

# Mt. Diablo Unified School District

Independent Contract Agreement

Man Wah Cheng

Project Inspector Services

Inspections to Support

2010 Measure C – Concord High School Interior  
Improvements & Stadium Improvements

At

Concord High School

Dated

**May 22, 2017**

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 22<sup>nd</sup> day of May 2017, by and between the Mt. Diablo Unified School District (hereinafter "District") and Man Wah Cheng, Construction Inspections (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:

\$ 30,600.00 total fee for Services (NOT TO EXCEED)

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

- a. \$ 85 per hour (see Exhibit A – item 4.1),  
b. \$ \_\_\_\_\_ per day, or  
c. \$ \_\_\_\_\_ per engagement.

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 be paid upon completion of services after obtaining originator's signature at the bottom of this contract, indicating that 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 May 22, 2017. 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, 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>Man Wah Cheng</u>
1936 Carlotta Drive	Address: <u>MWC &amp; Associates</u>
Concord, CA 94519-1397	<u>18482 Center Street</u>
Attn: Superintendent	<u>Castro Valley, CA 94546</u>
	Phone: <u>(925) 330-8256</u>
	Fax: <u>(510) 280-7327</u>
	Tax ID #: <u>564-49-7264</u>

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 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: Mark Jan [Signature] 5/22/17  
Date

Title: Director – Measure C

Title: P.I.

Approved: \_\_\_\_\_  
MDUSD Superintendent 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

**Upon completion of Services, sign below and forward original contract to Fiscal Services for payment.**

\_\_\_\_\_  
Originator's Signature Date Phone

Measure A  
~~326,700~~ - \$30,600.00

Budget Code(s)

<i>Distribution</i>
<i>original: Fiscal Services for payment</i>
<i>copy: Contractor</i>
<i>copy: Originator/Budget Administrator</i>

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

1. The Project Inspector's services shall include but not be limited to the following tasks:
  - 1.1. Provide resident inspection services to insure construction compliance with code, plans, and specifications as required of public schools in the State of California. Issue correction and stop work notices and notify the District and Construction Manager in writing if work does not conform to contract documents codes, plans, and specifications. If the Contractor fails to immediately correct the deviation, the Project Inspector shall notify the Construction Manager in writing of the continued deviation and send copies of such notice to the architect and the Division of the State Architect.
  - 1.2. The Project inspector will submit an updated deficiency list to the Construction Manager on a weekly basis.
  - 1.3. Verify that Contractor's As-Built record documents are updated on a monthly basis as necessary to accurately document as-built conditions and approved changes to the documents.
  - 1.4. Maintain liaison with the A/E, Construction Manager, Testing Lab, District and other regulatory agencies and governing bodies as necessary to maintain project continuity.
  - 1.5. On a daily basis, submit an activity report to the Construction Manager, including the following information:
    - 5.1. Activities performed by the Contractors, the number of workers in each trade, and areas where work is performed.
    - 5.2. Weather conditions.
    - 5.3. Equipment and materials delivered to or removed from the site.
    - 5.4. Verbal and written communication and clarifications of the work given to the Contractor.
    - 5.5. Inspection by representatives of regulatory agencies, including copies of any reports. Identify the individual and time when the independent inspection agency was on site.
    - 5.6. Occurrences or conditions that might affect Contract Sum or Contract Time.
    - 5.7. Visitors to the site, company name and reasons for visit.
    - 5.8. Project Inspector's record journal to include "Pertinent Calls" relating to conflicting issues regarding changes to documents, i.e. Plans, specifications, change orders and job conditions affecting the interests of the District.
    - 5.9. Any work or material in place that does not correspond with the codes, drawings or specifications, as well as resulting action taken. List any other problems or abnormal occurrences that arise during each day, including notations of any particular lack of activity on the part of the Contractor. Note corrective actions taken.
    - 5.10. Times of day Project Inspector was present on site.
  - 1.6. Notwithstanding anything expressed or implied to the contrary, the Project Inspector shall comply with all federal, state, county and local governmental requirements.
  - 1.7. Review and monitor Contractor's construction methods and procedures during all construction activities. Report to the Construction Manager all quality deviations as soon as they are observed.
  - 1.8. Attend all meetings as required by contract documents or requested by District or Construction Manager, i.e. pre-construction meetings, payment review meetings, specification review meetings, coordination meetings, weekly progress meetings, pre-installation meetings, schedule review meetings, etc.
  - 1.9. Assist the Construction Manager and District in scheduling all required site tests and testing laboratory visitations required by the contract documents. Observe and record dates and times of all test procedures and results.
  - 1.10. Inspect, verify, and document Contractor's delivered equipment and materials to ensure that they meet submittal and specification requirements. Such inspection must occur within 24 hours of Contractor's delivery to the job site. (Note: this is contractor's responsibility to notify Project Inspector when materials and equipment will be delivered on-site.)
  - 1.11. Review and initial the Contractor's Monthly Progress Payment Requests at payment review meetings.
  - 1.12. Assist the District in the review of Contractor's Submittals.
  - 1.13. When the Contractor's work or a designated portion thereof is substantially complete, prepare for the District a list of unresolved "correction" or "non-compliance" notices issued by Project Inspector and submit to the Construction Manager.
  - 1.14. At completion of project, deliver a copy of all inspection records and project correspondence to the District.
  - 1.15. Prior to commencement of work, the Project Inspector will cooperate with the District and Construction Manager to develop an inspection plan for all inspection required for the contract work.
  - 1.16. Initiate and file all project-related required inspection forms, verified reports, and semi-monthly and quarterly reports with the Office of the State Architect prior to their due date, with copies to the Construction Manager and the Architect.
  - 1.17. Review and initial contractor's daily forms for extra work, tracking time and material change order work.
  - 1.18. Attend regular Project Inspector meetings conducted by District for purposes of coordination and training.

