

Mt. Diablo Unified School District

Independent Contract Agreement

Capital Engineering Consultants, Inc.

Specialized Support

For

**California Proposition 39 California Clean
Energy Jobs Act of 2012**

MDUSD 1674

**Dated
April 30, 2014**

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 30th day of April, 2014, by and between the Mt. Diablo Unified School District (hereinafter "District") and Capital Engineering Consultants, Inc. (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:

\$ 275,000.00 total fee for Services (NOT TO EXCEED)

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

- a. \$ _____ per hour (see Exhibit A – item 4.1),
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 April 30, 2014. 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. Chuck Shinneman</u>
1936 Carlotta Drive	Address: <u>Capital Engineering Consultants, Inc.</u>
Concord, CA 94519-1397	<u>11020 Sun Center Drive, Suite 100</u>
Attn: Superintendent	<u>Rancho Cordova, California 95670</u>
	Phone: <u>(916) 851-3500</u>
	Fax: <u>(916) 631-4424</u>
	Tax ID #: <u>94-1492674</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: _____
Date

By: [Signature] 4/14/14
Date

Title: Interim Special Project Manager

Title: Dir. of Sustainability

Authorized by: _____
Assistant or Associate Superintendent Date

Approved: _____
Interim Superintendent Date

TO BE COMPLETED BY DISTRICT BUDGET ADMINISTRATOR	
<input type="checkbox"/> 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	
<input checked="" type="checkbox"/> 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 _____

000.3702.55.6205 - \$265,375.00 NTE
000.8002.55.6205 - \$ 9,625.00 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

1. **Perform energy survey/audit at all District sites including the following:**
 - 1.1. **Project Kick-Off Meeting:** Meet with MDUSD personnel to confirm potential scope of work, coordinate site/data access, and schedule site surveys for all facilities being audited.
 - 1.2. **Utility Bill Analysis:** Evaluate four years-worth of utility data to calibrate energy models, energy use, water use intensities and cost indicators to comparable school buildings. Determine approximate breakdown of utility use by end-use categories.
 - 1.3. **Walk-Through Audit:** Survey sites to identify energy efficiency opportunities and conduct a water fixture survey. Conduct staff interviews and inspect equipment as necessary to complete audit.
 - 1.4. **Analysis of Measures:** Using energy models based on nameplate and utility data determine the cost effectiveness of identified energy efficiency opportunities as measured according to Prop 39 guidelines. Reasonable assumptions for building type and age may be utilized in analysis. Analysis should use existing MDUSD utility rates as well as increased rates based on a CEC accepted escalator.
 - 1.5. **Feasibility Report Summary:** Present an executive summary, brief facility description, utility baseline analysis, and a description of measures and associated energy and water cost savings.
 - 1.5.1. Feasibility studies which will include but are not limited to:
 - 1.5.1.1. Energy management control systems
 - 1.5.1.2. Large-scale lighting controls
 - 1.5.1.3. Individual room lighting control (motion and audio sensors)
 - 1.5.1.4. Optical reflectors for fluorescent light fixtures
 - 1.5.1.5. Sodium to florescent lighting conversion
 - 1.5.1.6. Conversion to HID
 - 1.5.1.7. Motion sensor control
 - 1.5.1.8. Day lighting control
 - 1.5.1.9. Exit sign conversion
 - 1.5.1.10. Other lighting modifications
 - 1.5.1.11. Air conditioning unit replacement and potential incorporation of already planned upgrades
 - 1.5.1.12. Chiller replacement
 - 1.5.1.13. Chiller optimization and control
 - 1.5.1.14. Economizer control
 - 1.5.1.15. Thermal storage for heating and cooling
 - 1.5.1.16. Environmental system control replacement
 - 1.5.1.17. HVAC system modifications incorporating already planned upgrades
 - 1.5.1.18. Variable speed/frequency drives
 - 1.5.1.19. Air compressor replacement/upgrade
 - 1.5.1.20. Fuel conversion
 - 1.5.1.21. Boiler/burner replacement
 - 1.5.1.22. Boiler heat recovery
 - 1.5.1.23. Boiler combustion controls
 - 1.5.1.24. Building envelope improvements including multi-pane windows
 - 1.5.1.25. Domestic hot and cold water systems
 - 1.5.1.26. Air management systems
 - 1.5.1.27. Kitchen appliance conversion to gas
 - 1.5.1.28. High efficiency motors
 - 1.5.1.29. Motor down-sizing
 - 1.5.1.30. Energy conservation awareness training
 - 1.5.1.31. Irrigation Systems
2. **Prepare engineering report and recommendations for projects. Report shall meet all District and CEC requirements.**
3. **Work with District staff to develop Energy Expenditure Plan in accordance with CEC regulations.**
4. **Act as District Liaison with CEC.**

5. **Additional Phases (if requested)** District reserves the right to issue a task order to complete subsequent phases necessary to facilitate completion of work identified in base scope of work. At this time, the District utilizes a number of contracting methods including design bid/build and lease/leaseback. Additional work may include services necessary, regardless of contracting methodology. Anticipated additional work may include the following phases:

5.1. **Project Planning Phase**

Phase shall consist of programming and design development necessary to assist District, and/or authorized representative in preparation of documentation and approval process on all Proposition 39 Projects.

5.2. **Construction Phase**

In conformance with DSA requirements, construction phase shall consist of assisting District and/or authorize representative during construction drawing phase including constructability review and estimate development including all services, reports and documentation necessary to support ALL DSA approved projects. All work shall be completed in conformance with all DSA requirements.

In addition to services above services, District may occasionally require specialized professional services, within the scope of this request and in support of special projects within the District.

6. **SCOPE OF SERVICES**

District anticipates the full complement of professional services to be provided by selected firm, including but not necessarily limited to the following:

- 6.1. **Engineering Services** - to include full range of professional engineering and analysis necessary to support District program.
- 6.2. **Special Facility Inspection/Auditing Services** - to include a full range of ASHRAE Level 2 certified special service(s) as required by item 3.1.1 and/or necessary to complete item 3.1.
- 6.3. **Administrative Support Services** - to include all management, supervision, analysis, review and reporting as necessary and/or required by applicable law, regulation and governing authorities, including issuance of all documentation required to obtain approval and final certification.
- 6.4. Services provided under previous headings should be substantially identical, with any minor modifications necessary to those required to meet District and CEC requirements.

7. **ADDITIONAL RESPONSIBILITIES OF CONTRACTOR**

7.1. Provide District with proof of Department of Justice clearance as required to work in the presence of children on a public school site.

7.2. Special Conditions:

7.2.1. Use District management software (Constructware). Contractor will be issued one (1) license to facilitate use.

Services of Contractor arranged by

Signature

2010 Measure C

Department / School