

MINUTE RECORD OF: Madera Unified School District Board of Education

REGULAR BOARD MEETING HELD ON THE 28th DAY OF October, 2008

The Board of Education of the Madera Unified School District convened in a **Regular Board Meeting** in the Madera Unified School District Boardroom, 1902 Howard Road, Madera, California on **Tuesday, October 28, 2008**, at 5:30 p.m.

ROLL CALL

Ray G. Seibert, President
Michael H. Westley, Clerk

J. Gary Adams, Trustee
Robert E. Garibay, Trustee
Loraine Goodwin, Trustee
Philip D. Janzen, Trustee
Michael Salvador, Trustee

Michael Bravo, Madera South High School Student Board Representative
Marissa Speelmon, Madera High School Student Board Representative substitute

Absent:
Rebecca Ayala, Madera High School Student Board Representative

John R. Stafford, Superintendent
Teri Bradshaw, Director, Fiscal Services
Jake Bragonier, Public Information Officer
Robert Chavez, Chief Academic Officer, K-12, Educational Services
Kathleen Lopes, Associate Superintendent, Educational Services
Kelly Porterfield, Associate Superintendent, Business and Operations
Jerry Stehman, Director, Human Resources/Certificated
Darren Sylvia, Chief Academic Officer K-12, Educational Services
Fritz Ediger, Senior Administrative Assistant to the Superintendent
and the Board of Trustees

Kent Albertson, Principal, Madera High School
Andy Beakes, Principal, Madera South High School
Carsten Christensen, Principal, Alpha School
Rosalind Cox, Director, Facilities Planning and New Construction
Marisa DiMauro, Director, Categorical Programs
Rosie Galvez, Coordinator, ELD

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Jennifer Gaviola, Director, Special Services
Janet Grossnicklaus, Director, Curriculum, Assessment and Instruction
Sharon Stockdale, Librarian, Martin Luther King and Thomas Jefferson Middle Schools
Darrell Yates, Vice-Principal, Jack G. Desmond Middle School

Alice Rios, CSEA President
Sue Thornton, MUTA President

Carlos Uranga, Citizen
Phil Gonzalez, State Center Community College, Madera Center

There were approximately 25 visitors/District employees in attendance.

**1. CALL TO ORDER OF PUBLIC MEETING –
CLOSED SESSION IMMEDIATELY CONVENED**

President Seibert called the Public Session of the Board of Education to order at 5:34 p.m. and immediately adjourned to Closed Session pursuant to Government Code Sections 54956.9(a)), 54957, 54957.1 and 54957.6 and Education Code Sections 35146, 44951, 48900, and 48918.

2. RECONVENE PUBLIC SESSION/CALL TO ORDER REGULAR MEETING –
3. PLEDGE OF ALLEGIANCE, OPENING, AND ACKNOWLEDGEMENT OF VISITORS AND MEDIA

President Seibert adjourned the Closed Session at 6:53 p.m., and he reconvened the Regular Meeting by calling the Public Session to order at 7:03 p.m. President Seibert welcomed the visitors and he led the flag salute. President Seibert asked Pastor Richard Livasy of North Lake Church of God to lead the invocation. President Seibert explained the rules governing the Board meeting. The meeting was recorded on Tape No. 10–2008/09.

**4. CLOSED SESSION REPORTABLE ACTIONS
(GOVERNMENT CODE SECTION 54957.1)**

Superintendent Stafford announced there were not any reportable Closed Session actions.

5. ADOPTION OF AGENDA – MOTION NO. 41–2008/09

President Seibert stated that if the Board and/or Administration determined they wished to add to the Agenda under Miscellaneous Items, this would be the

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appropriate time.

Superintendent Stafford asked that we pull from the Staffing List, Classified Employment, Item 13 for separate discussion. And he also asked that we pull the Field Trip Requests for the Madera South High School Band for separate discussion.

It was moved by Clerk/Trustee Westley, seconded by Trustee Janzen, and unanimously carried to adopt the revised Agenda.

Ayes:	Trustees Adams, Garibay, Goodwin, Janzen, Salvador, Clerk Westley, and President Seibert
Noes:	None
Absent:	None
Abstained:	None

6. STUDENT BOARD REPRESENTATIVE REPORT

Rebecca Ayala, was absent. Marissa Speelmon, Madera High School Student Board Representative substitute, gave an update of academic, athletic, and extracurricular activities.

Michael Bravo, Madera South High School Student Board Representative, gave an update of academic, athletic, and extracurricular activities going on at MSHS.

7. COMMUNICATIONS

7A. PUBLIC HEARING

President Seibert opened the meeting for visitors to speak on a subject not on the Board Agenda. No one came forward to address the Board.

7B. STUDENT AND STAFF RECOGNITION

➤ Hispanic Heritage Poster presentation

Phil Gonzalez, State Center Community College presented the MUSD Board of Education a framed copy of the winning drawing for the Hispanic Heritage Poster Contest, in honor of Hispanic Heritage month.

8. APPROVAL OF CONSENT AGENDA – MOTION NO. 42-2008/09, DOCUMENT NUMBERS 143-2008/09 THROUGH 153-2008/09, AND RESOLUTION NUMBERS 13-2008/09 THROUGH 28-2008/09 INCLUDING COMMERCIAL WARRANTS – EXHIBIT “A”; STAFFING CHANGES – EXHIBIT “B”;

It was moved by Trustee Janzen, seconded by Trustee Goodwin, and carried to approve the consent agenda.

