

**FRESNO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM**

AGENDA ITEM: B-11

AGENDA SECTION <i>(Check Box Below)</i>			
A CONSENT	B DISCUSSION	C RECEIVE	RECOGNIZE/ PRESENT
	X		

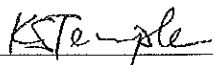
Board Meeting Date: September 26, 2012

ACTION REQUESTED: <i>(Adopt, Approve, Ratify, Discuss, Receive, etc.)</i>	Adopt
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TITLE AND SUBJECT: Adopt Resolution 12-01, Authorizing the Execution of Lease-leaseback Agreements (Site Lease and Facilities Lease with Construction Provisions) for Construction of Rutherford B. Gaston Sr. Middle School, Phase II (Construction of Buildings)

<p>DESCRIPTION/DISCUSSION: Attached is Resolution 12-01, the adoption of which is recommended to authorize the execution of lease-leaseback agreements (site lease and facilities lease with construction provisions) with Harris Construction Co., Inc. for Phase II construction of Rutherford B. Gaston Sr. Middle School. Phase II of the project consists of construction of buildings, on-site/site work, and athletic fields at the guaranteed maximum price of \$36,702,876.</p> <p>The lease-leaseback project delivery method is allowed under Education Code Section 17406. Harris Construction Co., Inc. is on the list of lease-leaseback contractors approved by the Board of Education on May 25, 2011.</p> <p>The site lease and facilities lease with construction provisions are available for review in the Board Office. The plans and specifications are available for review in the Purchasing Department.</p> <p>District Goals: Approval of this agenda item addresses each of the four Fresno Unified School District Goals for 2008-2013 in that it supports student success through operational excellence.</p>
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FINANCIAL SUMMARY: Sufficient funds of \$36,702,876 are available in the 2012/13 Measure K and Measure Q budgets.
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PREPARED BY: Paul Rosencrans, Executive Director, Purchasing <i>(Signature Required)</i>	DIVISION: Operational Services PHONE: 457-3134
DIVISION APPROVAL: Karin Temple, Assistant Superintendent, Operational Services <i>(Signature Required by Associate Superintendent)</i> 	SUPERINTENDENT APPROVAL:

Resolution No. 12-01

**RESOLUTION OF THE BOARD OF EDUCATION OF
THE FRESNO UNIFIED SCHOOL DISTRICT
AUTHORIZING THE EXECUTION OF A SITE LEASE
AND FACILITIES LEASE WITH CONSTRUCTION
PROVISIONS, AND OTHER ACTS RELATING TO THE
CONSTRUCTION OF RUTHERFORD B. GASTON SR.
MIDDLE SCHOOL, PHASE II (CONSTRUCTION OF
BUILDINGS)**

WHEREAS, the Fresno Unified School District ("District") desires to make improvements for the construction of the Rutherford B. Gaston Sr. Middle School, Phase II ("Project"), as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, Rutherford B. Gaston Sr. Middle School, Phase II ("Site"), as a lease-leaseback project whereby the District will lease the Site which the District owns to Harris Construction Co., Inc. ("Builder") who will construct the Project thereon and lease the Project and underlying Site back to the District; and

WHEREAS, Education Code Section 17406 authorizes the governing board of a school district, without advertising for bids, to let to any person, firm or corporation any real property belonging to the district if the instrument by which such property is let requires the lessee to construct on the demised premises, a building or buildings for use of the school district during the term thereof, and provides that title to the building shall vest in the school at the expiration of that term; and

WHEREAS, it is in the best interest of the District to cause the construction of the Project through lease and sublease of the Site pursuant to Education Code Section 17406; and

WHEREAS, in order to complete the Project, it is necessary that the District enter into the Site Lease, in which the Site will be leased to Builder, and a Facilities Lease which provides for the sublease of the Site and the lease of the Project by Builder to the District, and that certain other action be taken and authorized; and

WHEREAS, the Facilities Lease includes Construction Provisions with which Builder shall comply with respect to construction of the Project; and

