

**AMES COMMUNITY SCHOOL DISTRICT**  
**INDEPENDENT ACCOUNTANT'S REPORT ON**  
**APPLYING AGREED UPON PROCEDURES**  
**FOR THE PERIOD**  
**OCTOBER 15, 2003 THROUGH NOVEMBER 14, 2006**

## Table of Contents

		<u>Page</u>
Officials		3
Independent Accountant’s Report on Applying Agreed Upon Procedures		5-6
Detailed Recommendation:	<u>Finding</u>	
Physical Plant and Equipment Levy (PPEL) Projects	A	8
Staff		9
	<u>Schedule</u>	
District Prepared Spreadsheet	1	10-13
Reconciliation of Amount Paid to CPMI, Inc.	2	14
	<u>Exhibit</u>	
District Legal Counsel Opinion	A	15-18

**Ames Community School District**

**Officials**

<u>Name</u>	<u>Title</u>	<u>Term Expires</u>
<b>Board of Education (Before September 2006 Election)</b>		
Ronald Werner-Wilson	President	2008
Gail Johnston	Vice President	2006
Mary Ann Dilla	Board Member	2006
Roy Cakerice	Board Member	2006
Brian Dieter	Board Member	2006
Pat Brown	Board Member	2007
Mike Murray	Board Member	2008
<b>(After September 2006 Election)</b>		
Ronald Werner-Wilson	President	2008
Gail Johnston	Vice President	2009
Francis Todey	Board Member	2007
Pat Brown	Board Member	2007
Mike Murray	Board Member	2008
Roy Cakerice	Board Member	2009
Anita Rollins	Board Member	2009
<b>District Officials</b>		
Linda Beyea	Superintendent	2007
Karen A. Shimp	District Secretary/Treasurer and Chief Financial Officer	2007
Ahlers & Cooney, P.C.	Attorney	2007

**Ames Community School District**



**OFFICE OF AUDITOR OF STATE**  
**STATE OF IOWA**

David A. Vaudt, CPA  
Auditor of State

State Capitol Building  
Des Moines, Iowa 50319-0004

Telephone (515) 281-5834 Facsimile (515) 242-6134

Independent Accountant's Report on Applying Agreed Upon Procedures

To the Board of Education of the  
Ames Community School District:

We have performed the following procedures, which were agreed to by the Ames Community School District, solely to assist you in reconciling the amounts paid and due to CPMI, Inc. with the contract for the period October 15, 2003 to November 14, 2006. The Ames Community School District's management is responsible for compliance with the contract. This agreed upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the Ames Community School District (District). Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures we performed were as follows:

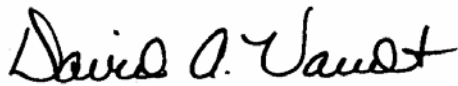
1. Verified the mathematical accuracy of District prepared spreadsheets detailing invoices submitted by CPMI, Inc.
2. Reconciled amounts reported as paid to CPMI, Inc. on the District prepared spreadsheets to amounts recorded in the District's general ledger.
3. Traced amounts reported as paid to CPMI, Inc. on the District prepared spreadsheets to invoices or other supporting documentation.
4. Traced amounts reported as due to CPMI, Inc. for items provided on behalf of the District on the District prepared spreadsheets to invoices or other supporting documentation.
5. Attempted to determine whether amounts paid or due to CPMI, Inc. for items provided on behalf of the District represent liabilities of the District, are properly supported or are outside of the scope of the middle school, high school and PPEL project contract with CPMI, Inc.
6. Recalculated any balance due to CPMI, Inc. under the middle school and high school project phases of the contract, including items provided on behalf of the District, and attempted to recalculate any balance due to CPMI, Inc. under the PPEL phase of the contract, including items provided on behalf of the District.
7. Reconciled the amount reported by the District as paid to CPMI, Inc. to the amount reported as paid to CPMI, Inc. in the Auditor of State's Report on Reaudit for the period July 1, 2004 to June 30, 2005.