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Ayes: Trustees Adams, Garibay, Goodwin, Janzen, Salvador, Clerk Westley, and President Seibert
Noes: None
Absent: None
Abstained: None

8A. ROUTINE BUSINESS TRANSACTIONS, ANNUAL RENEWAL OF PROGRAMS, BIDS, AGREEMENTS, NOTICES OF PUBLIC HEARINGS, AND PROCLAMATIONS:

- 8A1. APPROVAL OF REGULAR BOARD MEETING MINUTES OF OCTOBER 14, 2008
- 8A2. ADOPTION OF RESOLUTION NO. 27-2008/09; K-3 CLASS SIZE REDUCTION (CSR) OPERATIONS GRANT APPLICATION FOR 2008-09 RESOLUTION NO. 27-2008/09
- 8A3. APPROVAL OF CONTRACT FOR HEALTH SERVICES WITH ST. JOACHIM'S ELEMENTARY SCHOOL DOCUMENT NO. 143-2008/09
- 8A4. APPROVAL OF CONSULTANT SERVICES AGREEMENT WITH STEVEN JONES, SPECIALIST FROM UCP OF CALIFORNIA FOR SPECIAL EDUCATION STUDENTS DOCUMENT NO. 144-2008/09
- 8A5. APPROVAL OF CONSULTANT SERVICES AGREEMENT WITH CENTER FOR APPLIED LINGUISTICS TO PROVIDE SIOP TRAINING DOCUMENT NO. 145-2008/09
- 8A6. APPROVAL OF RENEWAL OF THE EDUCATIONAL RESOURCES AND SERVICE CONTRACT BETWEEN MADERA UNIFIED SCHOOL DISTRICT AND MADERA COUNTY OFFICE OF EDUCATION FOR 2008-2009 DOCUMENT NO. 146-2008/09
- 8A7. APPROVAL OF MADERA UNIFIED SCHOOL DISTRICT CARL PERKINS VOCATIONAL AND TECHNICAL EDUCATION FIVE YEAR PLAN, 2008-2012 DOCUMENT NO. 147-2008/09
- 8A8. APPROVAL OF CONTRACT WITH CLOVIS UNIFIED SCHOOL DISTRICT FOR NISHIMOTO 6TH GRADE STUDENTS TO PARTICIPATE IN 6TH GRADE CAMP AT SIERRA OUTDOOR SCHOOL DOCUMENT NO. 148-2008/09
- 8A9. APPROVAL OF ASB CLUB STATUS FOR THE TOBOTICS CLUB STUDENT CLUB AT MADERA HIGH SCHOOL DOCUMENT NO. 149-2008/09
- 8A10. APPROVAL TO ADOPT THE FINDINGS, CONCLUSIONS AND RECOMMENDATIONS RELATED TO THE POSSIBLE EXPULSION OR READMISSION OF PUPILS AS THESE ARE PRESENTED TO THE BOARD IN ONE OR MORE OF THE FOLLOWING FORMS OF DOCUMENTATION:
- REPORT(S) OF ADMINISTRATIVE HEARING PANEL(S)
 - EXPULSION STATUS REVIEW REPORT(S) BY THE SUPERINTENDENT'S DESIGNEE
 - STIPULATED EXPULSION AGREEMENT(S)
- THE GOVERNING BOARD IS ALSO REQUESTED TO ISSUE ORDERS CONSISTENT WITH THE ABOVE REFERENCED FINDINGS, CONCLUSIONS AND RECOMMENDATIONS RELATED TO THE POSSIBLE EXPULSION OR READMISSION OF PUPILS IN THE CASES OF THE FOLLOWING STUDENTS, HEREIN IDENTIFIED BY THEIR DISTRICT-ASSIGNED

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IDENTIFICATION NUMBERS: 985177, 302025, 986629, 7373, 602099, 17782, 997642, 995221, 303003, 975073, 202018, 402812, AND 17316
CONFIDENTIAL DOCUMENT NO. 150-2008/09

8A27. APPROVAL OF COMMERCIAL WARRANT LISTING DOCUMENT NO. 151-2008/09
EXHIBIT "A"

8B1. HUMAN RESOURCES ITEMS – STAFFING – EXHIBIT “B” - MOTION NO. 42–2008/09—DOCUMENTS NUMBERED 152-2008/09 AND RESOLUTION NUMBERS 13-2008/09 THROUGH 25-2008/09
APPROVAL OF STAFFING CHANGES AND COACHES
PULL FROM THE STAFFING LIST, CLASSIFIED EMPLOYMENT, ITEM 13
FOR SEPARATE DISCUSSION
MOTION NO. 43-2008/09, DOCUMENT NO. 152-2008/09
THIS ITEM WAS DISCUSSED AFTER AGENDA ITEM 8C

8B2. ADOPTIOIN OF RESOLUTION NOS. 13 THROUGH 25-2008/09 -
ASSIGNMENT OF TEACHERS TO DEPARTMENTALIZED CLASSES
RESOLUTION NOS. 13 THROUGH 25-2008/09

8C. FIELD TRIP/EMPLOYEE CONFERENCE REQUESTS AND ADULT
TRANSITION CLASS FIELD TRIPS
MOTION 44-2008/09, DOCUMENT NO. 153-2008/09 EXHIBIT "C"
PULLED FOR SEPARATE DISCUSSION - MHS AND MSHS BAND TRIPS -
APPROVAL PENDING VERIFICATION OF FUNDS AVAILABLE

8B1. APPROVAL OF STAFFING CHANGES AND COACHES
PULL FROM THE STAFFING LIST, CLASSIFIED EMPLOYMENT, ITEM 13
FOR SEPARATE DISCUSSION
MOTION NO. 43-2008/09, DOCUMENT NO. 152-2008/09
THIS ITEM WAS DISCUSSED AFTER AGENDA ITEM 8C

Due to the fact Mr. Bruce Norton unexpectedly resigned as the District representative to the Personnel Commission, the District needs to take emergency action to fill his vacancy. Since the unanticipated vacancy exists, not having a District representative will have a negative impact upon operations of the Merit Commission, impact the hiring and discipline issues, and hamper the adoption of the rules of the Commission. In light of the negative impact as noted above, the Governing Board needs to "declare that an emergency exists" and shall make an interim appointment to fill the vacancy to insure the continuance of the functions of the Personnel Commission in accordance to California Education Code 45248(b). The District will fill the vacancy permanently in accordance with current Ed Code requirements after December 2008. Staff recommends the appointment of Mr. William F. Colston as the Interim District Representative to the Merit Commission.

It was moved by Trustee Janzen, seconded by Trustee Adams, and

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unanimously carried that an emergency exists and the recommendation that Mr. William F. Colston be appointed as our Interim District Representative to the Merit Commission.

