

Mt. Diablo Unified School District

Independent Contract Agreement

Nacht and Lewis Architects (NLA)

Site Master Programming

At

Various Bay Point Sites

Dated
September 27, 2011

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 27th day of September 2011, by and between the Mt. Diablo Unified School District (hereinafter "District") and Nacht & Lewis Architects (NLA) (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 5 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:

\$ 160,750.00 total fee for Services (NOT TO EXCEED)

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

- a. \$ _____ per hour,
b. \$ _____ per day, or
c. \$ X 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 September 27, 2011. 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>Mr. Brian J. Maytum</u>
1936 Carlotta Drive	Address: <u>Nacht & Lewis Architects (NLA)</u>
Concord, CA 94519-1397	<u>600 O Street, Suite #100</u>
Attn: Superintendent	<u>Sacramento, CA 95811</u>
	Phone: <u>(916) 329-4000</u>
	Fax: <u>(916) 329-7474</u>
	Tax ID #: <u>94-2688872 (SEE W-9)</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: [Signature] 9/2/2011
Date

Title: _____

Title: PRINCIPAL - NACHT & LEWIS

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

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

Originator's Signature Date Phone

000.7605.58.6210 - \$160,750.00 (NTE)

Budget Code

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

EXHIBIT A

LIST OF SERVICES TO BE PERFORMED BY CONTRACTOR

Mt. Diablo USD, District requests professional services necessary to complete master planning at various Bay Point locations. Service under this agreement is anticipated to include, but not limited to:

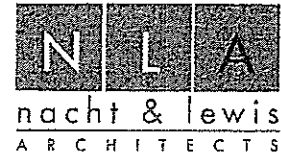
1. Professional services:
 - 1.1. Tour sites to assess existing buildings, site elements, layouts, set-backs, occupancies, available area, ADA restroom and play yards.
 - 1.2. Develop written programming indicating special requirements, number of staff and their responsibilities, status of existing restrooms to meet access compliance, or recommendations on improvements required to meet Title 24 including requirements for power, low voltage and HVAC.
 - 1.3. Develop program preliminary floor plans indicating locations and size of program special requirements of interior and exterior areas
 - 1.4. Site Investigation - to include a comprehensive review of site and District plans. As well as, review of existing as-built site information.
 - 1.5. Facilitate Program Meeting(s) – to include any required meetings with District site, District administration (Dent and 2010 Measure C) and any state, county or local users (example: County Health, Ambrose Park and Recreation).
 - 1.6. Schematic Design - to include a complete set of schematic drawings for discussion within the District. Any design must anticipate the need to meet Division of State Architect (DSA), county and/or other agencies deemed as having potential jurisdiction over potential work.
 - 1.7. Executive Presentation(s) – if requested, selected firm shall anticipate presentation of all work products to Board and/or 2010 Measure C – Over-site Committee.
 - 1.8. Develop written programming indicating special requirements, number of staff and their responsibilities, status of existing restrooms to meet access compliance, or recommendations on improvements required to meet Title 24 including requirements for power, low voltage and HVAC.
 - 1.9. Develop program preliminary floor plans indicating locations and size of program special requirements of interior and exterior areas
 - 1.10. Support District with developing project schedules.
 - 1.11. Provide recommendation addressing need to submit to DSA
 - 1.12. Develop a conceptual estimate.
 - 1.13. Utilize “CONSTRUCTWARE” for document control. District may provide one license for the duration of this project. Additional licenses are available for approximately \$950.00 each.
2. Exclusions:
 - 2.1. Topographic survey
 - 2.2. Development of CEQA documents or mitigation measures
 - 2.3. DSA and/or Local Fire Authority Fees
3. District acknowledges exclusion of any fees and/or associated DSA costs. Typically, unless approved in advance, payment for DSA fees will be issued directly from District.
4. RFP1581 dated May 9, 2011, associated scope and requirements are anticipated and hereby incorporated by reference.
5. Any addition services (extra meetings) and/or scope shall be approved by District, in writing, prior to completion.

Services of Contractor arranged by

Signature

2010 Measure C
Department / School

July 27, 2011



Mr. Tim Cody
Assistant Program Manager
Maintenance, Operations & Facilities
Mt. Diablo Unified School District
1480 Gasoline Alley
Concord, California 94520

Received
opined
AUG 12 2011

**Subject: MDUSD RFQ No. 1581
Site Master Programming at Various Bay Point Sites
Cost Proposal for Architectural Services**

2010 Measure C

Dear Mr. Cody,

Per the requirements of the RFQ for above referenced project, Nacht & Lewis Architects is pleased to submit this cost proposal for your consideration. This proposal is based upon the following scope of work, and in our professional opinion, inclusive of all services and materials required to complete the scope of services outlined in RFQ No. 1581. All inclusions assume that each site option will be exercised in under a single agreement with all other sites at one time. Meeting quantities identified assume that some meetings will be combined providing for a more efficient process.