Based on the performance of the procedures described above, we identified a recommendation for the District. Our recommendation is described in the Detailed Recommendation section of this report. Unless reported in the Detailed Recommendation, no items were noted during the performance of the specific procedures listed above.

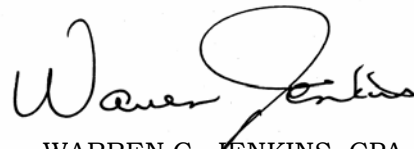
We were not engaged to and did not conduct an audit of the Ames Community School District, the objective of which would be the expression of an opinion on the financial statements of the Ames Community School District. Accordingly, we do not express such an opinion. Had we performed additional procedures, or had we performed an audit of financial statements of the Ames Community School District, other matters might have come to our attention that would have been reported to you.

This report, a public record by law, is intended solely for the information and use of the officials, employees and citizens of the Ames Community School District and other parties to whom the Ames Community School District may report. This report is not intended to be and should not be used by anyone other than these specified parties.

We would like to acknowledge the assistance extended to us by personnel of the Ames Community School District. Should you have any questions concerning any of the above matters, we shall be pleased to discuss them with you at your convenience.



DAVID A. VAUDT, CPA  
Auditor of State



WARREN G. JENKINS, CPA  
Chief Deputy Auditor of State

March 4, 2008

## **Detailed Recommendation**

Ames Community School District

Detailed Recommendation

October 15, 2003 through November 14, 2006

- (A) Physical Plant and Equipment Levy (PPEL) Projects – The Agreement for Project Manager Services for the middle school construction (phase 1), high school renovation (phase 2) and various projects funded by the Physical Plant and Equipment Levy (PPEL) (phase 3), Section 3.2, requires “The payment requests should include detailed summary of work performed, the date and amount of time worked and the person who performed the work.”

The following invoices for work performed under the PPEL portion of the contract did not include details of the date and time worked and the person who performed the work.

- Invoice number 17265 totaling \$164,859.73, dated February 28, 2006 and paid by the District on May 25, 2006.
- Invoice number 17422 totaling \$6,728.00, dated May 31, 2006 and paid by the District on July 17, 2006.

Although the District provided information on certain PPEL projects, we were unable to determine whether all of the projects for which billings were submitted under phase 3 were outside the scope of work performed on projects already covered under phases 1 and 2 of the contract. We are, therefore, unable to determine the propriety of amounts paid and owed to CPMI, Inc. under the PPEL portion of the management contract (phase 3).

Recommendation – The District should monitor compliance with contractual provisions which require a detailed summary of work performed, the date and amount of time worked and the person who performed the work prior to authorizing further payments under the contract. Whether the District should have paid the PPEL phase invoices or should pay \$14,428.80 allegedly due is a legal matter and, accordingly, the District should consult legal counsel to determine the disposition of this matter.

Response – The District will implement a contract monitoring system to ensure compliance with all contract provisions.

The District has consulted with Legal Counsel on the propriety of payments made on the PPEL phase. The opinion of Counsel is presented in the attached Exhibit A.

Conclusion – Response accepted.



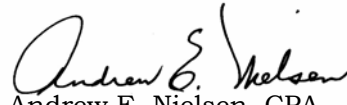
---

Ames Community School District

Staff

This agreed upon procedures engagement was performed by:

Marlys K. Gaston, CPA, Manager  
Phillip J. Cloos, Staff Auditor  
Andrew E. Nielsen, CPA

  
Andrew E. Nielsen, CPA  
Deputy Auditor of State

**Schedule 1**

## Ames Community School District

## District Prepared Spreadsheet

For the period October 15, 2003 through November 14, 2006

**SUMMARY OF INVOICES PAID**

	<u>Total</u>	<u>Contract Amount</u>	<u>Pd on Behalf of Dist</u>
Middle School Project	\$270,563.18	\$261,904.12	\$8,659.06
High School Project	\$174,745.28	\$148,595.70	\$26,149.58
PPEL	\$187,411.20	\$187,411.20	\$0.00
<b>TOTAL</b>	<b>\$632,719.66</b>	<b>\$597,911.02</b>	<b>\$34,808.64</b>