Ayes: Trustees Adams, Garibay, Goodwin, Janzen, Salvador, Clerk Westley, and President Seibert
Noes: None
Absent: None
Abstained: None

8C. FIELD TRIP/EMPLOYEE CONFERENCE REQUESTS

PULLED FROM THE FIELD TRIP REQUESTS MSHS BAND TRIPS FOR SEPARATE DISCUSSION

MOTION NO. 44-2008/09, DOCUMENT NO. 153-2008/09

Superintendent Stafford addressed the reason for pulling the MSHS Band Trips requests. There was a question about the large amount of money allocated for these field trips. They are coming up in early to mid November. He stated that we have been unable to confirm that there is adequate funding, we're still looking into it, but as of tonight we cannot confirm that. So, he asked that the Board consider approving the requests pending funding. The other option would be to approve it after the trips had occurred, so whatever is the pleasure of the Board.

Trustee Adams stated that we need to do everything we can. We've got this super star band and this District needs to continue to support and if you haven't been out and watched them perform, the enthusiasm, and the charisma that they have amongst each other, this is a special group and they require our support.

President Seibert stated that he's sure the question has come up because years ago we had a band that took a trip and it never got paid for. They took the trip before it was paid for. There is concern, we want to make sure the money is there before they spend it.

It was moved by Trustee Adams, seconded by Trustee Salvador to approve the MSHS Field Trip requests pending verification of funding.

Ayes: Trustees Adams, Garibay, Goodwin, Janzen, Salvador, Clerk Westley, and President Seibert
Noes: None
Absent: None
Abstained: None

9. OLD BUSINESS

9A. NONE

10. NEW BUSINESS

10A. 7:15 P.M., PUBLIC HEARING, SUBMITTAL OF WAIVER REQUEST TO THE STATE BOARD OF EDUCATION OF THE REQUIREMENT THAT THE ESTABLISHMENT OF TRUSTEE AREAS AND ADOPTION OF A "BY TRUSTEE AREA" ELECTION PROCESS BE SUBMITTED TO THE ELECTORS AS SET FORTH IN EDUCATION CODE SECTIONS 5019 AND 5020

No one came forward to address the Board regarding the Public Hearing.

**10B. ADOPTION OF RESOLUTION NO. 28-2008/09 - SUBMITTAL OF WAIVER REQUEST TO THE STATE BOARD OF EDUCATION OF THE REQUIREMENT THAT THE ESTABLISHMENT OF TRUSTEE AREAS AND ADOPTION OF A "BY TRUSTEE AREA" ELECTION PROCESS BE SUBMITTED TO THE ELECTORS AS SET FORTH IN EDUCATION CODE SECTIONS 5019 AND 5020
MOTION NO. 45-2008/09, RESOLUTION NO. 28-2008/09**

It was moved by Trustee Garibay, seconded by Trustee Janzen, and unanimously carried to approve Resolution No. 28-2008/09 - Submittal of Waiver Request to the State Board of Education of the requirement that the Establishment of Trustee Area and Adoption of a "By Trustee Area" Election Process be submitted to the Electors as set forth in Education Code Sections 5019 and 5020.

Ayes: Trustees Adams, Garibay, Goodwin, Janzen, Salvador, Clerk Westley, and President Seibert
Noes: None
Absent: None
Abstained: None

**10C. APPROVAL OF AWARD OF CONSTRUCTION CONTRACT TO THE LOWEST RESPONSIBLE AND RESPONSIVE BID FOR THE CONSTRUCTION OF THE MADERA SOUTH HIGH SCHOOL AQUATIC COMPLEX PROJECT
MOTION NO. 46-2008/09, DOCUMENT NO. 154-2008/09**

Rosalind Cox, Director of Facilities Planning and New Construction addressed the Board regarding the Bid process. Good evening President Seibert, members of the Board, Superintendent Stafford. On Tuesday, October 21st at 2:00 p.m. bids were received for the Madera South High School Aquatic Complex Project. The apparent lowest bidder was Morrissey Construction. After further review of their bid documents and information that we gathered it was determined that Morrissey Construction's pool sub-contractor did not meet the specifications that were listed in the general conditions. Namely, the sub-contractor certifies that it has in the last 5 years constructed at least 5 commercially designed municipal and public pools. Because Morrissey's sub-contractor, J&M Pools, does not meet this requirement, it was

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determined that Morrissey's bid was non-responsive. Therefore, we recommend that the Board accept the next apparent low bidder, Bobo Construction's bid protest, reject Morrissey's Construction bid as non-responsive, and award the general contract to Bobo Construction as the lowest responsible and responsive bidder. In your Board Packet you should have received a bid analysis that outlines the total bid. Again, Bobo Construction's bid came in at \$3,820,000. That is \$407,000 under the architect's estimated budget. Tonight, we have I believe, some representatives, Tom Morrissey from Morrissey Construction, and a gentleman from Nadar Pools. So at this time I will call them up for their comments. Also a representative from Bobo Construction as well.

Tom Morrissey of Morrissey Construction came forward to address the Board. I'm president of Morrissey Construction and this is Tom with Nadar Pools. What I wanted to talk a little bit about tonight is that we feel our bid was responsive, we feel our bid was the lowest bid and therefore we should be awarded the bid. We were \$40,000 low on the bid and I think the bid was ambiguous and I think there's a couple of issues. One, is that we do feel that J&M Pools, the people of that office, of that company do have the qualifications to complete that project and while we disagree with the findings of Aquatic Design Group and Darden Architects, and I personally, after we bid the job on the following day, I got a bid protest from Darden Architects stating that they felt like J&M Pools did not have the requisite qualifications. That's when I did some due diligence myself and called the pool references that J&M posted only to find out that nobody from either Darden or Aquatic Design Group, which is the pool designer had called them. So that was one issue and we do feel that J&M had the qualifications. But let's just put that aside for a second. That's really the only issue. Does J&M really have the qualifications or not. So when I got a call from Kelly Porterfield about 9:00 a.m. and he said that he had some bad news for me. We think your bid was non-responsive and were gonna go with the next lowest general contractor. We talked a little bit and what I found out the issue was, what I thought the issue was, look we don't think your pool guy has the qualifications and we don't want to get going with this project and so we don't want to have a legal issue after we award the project. So I said, that's fine you know if the only issue is my pool guy then I will call him up, get a letter from him withdrawing and I'll go to the next lowest responsible bidder. Well, a little side note, responsible by whose determination which I think that part is ambiguous so going forward then. I talked to J&M Pools and said, hey, Sean they're not going to go forward with your bid. I want to do this project, would you give me a letter of withdrawal? He said, sure, no problem. I'll have that tonight. So in the meantime, I called my office and I said let's go to the next qualified bidder which was Tom's company. I know that they're qualified because currently they're doing several projects with Aquatic Design Group, who is your pool consultant. So anyway, bottom line is my pool contractor bowed out. We have another qualified, Tom's company. He's here and he can answer any questions. We're not asking for the Board to pay any more money, we're set up. I guess what I want to tell you is that we responded to the protest letter and our company, our attorney, posted or at least talked about a particular law that states that the contractor, it doesn't preclude the

