

Purchase Requisition # \_\_\_\_\_

**MT. DIABLO UNIFIED SCHOOL DISTRICT**  
1936 Carlotta Drive  
Concord, CA 94519

**AGREEMENT BETWEEN  
MT. DIABLO UNIFIED SCHOOL DISTRICT  
AND INDEPENDENT CONTRACTOR**

THIS AGREEMENT is made this 3 day of September 2013, by and between the Mt. Diablo Unified School District (hereinafter "District") and Mt. Diablo Unified School District (hereinafter "Contractor").

District hereby engages Contractor to render described services under the terms and conditions of this Agreement.

1. Performance of Services

- (a) Contractor agrees to perform the services described on Exhibit "A" (hereinafter "Services") on page 4 of this Agreement as an independent contractor. Contractor will determine the means, manner, method, and details of performing the Services. Contractor shall be responsible for providing the materials, tools, transportation, and workspace necessary for the performance of the services. Contractor may, at Contractor's own expense, use non-District employees to perform the Services under this Agreement. Subcontractors may be used with the written approval of the District only.
- (b) Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of the District. Contractor shall be solely responsible for the professional performance of the services, and shall receive no assistance, direction, or control from District. Contractor shall have sole discretion and control of Contractor's services and the manner in which they are performed.

2. Compensation. District agrees to compensate Contractor for the performance of the Services on the following basis:

\$67,959 total fee for Services

000	-	5290	-	53	-	5800	\$16,929.
<u>BUDGET CODE</u>							

The basis of the fee for Services shall be as follows:

- a. \$ \_\_\_\_\_ per hour,
- b. \$ \_\_\_\_\_ per day, or
- c. \$ 6.75 per pick-up

000 - 6110 - 47 - 5893 \$51,030.

Not to exceed \$67,959.

Check one:

- Partial Payments: Contractor shall invoice District on a monthly basis or as agreed to for all hours worked pursuant to this Agreement.
- Payment in Full: Contractor shall invoice District on completion of services. District Administrator will verify invoice indicating that all required services have been performed.

Contractor shall be responsible for all expenses incurred in association with the performance of the Services.

3. Term and Termination. This Agreement will become effective on 8/26/13. This Agreement will terminate upon the completion of the Services or when terminated as set forth below.

Either party may terminate this Agreement at any time by giving thirty (30) days written notice to the other party. Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notice to the breaching party. Termination shall be effective immediately on receipt of said notice.

4. Relationship of the Parties. Contractor enters into this Agreement as, and shall continue to be, an independent contractor. Under no circumstances shall Contractor be considered an employee of District within the meaning of any federal, state, or local law or regulation including, but not limited to, laws or regulations governing unemployment insurance, old age benefits, workers' compensation, industrial illness or accident coverage, taxes, or labor and employment in general. Under no circumstances shall Contractor look to District as his/her employer, or as a partner, agent, or principal. Contractor shall not be entitled to any benefits accorded to District's employees, including, without limitation, workers' compensation, disability insurance,

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vacation, or sick pay. Contractor shall be responsible for providing, at Contractor's expense, and in the Contractor's name, disability, workers' compensation or other insurance, as well as licenses and permits usual or necessary for conducting the Services hereunder.

Contractor shall pay, when and as due, any and all local, state and federal income or other taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide District with proof of said payments upon demand. Contractor hereby indemnifies District for any claims, losses, costs, fees, liabilities, damages, or injuries suffered by District arising out of Contractor's breach of this Section.

- 5. Fingerprinting and Criminal Records Check of Contractor's Employees. Contractor shall comply with the provisions of Education Code §45125.1 regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of the contractor and/or its employees. Contractor shall not permit any employee to have any contact with District pupils until such time as Contractor has verified in writing to the governing board of the District that such employee has not been convicted of a felony, as defined in Education Code §45125.1.
- 6. Rules and Regulations. All results and regulations of the Board of Education and all federal, state, and local laws, ordinances and regulations are to be observed strictly by Contractor pursuant to this Agreement.
- 7. Indemnification. Contractor shall and does hereby indemnify, defend, and hold harmless District, and District's officers, employees, agents and representatives from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities and damages, including, without limitation, interest, penalties, and reasonable attorneys fees and costs, that District may incur or suffer and that arise, result from, or are related to any breach or failure of Contractor to perform any of the representations, warranties, and agreements contained in this Agreement.
- 8. Insurance. Insurance shall be endorsed to include the District, its officers, officials, agents, employees and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Contractor. Such insurance shall contain a provision that the insurance afforded thereby to the District and its officers, officials, agents, employees and volunteers shall be primary insurance to the full limits of liability of the policy, and that if the District, its officers, officials, agents, employees and volunteers have other insurance against a loss covered by such a policy, such other insurance shall be excess insurance only.
- 9. Ownership of Designs and Plans. Contractor agrees that all designs, plans, reports, specifications, drawings, schematics, prototypes, models, inventions and all other information and items made during the course of this Agreement and arising from the Services shall be owned by and assigned to District as its sole and exclusive property.
- 10. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by telegram, overnight delivery service, or facsimile transmission, addressed as follows:

<u>DISTRICT</u>	<u>CONTRACTOR</u>
Mt. Diablo Unified School District	Name: <u>David H. Costa</u>
1936 Carlotta Drive	Address: <u>Information on File</u>
Concord, CA 94519-1397	_____
Attn: Superintendent	_____
	Phone: _____
	Fax: _____
	Tax ID #: _____

Any notice personally given or sent by telegram or facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

- 11. Entire Agreement of Parties. This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both parties.
- 12. California Law. This Agreement shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California. The parties further agree

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that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Contra Costa County, California.