**BALANCE DUE TO CPMI**

CPMI Contract:	<u>Contract Amt</u>	<u>Amt Paid</u>	<u>Bal. Due</u>
Middle School Project	\$279,024.00	\$261,904.12	\$17,119.88
High School Project	\$153,136.00	\$148,595.70	\$4,540.30
PPEL	\$201,840.00	\$187,411.20	\$14,428.80
<b>TOTAL-CPMI Contract</b>	<b>\$634,000.00</b>	<b>\$597,911.02</b>	<b>\$36,088.98</b>

## Items Paid on Behalf of Ames CDS:

Fence	\$15,571.05	\$0.00
Trailer	\$7,800.00	\$9,650.00
Phone/Internet	\$7,769.39	\$2,457.12
Other	\$3,668.20	\$0.00
<b>TOTAL-Pd on Behalf of ACSD</b>	<b>\$34,808.64</b>	<b>\$12,107.12</b>

<b>TOTAL DUE</b>		<b>\$48,196.10</b>
------------------	--	--------------------

## Ames Community School District

## District Prepared Spreadsheet

For the period October 15, 2003 through November 14, 2006

**CPMI Contract  
Payments Made  
Ames Middle School Project**

<u>Date</u>	<u>Amount Paid</u>	<u>Contract</u>		<u>Items Paid on Behalf of the District</u>			<u>Invoice #'s</u>
		Hours	Other Exp.	Trailer	Phone/Internet	Gen. Cond.	
8/31/2006	\$79.83		\$79.83				18041
7/17/2006	\$160.56		\$160.56				17420, 422 Bal incl in PPEL
6/30/2006	\$281.67		\$272.72		\$8.95		17361
5/15/2006	\$914.41		\$887.56		\$26.85		17085, 144, 187,217, 257, 298, 329
9/30/2005	\$14,945.54	\$13,325.00	\$190.53	\$350.00	\$580.01	\$500.00	17024
9/30/2005	\$15,005.12	\$13,940.00	\$206.17	\$850.00	\$8.95		17064
7/29/2005	\$12,927.57	\$12,775.00	\$143.62		\$8.95		16975
6/30/2005	\$16,273.54	\$15,850.00	\$267.55		\$155.99		16851
6/30/2005	\$12,955.77	\$12,650.00	\$148.13		\$157.64		16895
6/30/2005	\$15,407.28	\$15,000.00	\$14.86		\$392.42		16933
4/15/2005	\$10,869.43	\$10,520.00	\$192.57		\$156.86		16812
3/15/2005	\$13,834.80	\$13,490.00	\$196.48		\$148.32		16765
1/31/2005	\$16,774.91	\$16,465.00	\$223.07		\$86.84		16734
12/16/2004	\$15,193.10	\$14,155.00	\$248.08	\$450.00	\$340.02		16679
11/30/2004	\$15,147.00	\$14,235.00	\$286.26	\$450.00	\$175.74		16608
11/8/2004	\$7,357.52	\$6,600.00	\$143.61	\$450.00	\$163.91		16594
10/29/2004	\$4,515.00	\$4,515.00					16594
9/30/2004	\$4,099.94	\$3,480.00	\$157.35	\$450.00	\$12.59		16553
9/15/2004	\$6,305.58	\$5,350.00	\$329.98	\$450.00	\$175.60		16503
6/30/2004	\$8,951.57	\$7,750.00	\$275.04	\$450.00	\$476.53		17894
6/30/2004	\$8,620.00	\$8,170.00		\$450.00			17901
5/28/2004	\$13,899.51	\$13,335.00	\$84.56	\$450.00	\$29.95		17831
4/30/2004	\$11,007.94	\$9,835.00	\$920.00			\$252.94	17806
3/31/2004	\$2,552.59	\$2,540.00	\$12.59				17752
2/27/2004	\$3,980.00	\$3,980.00					17709
1/30/2004	\$16,654.00	\$16,540.00	\$114.00				17647
1/15/2004	\$7,495.00	\$7,495.00					17616
12/17/2003	\$11,895.00	\$11,895.00					17575
10/30/2003	\$600.00	\$600.00					17509
10/15/2003	\$1,859.00	\$1,859.00					15493
<b>TOTAL</b>	<b>\$270,563.18</b>	<b>\$256,349.00</b>	<b>\$5,555.12</b>	<b>\$4,800.00</b>	<b>\$3,106.12</b>	<b>\$752.94</b>	
	<b>\$270,563.18</b>		<b>\$261,904.12</b>		<b>\$8,659.06</b>		