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contractor from substituting an unqualified sub-contractor in the bid. That's allowed in the law and I think that's what you're going to hear tonight is that, what Bobo's attorney will tell you is that the law they're going to talk about that's in Public Contract Code, I think its 4107, states that, and this is the issue. There was case law where there was a contract, the contract was awarded to a general contractor and then there was a protest. It was determined that the sub-contractor was unqualified and the contractor was allowed to substitute that sub-contractor that was unqualified. What you're gonna hear tonight is an arbitrary interpretation of that law. What they're gonna say is, that doesn't count because technically there's been no award of the job to Morrissey Construction. So, Morrissey Construction can't substitute that sub-contractor because you were never awarded the job. I think that's not what the law says. That's an arbitrary interpretation on their end. Bottom line is just that what I would suggest is that we did everything the right way, we gave a responsive bid, we interpreted the pool sub-contractors qualifications that they were qualified. The people that own the company have built many, many pools and the restrictive language was that the company has to do it. Well, we got by that again and what I would just say is that I think it's ambiguous. The restrictive wording, but aside from that we've replaced that contractor with a responsible pool contractor. We're not asking to raise our bid. Its \$40,000 that you'll be paying that you don't need to pay if we do the job. We're qualified, we've built pools, and we've built for your pool consultant. We built the pool in Murietta, the Murietta Pool Product Design Group was the architect back then. We're qualified. I can ask Tom to just say a few things about his qualifications. Again, I would say what's fair is fair, and I think that just to conclude this, that I think the qualifications are written, they're ambiguous, they're open to interpretation. One last point and I'll leave. When I was talking to Kelly again, and you know getting back to him, I said, look my guy will not only give us a letter, J&M Pools will give us a letter retracting their bid. But in the meantime, we've replaced them with a bona-fide Atom's company, Nadar. Kelly was at first, when the first time I spoke to him said, look I think that may do it, I think you may be in if you can get a letter of retraction. Then when I called the second time and we spoke, it was then, well maybe not. I said, How about if my attorney talks to your attorney? So we did that and my attorney called me back and said of the issues, the only issue is the pool and as long as your pool contractor will retract his bid then you should be in. I called Kelly back and said, Kelly just to memorialize my conversation with my attorney, this is what they said. Kelly said, well no that's not how I understand that so let me get back to my attorney. Anyway, it's very, it's been ambiguous. I mean just in my conversations with Kelly it's been ambiguous. I think we all wanna play on an even playing field and I don't know that that's it, and what I would ask you to do tonight and I'll answer any questions, is either award the job to Morrissey Construction or throw all the bids out and bid over again. That would be my request tonight. If you have any questions for Tom I'd just like him to say his experience.

Mr. Daken introduced himself to the Board. I'm Tom Daken and I'm with Nadar Incorporated. I've been building swimming pools for high schools and cities. I guess the first one I did was in Fowler back when I was about thirty. All up and down this

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valley, Oakhurst, Earlimart, Hanford, Visalia, Clovis West. I've done a couple of jobs for Darden Architects. We were contacted by Morrissey Construction this morning and he asked us if we were still interested in this project. I said, yes. We were the second highest, we may have been the third highest bidder. I guess California Pools was. We had different scopes and as I understand, we were all extremely close. I also understood from Morrissey or from Tom, California never gave Morrissey Construction a bid on bid day, so I was the second bidder he had and that's why he went to us. I said yes I am interested in this project. I personally went out from a project I'm doing with Aquatic Design right now, with the University of Santa Clara. We just finished and I stopped by Madera South and looked at the site and I said, this is a nice site, nice access, nice looking school and it's gonna be a good fast project. It was, I was very impressed with the site area. Sometimes you go to a school and you say, this is going to be miserable, I don't wanna work here. So when he called, when I talked to him, I said yes I would still like to work it, to still do the job. So that's all I can say but I know my qualifications do meet all of the qualifications that Aquatic Designs set up and with Bill Darden. Thank you.

Kelly Porterfield, Associate Superintendent of Business and Operations came forward to address the Board. He stated, my goal is not to hear from any attorneys tonight but we may not meet that goal. So let me very quickly summarize the process that the District went through to determine whether the bid was responsive and responsible. First, Tom and his company, from everything we can see it's a great company. He does good work, this is not an issue regarding Morrissey Construction. It's an issue of the specifications as they are written, which are not ambiguous in any form. When it comes to the sub-contractor, it's the company that we are hiring and their experience. Not any one individual. I may have Darden & Associates step up and share some information regarding the specifications. We submitted the information to our legal counsel. Legal counsel gave us a clear interpretation of what they felt, how applicable section 4107 and in this particular circumstance how it would effect this bid. 4107 is written and clearly states that the contractor, clearly states the condition for which a contractor can substitute a sub-contractor to prevent bid shopping. One of those conditions is first; the contract must be approved to that particular contractor. We find ourselves in a catch twenty-two. We found the sub-contractor is not responsive to the bid. Therefore we cannot award to the general contractor because the bid is non-responsive according to the specifications as written. When I contacted Tom this morning I made it clear that it was staffs intention to bring that to the Board and that would be staffs recommendation. That ultimately the Board would be making that decision. Subsequently he shared his position regarding the sub-contractor and whether he could substitute. And again I made it very clear that currently our recommendation will be that their bid is non-responsive. However, we thought it would be a good idea to get the two attorneys talking. They spoke and we got a letter, essentially it was a letter drafted by our attorney, Best, Best & Krieger. We formatted it onto District letterhead and Rosalind forwarded that to Tom Morrissey. Nadar is an outstanding contractor. We've heard of their projects and their work and they're actually on one of the lists among five to six other sub-contractors that can and are