## 2. ADDITIONAL RESPONSIBILITIES OF CONTRACTOR

- 2.1.** Project Inspector must meet the qualifications for an on-site Project Inspector as provided in the State Building Standards Administrative, Title 24, Code Part 1 Section 4-333 of the California Code of Regulations. Contractor shall have a General Inspector Class 1, 2 or 3 Certificate as required for this work, from the Division of the State Architect.
- 2.2.** The Project Inspector represents and maintains that he is skilled in the professional calling necessary to perform all services, duties and obligations required by this Agreement to fully and adequately complete the Project. The Project Inspector shall perform the Services and duties in conformance to and consistent with the standards generally recognized as being employed by school inspectors in the State of California. The Project Inspector further represents and warrants to the District that it has all licenses, permits, qualifications, and approvals of whatever nature are legally required to practice its profession, and the Project Inspector shall keep all such licenses and approvals in effect during the term of this Agreement.
- 2.3.** The District retains the Project Inspector on an independent contractor basis and the Contractor is not an employee of the District.
- 2.4.** Project Inspector shall obtain approval of District before entering into contracts with any other school district during the term of this contract.
- 2.5.** Project Inspector shall neither subcontract any portion of this work nor employ assistants to perform any duties other than clerical under this contract. The Project Inspector shall pay all wages, salaries and other amounts due such personnel in connection with their performance for services and as required by law. The Project Inspector shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers' compensation insurance. All such salaries and obligations shall be at Project Inspector's own expense.
- 2.6.** Project Inspector shall not have a financial or investment interest in any of the persons, Contractors or companies with responsibilities for the construction project, nor shall he have the authority to assist the Contractor in the performance of the Contractor's work, nor to undertake any responsibilities of the Contractor, its employees, or sub-contractors. It shall be understood, however, that the Project Inspector, acting on behalf of the District, shall make every attempt to identify and help solve problems preventing the orderly progress of the project.
- 2.7.** Project Inspector shall not have the authority to grant permission of modifications, changes or deviations from the contract document.
- 2.8.** Project Inspector shall provide District with proof of Department of Justice clearance as required to work in the presence of children on a public school site.
- 2.9.** Project Inspector will comply with the most current Department of the State Architect IR A-8, *Project Inspector & Assistant Inspector duties and performance rating by DSA*.

### 3. Provide inspection services during course of construction for:

- 3.1.** BID1782 Concord High School Stadium and Field Improvements & BID1783 Concord High School Interior Campus Improvements

### 4. Special Conditions:

- 4.1.** Hourly costs for this contract shall be billed at the following rate(s):
- 1.1.** Lead Project Inspector (DSA Class I) - \$85.00
- 1.2.** Project Inspector (DSA Class I) - \$75.00
- 4.2.** Cost(s)/Invoice shall identify no less than site, date, hour (per dated) and classification.
- 4.3.** Inspection reports shall use District management software (Constructware). Lead inspector will be issued one (1) license to facilitate use.

Services of Contractor arranged by

Brad Hunter 5/22/17  
Signature

2010 Measure C  
Department / School

## EXHIBIT "A"

**CRIMINAL BACKGROUND CHECK CERTIFICATION****Mt. Diablo Unified School District  
Consultant/Independent Contractor Agreement – Criminal Background Check**

Name of Independent Consultant / Contractor:	Man Wah Cheng
Services to be performed under the agreement:	Project Inspector
Schools/Locations where services will be performed:	Concord High School
Total amount to be paid by the District under this Agreement:	\$30,600.00 NTE
Term of Agreement:	Complete Feb. 2018
Check the applicable box(es) and fill in any blanks	
1	I certify that none of my employees, nor myself, will have more than limited contact (as defined by the District) with District students during the term of the Agreement. Therefore, we have not been fingerprinted.
2A	<input checked="" type="checkbox"/> If this box is checked, then Box 2B also applies and must be checked to indicate these employees have been fingerprinted. The following employees will have more than limited contact (as defined by the District) with District students during the term of the Agreement (attach and sign additional pages, as needed):
2B	<input checked="" type="checkbox"/> I certify that the employees noted in 2A above have been fingerprinted under procedures established by the California Department of Justice, and the results of those fingerprints reveal that none of these employees have been arrested or convicted of a serious or violent felony, as defined by the California Penal Code.

**Certification by Contractor/ Consultant**

"I certify that the information provided herein is true and accurate. I further acknowledge that during the term of my Agreement with the District, if I learn of additional information which differs from the responses provided above, I promise to forward this additional information to the District immediately"

  
 Independent Contractor / Consultant Signature

\_\_\_\_\_  
 Superintendent or Designee's Signature

Man Wah Cheng  
 Print Name  
 Independent Contractor / Consultant

5/22/17  
 Date

\_\_\_\_\_  
 Print Name  
 Superintendent or Designee's Signature

\_\_\_\_\_  
 Date