**Schedule 1**

## Ames Community School District

## District Prepared Spreadsheet

For the period October 15, 2003 through November 14, 2006

**CPMI Contract  
 Payments Made  
 Ames High School Project**

<u>Date</u>	<u>Amount Paid</u>	<u>Contract</u>		<u>Items Paid on Behalf of the District</u>			<u>Invoice #'s</u>
		Hours	Other Exp.	Trailer	Phone/Internet	Gen. Cond.	
11/14/2006	\$219.26		\$209.31		\$9.95		18154
9/29/2006	\$214.59		\$204.64		\$9.95		18101
8/31/2006	\$509.04		\$448.34		\$60.70		18040
7/17/2006	\$236.59		\$24.83		\$211.76		17421
6/30/2006	\$737.55		\$41.75	\$550.00	\$145.80		17362
5/15/2006	\$7,708.47		\$1,739.65	\$1,400.00	\$1,653.56	\$2,915.26	see below
4/15/2005	\$31,842.77	\$14,950.00	\$599.07	\$350.00	\$372.65	\$15,571.05	16813
3/15/2005	\$14,858.40	\$13,340.00	\$884.91	\$350.00	\$283.49		16764
1/31/2005	\$15,654.86	\$14,730.00	\$158.02	\$350.00	\$416.84		16735
12/16/2004	\$14,295.68	\$13,870.00	\$415.73		\$9.95		16665
11/30/2004	\$16,120.35	\$13,490.00	\$1,326.46		\$1,303.89		16605
10/29/2004	\$13,639.74	\$12,775.00	\$680.01		\$184.73		16596
9/15/2004	\$6,058.30	\$6,030.00	\$28.30				16504
9/30/2004	\$6,830.00	\$6,830.00					16555
6/30/2004	\$6,130.00	\$6,130.00					17899
6/30/2004	\$8,035.00	\$8,035.00					17892
5/28/2004	\$5,860.00	\$5,860.00					17830
4/30/2004	\$13,880.00	\$13,880.00					17807
3/31/2004	\$11,914.68	\$11,805.00	\$109.68				17727
<b>TOTAL</b>	<b>\$174,745.28</b>	<b>\$141,725.00</b>	<b>\$6,870.70</b>	<b>\$3,000.00</b>	<b>\$4,663.27</b>	<b>\$18,486.31</b>	
	<b>\$174,745.28</b>		<b>\$148,595.70</b>		<b>\$26,149.58</b>		

Invoices included in 5/15/06 amount paid: 16850, 16894, 16932, 16974, 17025, 17063, 17087, 17143, 17186, 17216, 17258, 17280, 17330