- 13. Attorneys' Fees. If either party files any action or brings any proceedings against the other arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to its costs or attorneys' fees.
- 14. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

MT. DIABLO UNIFIED SCHOOL DISTRICT

CONTRACTOR:

By: \_\_\_\_\_  
Budget Administrator Date

By: \_\_\_\_\_  
Date

Title: Chief Financial Officer

Title: Vendor

Authorized by: \_\_\_\_\_  
Assistant or Associate Superintendent Date

Approved: \_\_\_\_\_  
Assistant Superintendent of Personnel Date

**TO BE COMPLETED BY DISTRICT BUDGET ADMINISTRATOR**

It is my determination that this contractor is not required to comply with Ed. Code §45125.1 regarding the submission of fingerprints to the Department of Justice.

OR

This contractor is subject to the requirements of Ed. Code §45125.1 and will not begin services until I have received evidence that the Department of Justice has completed its criminal background investigation.

\_\_\_\_\_  
Administrator's Signature Date

Prior to commencement of service, sign and forward completed original contract to Fiscal Services.

\_\_\_\_\_  
Originator's Signature

Billing Address if reimbursed by outside agency—i.e. ASB, PTA, PFC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Distribution*  
original: Fiscal Services for payment  
copy: Contractor  
copy: Originator/Budget Administrator

**EXHIBIT A**

**LIST OF SERVICES TO BE PERFORMED BY CONTRACTOR**

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1. David H. Costa to provide courier service for site pick-up from 33 MDUSD sites for the 2013-14 school year. Delivery of pick-up to Western Federal Credit Union at \$6.75 per site pick-up. Log sheets will be implemented for each school site to verify pick-up.

Service will begin September 3, 2013 with two pick-ups per week beginning September 3 and end on June 19, 2014. Total pick-ups is 76 X 33 sites X \$6.75. Not to exceed \$16,929.00

2. **Food Services.** See attached Contract Between MDUSD Food & Nutrition Services and David Costa. Contract will expire on June 13, 2014 and will not exceed \$51,030. (180 days X 42 sites X \$6.75)  
Service will begin on August 26, 2013.

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Services of Contractor arranged by

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Fiscal Services, Chief Finance Officer  
Department / School

CONTRACT BETWEEN

MDUSD FOOD AND NUTRITION SERVICES  
AND  
DAVID H. COSTA

This contract is between MDUSD Food and Nutrition Services (FS) and David H. Costa.

This contract sets forth the terms and conditions upon which David H. Costa agrees to pick up monies and related documents from school cafeterias and offices.

The term of this contract is for ten (10) months, commencing on August 26, 2013 and continuing until June 13, 2014.

**Food Service Responsibilities**

FS cafeterias shall put their monies and related documents in a locked bag for pick up.

FS will pay David H. Costa \$6.75 per pick-up.

**Responsibilities of David H. Costa**

David H. Costa shall pick up the Food and Nutrition Service's monies, related documents and additional items as necessary and deliver them from the school sites (cafeterias or offices) and the Food and Nutrition Service's office to the Bank of America daily except holidays, furlough days and vacation days.

David H. Costa will not pick up monies and related documents in an unlocked bag.

David H. Costa will provide documentation showing that he is currently bonded, insured for General Liability in the amount of \$2 million, and insured for Auto Liability in the amount of \$1 million.

David H. Costa will comply with the terms and conditions as stated on the purchase order.

David H. Costa will provide pick-up routes and monthly log sheets to Food and Nutrition Services.

This contract may be canceled by either party with 30 days notice.

The parties have executed this contract as of the respective dates written below.

MDUSD FOOD AND NUTRITION SERVICES

DAVID H. COSTA

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

BY: \_\_\_\_\_

DEBORAH COOKSEY  
General Counsel  
Mt. Diablo Unified School District  
1936 Carlotta Drive  
Concord, CA 94519-1397  
Phone: 682-8000, Ext. 4001

DAVID H. COSTA



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
05/22/2013

<b>PRODUCER</b> Diablo Valley Insurance Agency 801 Ygnacio Valley Rd, Ste 100 Walnut Creek, CA 94598 Harry Bowers		Phone: 925-210-1717	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
<b>INSURED</b> David H. Costa		<b>INSURERS AFFORDING COVERAGE</b> INSURER A: Allied Insurance INSURER B: Commerce West Insurance Co. INSURER C: Liberty Mutual Surety INSURER D: INSURER E:	<b>NAIC #</b> 13161

### COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRO	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJ <input type="checkbox"/> LOC	ACP780523490	09/17/2012	09/17/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	CCV0385799	09/16/2012	09/16/2013	COMBINED SINGLE LIMIT (EA ACCIDENT) \$ 1,000,000 BODILY INJURY (PER PERSON) \$ BODILY INJURY (PER ACCIDENT) \$ PROPERTY DAMAGE (PER ACCIDENT) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
		<b>EXCESS / UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				WC STATU- TORY LIMITS <input type="checkbox"/> OTH- ER \$ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under SPECIAL PROVISIONS below				
		<b>OTHER</b> Bond	66658560000	09/17/2012	09/17/2013	Bond 50,000

### DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CARRIER for Mt Diablo School Dist  
 2004 Toyota Prius SEDAN VIN#JTDKB20U340044288  
 Mt Diablo School District is named as an Additional Insured as it applies to the contract with the named insured.

### CERTIFICATE HOLDER

MTDIA-4

Mt. Diablo Unified School District  
 District ATTN: food services  
 Attn: Renee Steen  
 1936 Carlotta Drive  
 Concord, CA 94519

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE: Harry Bowers