

# Harris Construction agreed to consult for free on Gaston Middle project

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The construction company that built Fresno Unified's new Rutherford B. Gaston Middle School agreed to do pre-construction consulting for free in exchange for winning the project's contracts worth nearly \$42 million, [a document obtained by The Fresno Bee shows](#).

The deal signed seven months before Harris Construction Co. was picked to build the southwest Fresno school shows the company agreed to vet the project, draft the building schedule and estimate construction costs. The company was also expected to listen in on conference calls with the building designers and consult with the architect.

The February 2012 consulting contract says "in return for district's selection of" Harris Construction as the general contractor, the company would perform the consulting at no cost.

The contract says that if Harris Construction wasn't picked, Fresno Unified would owe the company \$5,000. Because the deal was so cheap, and the school board's stamp of approval is only required on contracts larger than \$15,000, trustees didn't have to sign off on it. At least one trustee, Carol Mills, said this week that she'd never heard of the consulting agreement until The Bee provided her with a copy.

It seems unreasonably low and it seems that there was definitely an understanding that Harris was going to get that job. That \$5,000 is just to give it some type of appearance of legitimacy.

Kevin Carlin, attorney for Stephen Davis

The agreement, given to The Bee by the attorney of a [Fresno developer who just won an appeal against Fresno Unified and Harris Construction](#), shows the district and company were linked on the Gaston project months earlier than was ever known publicly.

Attorney Kevin Carlin said the document shows Harris Construction was all but guaranteed the lease-leaseback agreement to construct the school. Harris Construction was awarded the \$36.7 million building contract in late September 2012. The company was awarded a separate \$5.3 million lease-leaseback deal in May 2012 to demolish Carver Academy Middle, which sat on the land where Gaston Middle was built, and do site work like plumbing and landscaping.

Carlin said the consulting cost "seems unreasonably low and it seems that there was definitely an understanding that Harris was going to get that job. That \$5,000 is just to give it some type of appearance of legitimacy."

Carlin represents Stephen Davis, a principal at Fresno-based Davis Moreno Construction Inc., who won an appeal last week arguing the actual construction of the school illegally avoided the standard competitive bidding process.

\$117,000

Amount that Fresno Unified School District has spent on attorney fees opposing Stephen Davis in Fresno County Superior Court and in the 5th District Court of Appeal

Lease-leaseback agreements differ from traditional competitive bidding agreements in that a developer is hand-picked at a guaranteed maximum price. School districts across California have used the method for years, although it was originally intended as a way for cash-poor districts to fund often expensive building projects. Under lease-

leaseback, the school district leases land to the developer for a low price, the developer pays all the upfront costs to construct the school on the leased land, and then the district pays to “lease” the school until it has paid off the building price. The appellate decision says the Gaston Middle deal was never a true lease since the district paid for the building right away.

School board members had little to say about the court’s decision, although the board did remove a separate lease-leaseback agreement from its meeting agenda last week pending advice from the district’s legal counsel.

The district has spent \$117,000 litigating the case, district spokeswoman Amy Idsvoog said.

On the pre-construction agreement, trustees Christopher De La Cerda and Janet Ryan said Monday that they were awaiting more information before they could comment.

“The entire board is going to meet with our attorneys on Friday,” Ryan said. “At that time we’ll get the information. Until the entire board has the information, there is nothing to say.”

Board President Cal Johnson declined to comment other than to say he was reading through the agreement. Idsvoog said Superintendent Michael Hanson was unavailable to comment. Hanson did not return several phone calls and text messages left by The Bee.

Mills said she hadn’t seen the agreement until The Bee provided her with a copy.

“I definitely wish I had been notified about this agreement before it happened and certainly at the time it was occurring,” Mills said. “I don’t recall ever hearing about this type of agreement but the question has arisen whether this is happening on other projects and the board hasn’t been informed.”

Trustee Brooke Ashjian, who owns a sealing and paving business and also develops properties, said he read the agreement with great interest since he’s familiar with the types of services developers like Harris Construction provide.

Calling the \$5,000 figure a “Disneyland” number, Ashjian said everything that was expected of Harris Construction would likely cost closer to \$50,000.

“Being in the industry, there’s no way you could do all of those things for \$5,000,” he said. “Either I don’t have all the information or something is not right.”

## **Conflict of interest question**

In the court decision filed last week, the trio of 5th District Court of Appeal justices said Davis had grounds to press a conflict of interest case against Harris Construction owner Richard Spencer since he acted as a consultant on a project he was later awarded. Whether there was an actual conflict would have to be decided by a trial court. Spencer declined to comment on Monday.

Carlin said he already has his smoking gun.

The details outlined in the consulting agreement make it clear that Harris Construction was in charge of “things that would actually influence the cost or profitability of the ultimate project.”

Without someone to independently look at those details, it could lead to a rotten deal for the district, Carlin said.

“You would want that being done by someone who is independent of the construction of the project, so you know whatever recommendations they are making to you are really in your best interest, not theirs,” Carlin said.

That point wasn’t lost on Ashjian, who said it’s a case of the “fox guarding the chickens.”

“It’s getting away from protecting the taxpayer from paying too much, and the fiduciary responsibility of a trustee,” Ashjian said.

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