Ames Community School District

District Prepared Spreadsheet

For the period October 15, 2003 through November 14, 2006

**CPMI Contract  
Payments Made  
PPEL Projects**

<u>Date</u>	<u>Amount Paid</u>	<u>Contract Hours</u>	<u>Other Exp.</u>	<u>Items Paid on Behalf of the District</u>			<u>Invoice #s</u>
				<u>Trailer</u>	<u>Phone/Internet</u>	<u>Gen. Cond.</u>	
7/17/2006	\$6,728.00	\$6,728.00					17420, 422 Was Pd in AMS Fund
5/25/2006	\$164,859.73	\$164,859.73					17265
12/16/2004	\$1,235.00	\$1,235.00					16664
11/30/2004	\$255.00	\$255.00					16610
10/29/2004	\$4,515.00	\$4,515.00					16595
9/30/2004	\$2,820.00	\$2,820.00					16554
8/31/2004	\$1,808.47	\$1,790.00	\$18.47				16505
6/30/2004	\$1,240.00	\$1,240.00					17895
6/30/2004	\$850.00	\$850.00					17900
5/28/2004	\$3,100.00	\$3,100.00					17832
<b>TOTAL</b>	<b>\$187,411.20</b>	<b>\$187,392.73</b>	<b>\$18.47</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	
	<b>\$187,411.20</b>		<b>\$187,411.20</b>		<b>\$0.00</b>		

**Schedule 2**

Ames Community School District

Reconciliation of Amount Paid to CPMI, Inc.

For the period October 15, 2003 through November 14, 2006

**Reconciliation of Amount Paid to CPMI, Inc.**

In August 2003, the District entered into a contract with CPMI, Inc. to provide project management services for three “phases” or projects, including middle school construction (phase 1), high school renovation (phase 2) and management of various Physical Plant and Equipment Levy (PPEL) projects (phase 3). The total contract price for these three phases was \$634,000.

In a Report of Reaudit of the Ames Community School District for the period July 1, 2004 to June 30, 2005, including procedures for certain items paid before and after this period, the Auditor of State reported the District had paid \$670,011 to CPMI, Inc. under the project management contract. The District subsequently accumulated total payments through November 14, 2006 of \$632,719.66 as shown on Schedule 1.

As part of the procedures agreed upon by the District, we reviewed the amount the District asserted it had paid to CPMI, Inc. and reconciled the amount to the amount reported in our Report of Reaudit. The variance between the two amounts occurred for the following reasons:

- At the time of our reaudit procedures, the District had not reconciled the project costs per the Financial Status Reports (FSRs) to the District’s general ledger. Accordingly, to determine the amount paid to CPMI, Inc. we reviewed actual invoices, many of which were marked “paid”, we believed represented payments to CPMI, Inc. Subsequent to our reaudit procedures, we determined only a portion of many of those invoices were actually paid. The amounts paid were those identified as “reimbursables”. The contract amounts noted on those invoices had not been paid.
- The amount reported in our Report of Reaudit covered payments/invoices dated August 31, 2003 up to and including two claims paid on May 15, 2006. The amount identified as paid by the District included payments through November 2006, six months beyond the period of our Reaudit report.

Total reported as paid to CPMI, Inc in reaudit report	\$ 670,010.96
Total CPMI, Inc. invoices included as paid in reaudit but not included in Schedule 1	(242,410.00)
Total CPMI, Inc. invoices included on Schedule 1 but not included in reaudit.	<u>205,118.70</u>
Total paid to CPMI, Inc. per Schedule 1 prepared by District	<u>\$ 632,719.66</u>

Ames Community School District

District Legal Counsel Opinion

AHLERS & COONEY, P.C.

PAUL F. AHLERS (1913-2002)

JAMES EVANS COONEY (1917-1998)