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qualified to perform the work. Also, contrary to what Mr. Morrissey was saying, actually I personally called the references listed under the sub-contractors references. Let me get the name right, J&M Pools and the references they asked us to check on. What I found out was, Jurupa Unified School District Pool, actually was a renovation of \$800,000. This is one of the five that they listed as pools that fit the specifications requirement. Santa Cruz High School is not built yet, is not complete. Specifications are clear, must be complete. Los Banos High School has not been started yet. It's a project that's been awarded but not constructed. Chaffey Unified School District is a renovation and Orangewood Children's Home is not a, I believe, not a public works project. So bringing the Board up to date, as far as our due diligence, I don't know if Darden & Associates would like to address the specifications and then we can take any further questions.

Trustee Westley asked Mr. Porterfield if the paragraph or the section of the bid package that is under protest right now, is it available for us to see or hear.

Mr. Porterfield responded yes, you actually, I believe we provided to you in your packet, it's in the hand out that we handed to you. Both the specification is in your packet and the 4107.

President Seibert asked what's the issue here now. You got the sub-contractor that he came in with on the bid. Now he's got a different sub-contractor that is qualifying. So that seems to be the issue. Is that allowed or what?

Mr. Porterfield responded that under the law, as our legal counsel and I frankly double checked and got a second opinion on it, is that under 4107, substituting a sub-contractor prior to award of contract is not allowed under Public Contract Code. It doesn't fall in the requirements of 4107. I am not an attorney, I didn't stay at the Holiday Inn Express last night or anything like that but I did get our legal counsels opinion and legal counsels opinion was very clear about how it applied. Again, my goal is that we not have any attorneys speak, but if we need to we can.

Trustee Adams said that if I understand this, one of the concerns I would have is trying to meet these five projects. We have one small project, we have two refurbishment projects and two pending. How would you possibly fit us in? We're in an emergency state, we've been ready to roll.

Mr. Porterfield said I don't want to take words out of Tom's mouth, but all contractors have multiple projects going on at the same time. Where it applies to this particular project is that they contend they have an individual that they have hired that has done many of these projects and would be implemented on our project as well. The concern would be if you just have one person that has the expertise. Would that person be spread to thin? That would be a question we would have to address if the contract was awarded, but we don't intend to do that.

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Trustee Adams stated that he personally would not be comfortable knowing that we have to wait until Los Banos and this other District or this other pool is completed.

Mr. Porterfield said I can defer that to Tom.

Trustee Adams stated that we need to hear something up front that we get up on the list here.

Mr. Morrissey said sure. One of the guys, he's an owner and an officer of the company has got the experience and I think that you did call Aquatic Design Group today, Ken Mauer. And see when I got the protest letter, I did look at J&M's qualifications and I did call what he had on his list. There's Corona Del Mar High School, Plaza Irvine, Newport Harbor High School. I don't know if you called them. One of the owners of the company has done this work working for a different company before they formed this new company, J&M Pools. So they had the experience in my mind when we looked at this and that's to me what was ambiguous. I mean if you write a spec that's so restrictive, that only three or four people in the whole state can do these pools, to me that's not consistent with what the public contract code is and that's an overly restrictive speculation that is being done out there so only less than a handful of people can bid it. So consequently you're paying more money for that. But I'll tell you this, that one of the architects that was competing for this project was Aquatic Design Group but Darden got the job. That's who I talked to and found all this out because of my due diligence. I asked him would J&M Pools be qualified with what you know and he said, absolutely. So you know in my work I just saw some things that were inconsistent and ambiguous. Not a level playing field.

Trustee Adams stated I'm not hearing that this project would become maybe not a priority but it should be high up. I'm not hearing that.

Mr. Morrissey responded that if you told us tomorrow to start, we would be starting. I don't understand. Your concern is?

Trustee Adams responded, well, I'm concerned that you have other projects going and they're pending. So where do we fit in getting this project started here?

Mr. Morrissey responded, we would be ready to go tomorrow. I mean companies do more than one job at a time. Trustee Adams said I understand that.

Mr. Morrissey said, but I mean at this point J&M Pools pulled out. They were qualified. I think they're qualified, Aquatic Design Group thinks they're qualified. They do what Darden does but lay that aside because we, if that's what it takes to get this project, they gave me a letter. Now we have a qualified, according to Darden's thought and so we have a qualified pool contractor, we're a qualified general contractor. To me, what Kelly talked about was section 4107, my attorney says we should be given this job for the same law. Now the only thing that's different is the

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Public Code 4107 is that you have a general contractor who is awarded a project, we're first standing because we were low. Kelly's argument is that in this particular case law the general contractor was awarded a project and then there was a protest. Well, we were low and there's a protest now. I mean I can tell you California Commercial Pools didn't bid with us. They're, it's not a level playing field. I got a call Monday morning from California Commercial Pools which said, look we've heard you're gonna get the job as a general contractor, but we heard that J&M Pools is not gonna make it. We want to send you our bid and I said I didn't know you didn't send us a bid. My estimating department is taking care of this, so there are some games going on and from what I can see it should be a level playing field. We were the low bidder. We didn't play any games. Kelly said, or Darden is saying, look we don't think your guy is qualified so we got somebody that's qualified. We're not asking to pay any more money and there hasn't been any games. I'm asking for what's fair and the right thing and I disagree with Kelly in that the case law - you can interpret the case law - in the case law, the general contractor was awarded the project. My point is we were the low bid, by defacto we would have been awarded the project. Somebody got some information out that maybe shouldn't have been and there was a protest before the award. But that's just a matter of timing in my opinion and not a material point. To me it's just not fair to reject our bid because of what we're hearing.