WHEREAS, pursuant to Section 17402 of the Education Code, the plans and specifications for the Project ("Plans and Specifications") must be prepared and adopted prior to entering into Site Lease and Facilities Lease for the Project; and

WHEREAS, the Plans and Specifications have been approved by the Division of State Architect ("DSA"); and

WHEREAS, in order to ensure that moneys sufficient to pay all costs will be available for the Project, the District desires to appropriate funds for the Project from its current fiscal year as provided by the Facilities Lease; and

WHEREAS, the Board of Education (“Board”) has been presented with the Plans and Specifications for the Project and has examined and approves of such documents, subject to minor revisions, if any, by DSA, and subject to the delegation of authority provided by the Board as set forth below; and

WHEREAS, the Board has been presented with the form of each document referred to herein relating to the transaction contemplated hereby, and the Board has examined and approved each document and desires to authorize and direct the execution of such documents and the consummation of such transaction, subject to the delegation of authority provided by the Board as set forth below; and

WHEREAS, all acts, conditions, and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transaction authorized hereby, do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the District is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such financing for the purpose, in the manner, and upon the terms herein provided.

NOW, THEREFORE, THE BOARD OF EDUCATION OF THE FRESNO UNIFIED SCHOOL DISTRICT DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. Recitals. All of the recitals herein contained are true and correct.

Section 2. Site Lease and Facilities Lease. The form of agreements entitled “Site Lease” and “Facilities Lease,” each presented to this meeting and each to be entered into by and between the District and Builder which together provide generally for (i) the lease by the District of the Site to Builder, (ii) the sublease of the Site and the lease of the Project by Builder to the District, and (iii) the payment of certain lease payments by the District under the Facilities Lease in an amount equal to the aggregate construction costs for the Project as set forth in the Construction Provisions (“Lease Payments”) are hereby approved subject to any revisions which are acceptable to both District’s Superintendent (“Superintendent”) and District’s legal counsel. The Superintendent or his designee is hereby authorized and directed, for and in the name and on behalf of the District, to execute and deliver to Builder such agreements, once finalized, pursuant to the delegation of authority provided for hereby.

Section 3. Approval of Process. The Board hereby approves of the lease-leaseback process and approves of the Guaranteed Maximum Price amount of \$36,702,876, for construction of the Project pursuant to the terms of the Facilities Lease.

Section 4. Approval of Plans and Specifications. The Board hereby approves of the DSA-approved Plans and Specifications for the Project.

Section 5. Other Acts; Delegation. The District’s Board hereby approves a delegation of authority and appoints the District Superintendent, or the designee of the District Superintendent, who is/are hereby authorized and directed, to execute and deliver the Site Lease and Facilities Lease with Construction Provisions as provided by Section 2 above, and to do any and all things necessary, in consultation with the staff, that they may deem necessary or advisable in order to effectuate the purpose and intent of this Resolution, all subject to

ratification of the Board of Education, if necessary. Said delegation shall be valid during the construction of the Project, or until otherwise rescinded by the Board.

Section 6. Effective Date. This Resolution shall take effect upon adoption.

PASSED AND ADOPTED this 26th day of September, 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

I, Valerie F. Davis, President of the Fresno Unified School District Board of Education, do hereby certify that the foregoing is a full, true, and correct copy of the resolution passed and adopted by said Board at a regularly scheduled and conducted meeting held on said date, which resolution is on file in office of said Board.

President of the Board of Education
Fresno Unified School District

I, Lindsay Cal Johnson, Clerk of the Board of Education of the Fresno Unified School District, do hereby certify that the foregoing Resolution was introduced and adopted by said Board at a regular session meeting thereof held on the 26th day of September, 2012.

Clerk of the Board of Education
Fresno Unified School District

EXHIBIT "A"

DESCRIPTION OF SITE

Rutherford B. Gaston Sr. Middle School- Phase II, 1100 East Church Avenue, Fresno CA 93706