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PROPOSITION 39
CITIZENS' OVERSIGHT COMMITTEES
(GENERAL OBLIGATION BOND MEASURES)

PREPARED FOR:

CYPRESS SCHOOL DISTRICT
(MEASURE "M" BOND MEASURE – NOVEMBER 4, 2008)

PRESENTED BY:

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Background

On November 7, 2000, California voters approved Proposition 39, the Smaller Classes, Safer Schools and Financial Accountability Act (School Facilities; 55% Local Vote; Bonds, Taxes; Accountability Requirements). Within the text of Proposition 39 various accountability requirements, including requirements for certain types of audits, were specifically required. In an effort to increase voter acceptance for Proposition 39, the California Legislature passed, and Governor Davis signed, Assembly Bill 1908 (“AB 1908”), which provided additional requirements relative to school district general obligation bond elections conducted pursuant to Proposition 39. Those requirements included provisions for school districts conducting Proposition 39 elections and thereafter establishing and appointing members to a Citizens Oversight Committee (“Committee” or “Citizens Oversight Committee”), as required by Education Code Section 15278, et seq. as put into place pursuant to AB 1908, are discussed herein.

Legal Requirements

The provisions of AB 1908, largely contained in Education Code Sections 15278, et seq., provide specific legal requirements relative to Citizens Oversight Committees. These legal requirements include the purpose of the Committee, the establishment and appointment of members to the Committee, authorized activities of the Committee, membership on the Committee meeting and procedural requirements applicable to such Committee and limitations and requirements relative to school district support of the Committee. Each of these matters is briefly discussed below.

It should be noted that the requirements relating to Citizens Oversight Committees are only applicable to general obligation bond measures which are called pursuant to the provisions of Proposition 39 and the related legislation. These specific legal requirements are not applicable to general obligation bond measures called pursuant to the previously existing statutes (66-2/3% favorable voting requirement) although the school district calling such a general obligation bond measure may wish to reference a citizens committee and form a citizens committee under such requirements and guidelines as the school district shall direct.

The Measure M bond proposal of the Cypress Elementary School District (“District”), was called and conducted pursuant to the provisions of Proposition 39 and related State legislation. In light of the success of Measure M the District and its Board of Trustees (“Board”) will be required, under the provisions of the resolution which called the Measure M bond election and State law, to establish and appoint initial members to a Citizens’ Oversight Committee pursuant to Education Code Section 15278, *et seq.*, to account for the District’s expenditure of bond proceeds approved as part of Measure M (“Bond Proceeds”). The appointment of the initial members of the Citizen’s Oversight Committee must occur within 60 days of the adoption by the Board Resolution certifying the election results (which was adopted on January 13, 2009).

Purpose of the Committee

The Committee's primary purpose is to inform the public at least annually in a written report regarding the expenditure of the applicable Bond Proceeds. In carrying out this purpose the Committee can undertake any of the following:

- (a) Actively review and report on the proper expenditure of taxpayers' money for school construction;
- (b) Advise the public as to whether the District is in compliance with the following Constitutional requirements:
 - (i) Bond Proceeds must be expended only for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities;
 - (ii) No Bond Proceeds may be used for any teacher or non-construction administrator salaries and other non-construction operating expenses;
 - (iv) Annual independent performance audits must be performed; and
 - (v) Annual independent financial audits must be performed.

Appointment and Membership

Education Code Section 15278(a) requires that the Board establish the Committee and appoint the initial members within sixty (60) days after the date that the Board enters the results of the Election on its minutes (i.e. adopts the resolution certifying the election results). The Resolution and Policy and Regulations adopted by the Board has been tailored to the District's needs and includes procedures for selecting appointees to the Committee.

Once the District has determined the appropriate appointment process, the Board must appoint certain qualifying members. Specifically, the Committee must consist of at least seven (7) members (and may be larger) to serve for a term of two (2) years, without compensation. Members may, but are not entitled to, serve for a maximum of two (2) consecutive terms. No Committee member(s) may be a District employee, official, vendor, contractor or consultant. In addition, the Committee must include all of the following in its membership:

- (a) One member who is active in a business organization representing the business community located within the school district;
- (b) One member who is active in a senior citizens organization;
- (c) One member who is active in a bona fide taxpayer association;

- (d) One member shall be the parent or guardian of a child enrolled in the District; and
- (e) One member shall be both a parent or guardian of a child enrolled in the District and active in a parent-teacher organization, such as the parent-teacher association or school site council.