Trustee Adams stated, so the new group is prepared to go to work if they were to receive the bid? Mr. Daken responded we could get a crew out there Monday morning. We have other work to do but we have crews that run up and down this valley. Trustee Adams responded, the college won't throw you out? Mr. Daken responded, pardon me? Trustee Adams asked, the college you're working on won't throw you out? Mr. Daken responded that's just one of our projects, we have ten projects going and I know California has more than that. I'm just trying to tell you.

Mr. Porterfield asked the Board if they wanted to hear from Bobo Construction. Kent Schumacher counsel for Bobo Construction stated that he represents Bobo Construction, the lowest responsible, responsive bidder for this project. I want to affirm for you that Chris Bobo, the president, wanted me to come today and confirm to you that he is excited and committed to build this project for you. I didn't have the opportunity to speak to Morrissey's counsel. I did assist with the bid protest letter for Bobo but haven't been involved in the process, but I have a lot of respect for Best, Best & Krieger and for Darden Architects, we do know them well. The pool specifications are there for a reason. To be sure you get the best pool by the best contractor. So, yes the District is entitled to that and that's why the specifications are written that way. Bobo's pool sub contractor meets those specifications, Morrissey's does not. In terms of 4107, if you look at 4107, if you look at the numerated reasons why you can substitute out a sub contractor deals with either not entering into a sub contract which presumes that the contract has already been awarded to the prime contractor, deals with solvency issues and other issues. None of those apply to the situation here. This is a prime contractor who did not do their due diligence, a sub who does not meet specifications, and if you allow them to now try to substitute

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somebody in before bidding, that violates just about all of the tenants of competitive bidding. That means bid shopping, bid peddling and that cannot be condoned by this Board. So again, I just request that the Board affirm the recommendation of the Director and the staff. I appreciate your time.

Marty Dietz of Darden Architects came forward to address the Board. Good evening Board, Chairman, Superintendent. I'm Marty Dietz from Darden Architects. Just to clarify a few things here, we are the architects for your project. We have retained Aquatic Design Group as a sub-consultant to us. They have been working on your pool. We have been working on this as a team. Together, we developed the drawings and the specifications and the requirements that are included in the bid documents. There are no games going on here, those were very up front documents. You can read the content of those documents. This contract has not been awarded yet. That's what we're coming here for, to get this contract awarded. There's been some talk that it's been awarded, that's what we're pre-award here and we recognize Tom Morrissey, clearly a qualified general contractor. He was the low bidder on the bids that were submitted and you see it there. Had he listed Nadar Pools as a sub-consultant or sub contractor to him we probably wouldn't be here today talking about this. But he listed a sub-contractor the design team, your design team, doesn't feel is qualified to build a commercial pool based on some of the criteria we've written. That's fair criteria available for all to see and all to read and react to. That criteria has been used in the past, that criteria has been tested in court in the city of Patterson where this kind of a situation went further and that language was upheld. It does develop or set a standard of quality from the person that's going to build your pool. We do require logically that the person that builds this pool have commercial pool experience, public pool experience and show a track record of having done those and actually getting a significant portion of this income in doing those kinds of pools. Those are logical connections to look for in people that are qualified to do that work. It's not arbitrary. We did not feel that the J&M sub-contractor met that requirement and we've indicated that to your District. The only other comment I'll make is regarding the suggestion that this project be rebid and I do not think that is necessary. I think that will take time, one of your concerns and the Board's concerns to get this pool done, in operation and on schedule and it will cost money to go through that process again. So we support the District's recommendation here, staff recommendation.

Mr. Porterfield responded, just to clarify, staff is recommending that we accept Bobo's bid protest and that's in your packet that you have in front of you. That we reject Morrissey's bid as a non-responsive bid for the reasons outlined and that we award contract to Bobo as the lowest responsible and responsive bidder. That is staff's recommendation.

Clerk/Trustee Westley said that he had a couple of questions for Mr. Porterfield. First of all I can kind of see where the Morrissey interpretation was a fair, I mean there was an intent to provide what was being asked for. Okay, I understand the view that it

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didn't really meet the qualifications. I have an issue with letting \$40,000 slip by us and so what I guess I want to ask you is what is the process for rebidding? What does that actually do to the project? What exposure does it put the District in? Tell me a little more about it.

Mr. Porterfield responded, well, we obviously have an architects estimate. When we got out to bid these general contractors and we had a great turn out, we had over 11 contractors so a lot of people wanted to participate in this project. What's happened now essentially is those numbers have been exposed. Everyone knows what those numbers are. Typically, and I can defer to Marty Dietz on this, typically when you rebid a project you don't get the same numbers you had the first time. So in our effort to rectify the situation two things can happen; one, you're not guaranteed you won't run into the same problem. J&M Pool & Spa may rebid the project and we may very well end up in the same place we are now. My hope is that would not happen. Two, you have an exposure of what your numbers are. Not just the architects estimate, but everyone that bid on the project. So, those are the concerns. The third concern is schedule, is that it would take it typically to move it fast a six to seven week bid process and that would affect our timeline and time is money also.

President Seibert responded, well, I look to see if the instructions were clear. I think Mr. Morrissey should have made sure his sub contractor was acceptable from the start. I mean the information was there. Mr. Morrissey responded, you know I agree with you and what I think is orange, you may think is a different color. I think it would have been clearer with such restrictive specs that possibly there should have been a pre-qualification ahead of time of what pool contractors are approved so this doesn't happen. When I say it's ambiguous, that's what I'm talking about. I mean what I see as white you may see as yellow. President Seibert responded, where do you see that J&M is qualified? How do you qualify that? Mr. Morrissey responded that they have a guy that's an owner of the company while he was working with a different company. He did a ton of these types of pools but they're not giving that company any credit for what he did. Who builds pools, corporations or people? People build pools and to not give J&M Pools credit for his experience, to me is ambiguous and that's what I was looking at and none of those people were called evidently. I will tell you when I received the letter from Darden saying they did all their due diligence, they didn't do any due diligence, because they hadn't called this guys references which I did. Then I said, did you get a call and they said no. Now I told that to Kelly today when Kelly made some phone calls, but evidently didn't call all the right people. So that's the ambiguous part, J&M does have in my mind the experience. I mean what you do all your life if you go over and start a company, do you not get credit for everything that you know? If you're a CPA and you start another company and it's CPA work President Seibert responded, was he an owner of any other company he worked for? Mr. Morrissey responded, pardon me? President Seibert responded, was he an employee or an owner of any other company? Mr. Morrissey responded no. I think he was just a worker bee for another company. He was the Superintendent for California Pools which is the company . . . He was a Superintendent for two of the