Phase I Inclusions (data collection):

1. Site visits as required to document each existing site and building facility condition, space uses and condition assessments.
2. Facilitate (2) comprehensive meetings with MDUSD district staff, administration, Facilities & Planning staff and others as required to gain understanding of all objectives to master programming campaign and obtain any required background information on relevant program activities, curriculum and education standards.
- 7 3. Facilitate (5) comprehensive workshop with each site's administration and staff (1 each for 5 schools) to gain understanding of local issues specific to each school site.
- 2 4. Facilitate (2) comprehensive workshops with interested parents and community members to gain understanding of issues from parents of children attending each school as well as concerned community members.
- 1 5. Facilitate (1) meeting with MDUSD district staff, administration, Facilities & Planning staff and others as necessary to present survey findings and key points of discussion from individual site staff and community members.
6. Miscellaneous meetings and/or phone conversations with other state, county and local agencies or organizations with an identified concern regarding facility changes.
7. Coordination of MDUSD provided facility use information, student loading status and projections, and collaboration with MDUSD's outside consultants for these projections.
8. Coordination with MDUSD consultants on any state eligibility allowances.
9. Compilation and documentation of all site facility survey information, workshop data, consultant data and projections, etc.

600 Q Street, Suite 100
Sacramento, CA 95811

916/329-4000
916/329-7474 fax
www.nlarch.com

Phase II Inclusions (programming studies, schematic design and final programming report):

1. All services required to provide programming options for each site including analysis of anticipated space uses, recommended reconfigurations and/or new construction.
2. Documentation of all baseline student loading capacities and master planned adjustments including assumptions based on the implementation of class size reduction, preparatory periods, etc.
3. Graphic and written schematic design options for each site including graphic site and floor plans, space uses and area summaries.
4. Review of schematic design options with District and interested parties, including (1) meeting with the MDUSD Board of Trustees if needed.
5. Review of any relevant design and construction issues with the Division of the State Architect and other required state or local agencies.
6. Estimate of construction cost for planned new construction, modernization and space/site reconfigurations including the cost of construction, utilities, site work and temporary facilities if needed.
7. Development of construction implementation schedules for each site.
8. Publication of final report documentation.
9. Utilization of (1) C-Ware license for the duration of the project, with single license being provided by the MDUSD.
10. Deliverables include electronic (PDF, AutoCad, Excel, Word, MSProject, etc.) files of all presentation and progress work. (5) hard copies of all draft and final published documents will also be provide with (1) set being unbound. Large format plots, prints and miscellaneous small format copies will be provided for all workshops and meetings.

Exclusions:

1. Development of CEQA documents or mitigation measures. Nacht & Lewis will coordinate any recommendations from the District's CEQA consultant as needed.
2. Although not anticipated at this early stage of programming and planning activities, DSA and/or local fire authority review fees are not included.

Per the requirements of the RFQ, the cost proposal requires a line item format addressing (8) individual options including the complete scope of work at each current site and the vacant Alves property. The following fees have been divided among the individual sites as requested, however, it should be noted that better efficiency and better pricing will be obtained if the entire program is executed at one time under a single contract. Pricing for a single program fee inclusive of all 8 options is also provided for your consideration. All fees are lump sum, billed on a percent complete basis and inclusive of all reimbursable items and allowances.

Option 1 – Riverview MS Conversion to 7-12	\$22,250
Option 2 – Shore Acres ES Conversion to K-6	\$22,250
Option 3 – Rio Vista ES Conversion to K-6	\$22,250
Option 4 – Bel Air ES Conversion to K-6	\$22,250

Option 5 – Delta View ES Conversion to K-6	\$22,250
Option 6 – Alves Property for K-5	\$15,750
Option 7 – Alves Property for K-6	\$15,750
Option 8 – Alves Property for K-8	\$18,000
Total Value of all Sites if Contracted Individually	\$160,750
Single Program Option (all scope under one agreement)	\$108,500

It should be noted that considerable efficiency is gained when all options are combined into a single program. By individualizing options, additional meetings and trips will be required and work efforts duplicated, thus increasing costs.

As with all of our fees, we are willing to discuss and negotiate once the program and deliverables are further clarified. If you have any immediate questions, please do not hesitate to give me a call.

Sincerely,



Brian J. Maytum, AIA, LEED AP
Principal

January 1, 2011

**Nacht & Lewis Architects
2011 Billing Rate Schedule
Hourly Rates**

<u>POSITION</u>	<u>RATE</u>
Principal	235.00
Director of Design	170.00
Senior Project Manager	165.00
Senior Planner	155.00
Project Manager	145.00
Senior Designer	145.00
Senior Project Architect	140.00
Senior Project Coordinator	135.00
Project Architect	130.00
Project Coordinator	120.00
Virtual Design Coordinator	120.00
Designer	95.00
Senior Design Technician	95.00
Design Technician	85.00
Interior Designer	85.00
Graphic Designer	85.00
Office Manager	95.00
Project Administrator	65.00
Administration	60.00

Billing rates are subject to review and change on the anniversary date of the contract.