200 COURT AVENUE, SUITE 600 • DES MOINES, IOWA 50309-2231 • PHONE: 515-243-7611 • FAX: 515-243-2149 • WWW.AHLERSLAW.COM

EDGAR H. BITTLE	LINDA L. KNIEP	STEVEN M. NADEL	ANDREW T. TICE	OF COUNSEL
LANCE A. COPPOCK	JOHN D. HINTZE	ELIZABETH A. GROB	NICHOLAS A. KLINFELDT	KENNETH H. HAYNIE
DAVID H. LUGINBILL	PETER PASHLER	JENNIFER A. CLENDENIN	AMANDA G. WACHUTA	H. RICHARD SMITH
MARK W. BEERMAN	IVAN T. WEBBER	NATHAN J. OVERBERG	KRISTY M. LATTA	ROBERT G. ALLBEE
EDWARD W. REMSBURG	JANE B. MCALLISTER	JOHN H. BUNZ	JASON M. CRAIG	RICHARD G. SANTI
RANDALL H. STEFANI	JAMES C. HANKS	DANIELLE JESS HAINDFIELD	GORDON D. GRETA	RONALD L. SUTPHIN
ELIZABETH GREGG KENNEDY	R. MARK CORY	JAMES R. WAINWRIGHT		JOHN F. MCKINNEY, JR.
WADER R. HAUSER III	RONALD L. PEELER	J. ERIC BOEHLERT		PHILIP J. DORWEILER (Retired)
WILLIAM J. NOTH	ANDREW J. BRACKEN	MICHAEL M. GALLOWAY		

March 4, 2008

Karen Shimp, Chief Financial Officer  
 Ames Community School District  
 415 Stanton Avenue  
 Ames, Iowa 50014

RE: CPMI Agreement – Payment of Part 3, Physical Plant and Equipment Levy (“PPEL”) Funded Projects

Dear Karen,

You have asked us if the District is obligated to pay CPMI for Part 3 of the Agreement, PPEL-funded projects. Specifically, when the District issued the Request for Proposals for Project Management services, the District provided information to all bidders that the PPEL would generate approximately \$1,500,000 per year for projects selected by the District. The District asked all bidders to provide an annual fee to handle such services. CPMI, who was eventually awarded the contract, provided an annual rate of \$67,280 to manage the PPEL-funded projects. CPMI handled various PPEL-funded projects until the spring of 2006, when the District notified CPMI that it did not need CPMI to handle any PPEL-funded projects for the fiscal year beginning July 1, 2006 or thereafter.

You have asked us if the District is obligated to pay CPMI the annual fee of \$67,280 for the years in which the District directed CPMI to manage PPEL-funded projects or if the District should pay CPMI on an hourly basis, not to exceed the annual fee.

It is our opinion that the District contracted with CPMI to pay a lump sum, fixed fee amount of \$67,280 annually, which means the District contractually is obligated to pay CPMI the amount quoted for each year in which CPMI managed PPEL-funded projects for the District.

WISHARD & BAILY - 1888; GUERNSEY & BAILY - 1893; BAILY & STIPP - 1901; STIPP, PERRY, BANNISTER & STARZINGER - 1914; BANNISTER, CARPENTER, AHLERS & COONEY - 1950; AHLERS, COONEY, DORWEILER, ALLBEE, HAYNIE & SMITH - 1974; AHLERS, COONEY, DORWEILER, HAYNIE, SMITH & ALLBEE, P.C. - 1990

March 4, 2008

Page 2

**FACTS**

In the beginning of 2003, the District issued a Request for Project Manager Services (“RFP”) for three projects: 1) construction of the new Middle School; 2) remodeling of and construction of additions to the High School; and 3) manage various PPEL-funded projects, as directed by the District. The RFP states that the PPEL would generate about \$1.5 million annually which might be spent on a large number of qualifying projects or a small number of large projects, and that the mix (and, thus, the corresponding degree of labor required) would vary “greatly each year and from year to year.” See RFP, p. 3. Part III, section M, of the RFP requires that the bidders submit a fixed lump sum fee proposal, which is again stated in Attachment B, Price Proposal of the RFP. The RFP then lists the percentages of the fixed lump sum fee which will be paid during each phase of each project. Further, Part I, section M of the RFP, provides that bidders may submit alternate proposals, including a guaranteed maximum price proposal.