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large pool companies. One of them having been approved by Darden. So, they have got the experience and like I said, I don't agree with it, it's ambiguous and I think you could write restrictions and that's what that spec does, but because we want the work he agreed to walk away from it. I just don't think it's fair. President Seibert responded by saying, I think at this point there's a lot of questions. You know, to me this guy had experience, but that you know maybe he was fired by California Pools. I don't know how good he was, we have no reference from California Pools on how good he was as a Superintendent. Mr. Morrissey responded, well you know what, that's some due diligence that needs to be done but when I called I asked, I called this guys references and I got a different result than what Darden's response was when they wrote the letter. They said they did due diligence and they didn't because I did due diligence and nobody called him. So that's why I think there's something a little astray here. Now, you did call today after I said nobody had called and so the other thing is, if you're going to write a restrictive spec like that it makes sense to pre-qualify the bidders. That way we wouldn't be here right now because obviously we didn't spend all this money to bid this job to give you a savings of \$40,000 to come and lose it on a technicality. That's just a little tough to swallow. President Seibert responded, yes, I understand where you're at but we're in a position here too. Mr. Morrissey responded, if you were too rebid your numbers would be lower, I'll tell you that right now. It's just the way the market is.

Trustee Garibay responded by saying, I'm just curious, on the two companies, the one that was substituted and now the new guy, how far apart were they in bids? Ms. Cox responded, \$40,370.00. Trustee Garibay asked, as a construction manager, you're going to eat that cost? Is that what I heard? Mr. Morrissey responded that there are two issues here. What Ms. Cox was telling you the difference between Morrissey Construction and the next lowest bid which was Bobo. You're asking me what's the difference between J&M Pools and Nadar, it was about \$5,000.00. So yeah, we'll eat that. Trustee Garibay responded, it's only \$5,000.00, but which was higher? Mr. Morrissey responded Nadar was higher. We still would have gotten the job had we listed them.

Trustee Salvador stated, that rings into my question. You asked for competitive bids from your subs, is that correct? Mr. Morrissey responded, sure. Trustee Salvador said, okay, and you had two subs or I'm assuming you asked for three sub-contractors bids, is that correct? Mr. Morrissey responded, we don't, on a public bid, you get bids from some people, some you talk to, some you just get them in the fax machine. I think we got three pool bids to answer your question. Trustee Salvador said as you're preparing your bid for us, you receive bid products from three sub-contractors? Mr. Morrissey responded, if you're talking about the pool, yes. Trustee Salvador said yes, I am talking about the pool. If they were so close and Nadar is so much better, then J&M, why didn't you use this gentleman over here? (Nadar Pool, Tom Daken) Mr. Morrissey responded, you know what, because it's the lowest guy wins. I mean you know maybe that's true, but a guy does all this work and you're gonna reward the guy. We reward the people that do the work and have the lowest price. Trustee Salvador

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said okay. I realize it was a business decision. I'm just trying to get your mental process because you're asking us here to allow you to substitute someone in my opinion at the eleventh hour. I don't know if I'm comfortable with that. Mr. Morrissey said, well, if you awarded me the project and then we were here it wouldn't be an issue. So, it's a technicality and they'll say it's contrary to 4107. It's not contrary to 4107, it's an interpretation. The fact of the matter is they awarded the job, I mean I would think that through defacto we were the low bidder. If you wanna look at it, we should have been awarded the job, we were the low bidder. It's the same thing.

Trustee Goodwin asked, who is the "J" in J&M Pools?

President Seibert asked Kelly, do we have a written opinion, a legal opinion from our attorneys? Mr. Porterfield responded that yes we do. We actually have two opinions. One was from Best, Best & Krieger and the other was from Atkinson, Andelson, Loya, Ruud & Romo. Loya, Ruud & Romo was a verbal confirmation. Best, Best & Krieger was a written. I want to make sure that something is clear too, that Terry who would have been the Superintendent on this project, who now works with J&M Pools is experienced. Even talking to the Aquatic art pack, the Aquatics Ken Moehler, he is experienced, but even he said, as long as you're dealing with Terry. I don't know anything else about the other contractor, about the contractor he's working for. To me that just reiterates the purpose. The purpose of the specifications is to apply the experience to the contractor, not an individual.

Trustee Goodwin again asked who the "J" was in J&M Pools. Mr. Porterfield responded, J&M Pools, I'm not sure. I don't know what the J&M stands for. Trustee Goodwin responded, okay, I assume the "M" is Moehler. Several people in the audience responded no. Trustee Goodwin responded, oh, it's not, okay.

Mr. Porterfield said the 4107 is frankly where we're getting into the legal case and all that. President Seibert responded, now wait a minute, you said contractor. Mr. Porterfield responded yes. President Seibert said, which contract are you talking about? Mr. Porterfield responded, sub-contractor. President Seibert said, the sub-contractor? Mr. Porterfield responded that this speaks nothing about the qualifications of Tom Morrissey. He is qualified. What it speaks of is the sub-contractor and whether or not the sub-contractor meets the qualifications of the specifications as written. President Seibert said okay, so what's your legal opinion here because now you're dealing with a substitution of a contract at this point, right? Mr. Porterfield responded yes. President Seibert said, that's the issue? Mr. Porterfield responded, the legal opinion is the letter that's in front of you. The letter that's addressed and it's signed by Rosalind. That is the legal opinion. President Seibert responded, Rosalind? It's her opinion? Ms. Cox responded that our legal team drafted it.

Trustee Goodwin said that it's basically stating that in order to keep the integrity of this bidding process that you can't make changes after you write it down, submit it and then before it's accepted you can't start making changes because it just throws the

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whole process off kelter. It's just an integrity issue for the bidding process, not a negative statement that someone couldn't do it. It's just they started making changes too soon.

