in connection herewith. The parties agree that this is a contract for services and not for goods.

8.6 Assignment and Successor Entities. Neither party shall directly or indirectly sell, transfer, assign, convey, pledge, encumber or otherwise dispose of this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Spectrum may, without the prior written consent of the District, assign or transfer this Agreement to any entity as part of a corporate reorganization, consolidation, merger or sale of assets or stock provided the entity assumes all of Spectrum's obligations hereunder.

8.7 Relationship of the Parties. Nothing contained in this Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties shall at all times be that of independent contractors. Neither party shall have authority to contract for or bind the other in any manner whatsoever. This Agreement confers no rights upon either party except those expressly granted herein.

8.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8.9 Entire Agreement. This Agreement is the complete, entire, final and exclusive statement of the terms and conditions of the agreement between the parties. This Agreement supersedes, and the terms of this Agreement govern, any prior or collateral agreements between the parties with respect to the subject matter hereof. This Agreement may not be modified except in a writing executed by duly authorized representatives of the parties.

8.10 Exhibits. All exhibits to this Agreement to which reference is made in this Agreement are hereby incorporated, in full, into this Agreement as an integral part of this Agreement.

8.11 Signatories. Each signatory represents and warrants that it has the authority to bind the party for whom it is signing.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date set forth above.

Spectrum Management Solutions

Santa Barbara School District

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**FEE SCHEDULE**

1) ADR on Bond projects: \$ 1000/day

*SMS' standard billing practice is that our fees include all reimbursables and related costs (i.e., travel, office supplies, meals, etc.) for completing the work.*

Propositions' 47, 55 & 1D State Match Funding Update 06-03-08

PROJECT #	PROJECT	SAB FUNDED	DISTRICT REQUEST	OPSC APPROVAL	WARRANT MAILED	AMOUNT RECEIVED	AMOUNT EXPECTED
57/69286-00-002	Goleta Valley JHS Modernization	05/28/03	06/04/03	06/18/03	07/03/03	2,917,839	
57/69286-00-003	La Colina JHS Modernization	05/28/03	06/04/03	06/18/03	07/03/03	2,688,365	
57/69286-00-004	Santa Barbara JHS Theater	07/02/03	08/27/03	09/10/03	09/25/03	324,198	
57/69286-00-005	San Marcos HS Theater	07/02/03	08/27/03	09/10/03	09/25/03	3,328,171	
57/69286-00-006	Santa Barbara HS Pool	07/02/03	08/27/03	09/10/03	09/25/03	2,114,200	
57/69286-00-007	Santa Barbara HS Mod PH I	07/02/03	08/27/03	09/10/03	09/25/03	1,950,583	
57/69286-00-008	San Marcos HS Mod PH I	07/02/03	08/27/03	09/10/03	09/25/03	521,968	
57/69286-00-009	La Cumbre JHS Mod PH I	07/02/03	12/03/03	12/29/03	01/09/04	2,953,374	
57/69286-00-010	SBHS Elevators/Bleachers	04/28/04	10/25/05	11/04/05	11/23/05	1,950,450	
57/69286-00-011	La Cumbre JHS Mod PH II	02/23/05	04/19/05	05/02/05	05/17/05	1,304,645	
57/69286-00-012	Santa Barbara HS Infrastructure	06/22/05	06/29/05	07/13/05	07/28/05	2,884,226	
57/69286-00-013	Dos Pueblos HS ADA/Infrastructure	07/27/05	08/04/05	08/24/05	09/16/05	5,521,147	
57/69286-00-014	San Marcos HS Gym/Pool	07/27/05	11/29/05	12/15/05	01/09/06	4,965,424	
57/69286-00-015	Santa Barbara HS Mod PH II	10/26/05	07/13/06	07/28/06	08/09/06	2,919,821	
57/69286-00-016	Dos Pueblos HS Pool	03/22/06	06/02/06	06/15/06	06/26/06	2,609,626	
57/69286-00-017	DPHS Mod PH I (ADA, Heating/Ventilation)	01/24/07	07/06/07	07/13/07	07/30/07	1,804,521	
57/69286-00-018	La Cuesta HS Mod	05/28/08					1,041,289
TOTAL MEASURE V						\$40,758,558	
57/69278-00-001	Adams ES Mod	12/18/02	06/01/04	06/11/04	06/21/04	1,627,310	
57/69278-00-002	Monroe ES Mod	12/18/02	05/27/03	06/04/03	06/16/03	1,301,947	
57/69278-00-004	Peabody Mod PHI	04/23/03	05/27/03	06/04/03	06/16/03	814,703	
57/69278-00-005	Peabody Mod PHII	04/23/03	10/20/04	10/27/04	11/12/04	1,696,230	
57/69278-00-006	SBC Academy	08/27/03	10/07/03	10/22/03	11/04/03	907,027	
57/69278-00-007	Cleveland ES Mod	08/04/04	02/27/06	03/09/06	03/21/06	1,546,509	
57/69278-00-008	Franklin ES Replacement	05/25/05	06/06/05	06/23/05	07/15/05	2,416,423	
57/69278-00-009	Washington ES ADA	07/27/05	08/08/05	08/18/05	09/08/05	325,597	
57/69278-00-010	Harding ES ADA	03/22/06	03/28/06	04/11/06	04/21/06	115,268	
TOTAL MEASURE I98						\$10,751,014	
TOTAL PROP 47, 55 & 1D						\$51,509,572	