In May, 2003, the District held an informational meeting with potential bidders and issued “Written Responses to Questions” in response to questions posed at that meeting. One of the questions states:

*Q: RFP, page 5, top paragraph – Is the District seeking a lump sum or a rate for the services?*

*A: Both. For the parts one and two [middle school and high school projects], we are seeking a lump sum. For part three [PPEL-funded projects], we are seeking an annual rate. If there are other creative ideas, we are open to those and please submit them as alternates.*

*Question 10.* The same document also contains the following:

*Q: RFP, page 15, item M, paragraph 3 – What is meant by “Payment request should include a detailed summary of work performed?”*

*A: It is expected that portions of the payment process for the PM will be done in small amounts and not simply the lump sum associated with [the] portion of the process. For example, in item d you are restricted to 73% of the lump sum fee for the duties associated [with] construction administration. It is anticipated that the construction administration phase of the projects will extend over many months. The District will not pay the entire portion of the fee at the beginning of the construction administration phase, and it is expected that the PM will not be will[ing] to wait until the end of this phase to receive compensation. To the satisfaction of both entities, progress payments*



## Ames Community School District

## District Legal Counsel Opinion

March 4, 2008

Page 3

*will then necessarily need to be made along the way. The specifics of these progress payments will be negotiated after-the-fact with the successful PM.*

*Question 22.*

Article 3, *Compensation of the Project Manager's Services*, section A, *Fixed Lump Sum Fee*, of the agreement dated June 30, 2003 between the District and CPMI, clearly states, "The amount of the fee for all services provided by the Project Manager in this RFP shall be a fixed lump sum amount." The agreement then goes on to state the fee for services for Phase 3, PPEL-funded projects, is \$67,280/year. This also is consistent with the price proposal submitted by CPMI in response to the RFP.

**ANALYSIS**

In the construction industry, the fee arrangement in any contract is a term of art. Although there are several variations of each fee arrangement, it is only necessary to discuss three of the basic fee arrangements in this case. A *lump sum fee* (or stipulated sum) contract provides that a vendor will provide a specific service for a specific price. If the cost to provide the service is less than the fee quoted, the vendor still bills the same price. On the other hand, if the cost to provide the service is more than the fee quoted, usually the vendor still bills the same price. The benefit to the owner (or here, the District) is a firm, known price for the service.

A *unit price* contract is usually broken down by "units" and a fixed price is established for each unit. For example, a "unit" could be a cost per hour to perform the service and the vendor then bills the owner the agreed upon unit price times the number of units performed. In this type of contract, there is no firm, known price for the service; the owner simply pays as billed by the vendor and the work progresses.

A *guaranteed maximum price* contract, provides a maximum price to perform the service but the vendor bills the owner on some agreed upon basis, such as per hour, as the work is performed. Typically these contracts are limited to the scope of the work as described in the agreement and the costs of the project as defined in the contract and documented by the vendor. These agreements usually contain an owner's "right to audit costs" clause in the agreement and require a greater degree of oversight from the owner.

In the present case, the District's agreement with CPMI is a lump sum agreement, as clearly stated in the RFP, the Agreement, and in the "Written Responses to Questions". As stated by the District, the detail level of each invoice was to be negotiated between the District and CPMI, and was only meant to even-out payments, instead of front- or end-loading the lump sum payment to CPMI during each phase of the project. The District asked for and received from CPMI an annual price to manage PPEL-funded projects as

Ames Community School District

District Legal Counsel Opinion

March 4, 2008

Page 4

designated by the District. Thus, in the years in which the District requested CPMI to manage PPEL-funded projects, the District must pay CPMI the annual fee.

This opinion is intended for those to whom it is addressed, is based on legal research as of this date and the facts as stated in this opinion. We assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may come to our attention after the date of this letter or any changes in law that may occur after the date of this letter. If you have any questions or additional concerns, please let us know.

Very truly yours,

AHLERS & COONEY, P.C.



Elizabeth A. Grob

EAG:ck

cc: Andy Nielsen

57132809540.305