Mr. Porterfield said, hats off to Tom for trying to fix the problem. Unfortunately we feel the context that he's trying to fix it in is not legal and we as a District would be opening ourselves up to possible additional problems if we were to allow that to happen. It does require District approval for that to happen. Any additional questions?

Trustee Goodwin stated I think we're ready. President Seibert stated that he was not ready. Mr. Seibert said that he had to read this a little closer.

Mr. Porterfield referred to Public Code Contract 4107. This is the actual code, it says: a prime contractor who's bid is accepted may not substitute a person as a sub-contractor in place of the sub-contractor listed in the original bid except that the awarding authority or it's dually authorized officer may, except as otherwise provided in Section 4107.5 consent to the substitution of another person as a sub-contractor in any of the following situation, and then it gives your situations, the premise, the first line, assumes award. That's the problem, it assumes award. You can't do it prior to award because we find the sub-contractor non-responsive we cannot award to the general contractor. So, that's our Catch 22. That's outlined in the letter you're reading Mr. Seibert. Mr. Morrissey also received that same letter. Mr. Morrissey responded that my office did, I've been on the road. Mr. Porterfield responded, you've been on the road, I'm sorry. President Seibert stated that he thinks it's smart for us to go by our attorney's legal opinion. I don't know how we can go anywhere else. Mr. Morrissey responded, can I read you what my attorney said? President Seibert responded, yes go ahead. Mr. Morrissey said that basically, we're using the same law. Accordingly, Morrissey is compelled to make its request for a substitution of the sub-contractors provided by 4107 if indeed this determination of the public agency upon further review which review is hereby requested. I guess what I'm telling you is you have the information and I think what you're looking at is what's the right thing to do. The attorney could have just as easily, he interpreted it a certain way and my attorney interpreted it a different way. So, I guess it's which side of the fence you are on. The issue is that the award was made then the sub-contractor was deemed to be unqualified. In this case, the sub-contractor was deemed to be unqualified before the award, but so what? The law says that you can't make that decision. In talking to my attorney, you can make that decision and I can tell you there was no hanky panky on our end. We just do it the way it's supposed to be done. We're \$40,000 low and you're right, if you go with another contractor you're gonna pay another \$40,000 and we're gonna give you just as good or a better job than any other contractor. President Seibert responded, our side is we pay attorneys to protect us and we need to take their advice, I feel. We appreciate your bid and your effort. I feel bad we're in this situation, this argument, this discussion that we're in. Mr. Morrissey responded, then I would say, is it fair to just throw the bids out and start over again? Because we think there's two opinions here. Again, I guess it's what side of the fence you're on.

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President Seibert responded, well we got two choices here, we can throw the bids out and go out again or accept one of the bids. Trustee Garibay said that because he was out of town all day and just arrived in time for the Board meeting, I was not privy to any of the information that the Board received. President Seibert stated that we just got it tonight, too. Trustee Garibay said that he had not seen it at all, so if there is a vote, whichever way, he will be abstaining. President Seibert said, well you've had it just as long as everybody else on the Board. Trustee Garibay said he didn't have anything in front of him on the dais. Just for clarification, since Mr. Garibay was not in Closed Session where the information was given to the other Board members, he did not have the information in front of him. Mr. Porterfield responded, oh no, he didn't get it. Trustee Garibay responded to Mr. Seibert that he does not have a copy of what the rest of the Board received. Mr. Porterfield indicated to Mr. Garibay that he's right, he did not receive or have the opportunity to review the information at all. Mr. Porterfield told Mr. Garibay that he would get copies to him promptly.

Trustee Salvador stated to President Seibert that he was prepared to make a motion. Mr. Porterfield asked if he could clarify, please. He said that the Board needs to accept Bobo's bid protest, reject Morrissey's bid as non-responsive, and award contract to Bobo as lowest responsible and responsive bidder. It can be taken as one or three separate pieces. President Seibert asked Mr. Porterfield if that is our attorney's recommendation. Mr. Porterfield responded yes. Trustee Salvador said that he would forward the motion as follows: I'll forward the motion to accept the Bobo Construction bid protest, reject the Morrissey bid as being non-responsive, and award the contract to Bobo Construction as the qualifying low bid.

It was moved by Trustee Salvador, seconded by Trustee Janzen, and carried to accept Bobo Constructions bid protest, reject Morrissey's bid as non-responsive, and Award the contract to the lowest responsible and responsive bidder, Bobo Construction.

Ayes:	Trustees Adams, Goodwin, Janzen, Salvador, Clerk Westley, and President Seibert
Noes:	None
Absent:	None
Abstained:	Trustee Garibay

11. INFORMATION/REPORTS

**11A. QUARTERLY INVESTMENT PORTFOLIO REPORT OF THE
MADERA COUNTY TREASURER-TAX COLLECTOR PURSUANT
TO GOVERNMENT CODE SECTION 53646**

**11B. 2007/08 UNAUDITED ACTUAL FINANCIAL REPORT FOR SHERMAN
THOMAS AND EZEQUIEL TAFOYA CHARTER SCHOOLS**

11C. STANDARDS REPORT DOCUMENT NO. 155-2008/09

11D. BUSINESS AND OPERATIONS UPDATE

Mr. Porterfield gave a brief update on cleanup, etc. of the third High School Site.

12. ANNOUNCEMENTS

There were none.

13. MISCELLANEOUS

There were no items.

14. ADVANCED PLANNING

President Seibert made the following announcement:

Next Regular Board Meeting

Tuesday, November 18, 2008 - 7:00 p.m.

Madera Unified School District Boardroom – 1902 Howard Road, Madera, CA. 93637

15. SUGGESTED FUTURE AGENDA ITEMS

Trustee Adams reminded the Board of the Alternative Governance Board meetings that were coming up. He said that he would recommend that if any of the Board members have free time during the AGB meetings, they should come and be an observer so they understand the process since down the road they may need to work in this capacity. President Seibert stated that they do need some more help.

16. ADJOURNMENT MOTION NO. 47-2008/09

President Seibert adjourned the Public Session at 8:53 p.m.

Fritz Ediger

Fritz Ediger, Senior Administrative Assistant
to the Superintendent and Board of Trustees

Dated: October 28, 2008