Members of the Committee are expressly subject to the requirements and limitations of Government Code Section 1090, *et seq.* (which prohibits involvement in public agency contracts) and Government Code Section 1125, *et seq.* (which prohibits incompatible public offices).

Committee Activities

In furtherance of its purpose (e.g., informing the public regarding the District's Bond Proceeds expenditures), the Committee may, by law, engage in any of the following activities:

- (a) Receive and review copies of annual performance audits, which will be prepared by an independent consultant selected by the District;
- (b) Receive and review copies of annual financial audits, which will be prepared by an independent consultant selected by the District;
- (c) Inspect school facilities and grounds to ensure that Bond Proceeds will be expended for the purposes set forth in the bond measure approved by the voters;
- (d) Receive and review copies of any deferred maintenance proposal or plans developed by the District;
- (e) Review efforts by the District to maximize Bond Proceeds by implementing cost-saving measures, including, but not limited to:
 - (i) Mechanisms designed to reduce the cost of professional fees;
 - (ii) Mechanisms designed to reduce the costs of site preparation;
 - (iii) Recommendations regarding the joint use of core facilities;
 - (iv) Mechanisms designed to reduce costs by incorporating efficiencies in school site design; and
 - (v) Recommendations regarding the use of cost-effective and efficient reusable plans.

The Committee must issue regular reports of the results of its activities and must issue at least one report for each year the Committee exists. We also note that the Committee shall establish meeting dates, times, and place(s) and that applicable notices must be published/posted

in accordance with the Ralph M. Brown Act. All Committee proceedings must be open to the public and shall be subject to the provisions of the Ralph M. Brown Act. Moreover, all documents formally received and/or issued by the Committee will be a matter of public record.

The term of the Committee shall expire at the end of the fiscal year in which all of the approved Bond Proceeds (and earnings thereon) have been expended, the Committee has issued its final required report as specified by law, and the Committee has conducted its final meeting in accordance with applicable law. As a practical matter, once all Bond Proceeds have been expended, the final Committee meeting has been held and the final Committee report has been approved, the Committee is functionally terminated.

District Support of Committee

In order to assist the Committee with its authorized activities in furtherance of its purpose, the District must provide certain support to the Committee, but must do so without expending any Bond proceeds. Specifically, the Board must provide the Committee with administrative and technical assistance in furtherance of the Committee's purpose. The District may limit this assistance to all such assistance which is reasonable in nature.

In addition, the District must provide sufficient resources to publicize the conclusions of the Committee. Education Code Section 15280(b) requires that certain Committee documents be made available on an internet website maintained by the District. The District bears the cost (without expending Bond Proceeds) to establish, operate, maintain and update such an internet website. Committee minutes, reports and formally received documents received must appear on the identified website.

Policy and Regulations

By adopting a Policy and Regulations for the Committee, the District has provided for guidance and operational parameters for the Committee within the statutorily prescribed requirements. Although the Committee may establish its own procedures for conducting its meetings, the following are provisions and requirements that the District has included in the Policy and Regulations:

- (a) Replacing Committee members in the event of a vacancy.
- (b) Clarifying that the role of the Committee is exclusively limited to oversight regarding the Bond Proceeds, and that no additional authority exists regarding decisions to expend Bond Proceeds.
- (c) Encouraging parents, community members, and news media representatives to attend Committee meetings. When individual schools are placed on the Committee meeting agenda, those schools' parent groups should be notified and encouraged to attend. Posting and dissemination of notice of the meetings of the Committee can be covered in the regulations.

- (d) Specifying what expenses and costs the District will absorb in providing technical and administrative assistance and publicizing Committee reports and conclusions, such as providing Committee meeting locations/facilities, for Committee meeting agendas, materials, requested information, informational reports and Committee meeting minutes, presenting information on the designated Committee Internet Website(s) and by other means, such as newsletters, etc., maintaining Committee records and files, completing and transmitting correspondence on behalf of the Committee, and responding to informational requests from the Committee or its individual members.

The applicability of the legal matters discussed may differ substantially in individual situations. The foregoing information has been prepared by Bowie, Arneson, Wiles & Giannone as an overview of the subjects discussed and should not be construed as individual legal advice.