

Mt. Diablo Unified School District

Independent Contract Agreement

RGM and Associates

and

2010 Measure C

Dated

February 26, 2018

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 26th day of February 2018, by and between the Mt. Diablo Unified School District (hereinafter "District") and RGM and Associates (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:

Two hundred twenty-three thousand five hundred dollars (\$223,500.00) total fee for Services (NOT TO EXCEED)

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

- a. See Exhibit "B", RGM and Associates rate sheet attached

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 February 26, 2018. 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>RGM and Associates</u>
1936 Carlotta Drive	Address: <u>3230 Monument Way</u>
Concord, CA 94519-1397	<u>Concord, CA 94518</u>
Attn: Superintendent	Phone: <u>(925) 671-7717</u>
	Fax: _____
	Tax ID #: <u>94-3027280</u>

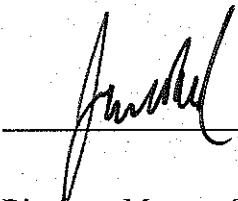
Any notice personally given or sent by telegram or facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three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

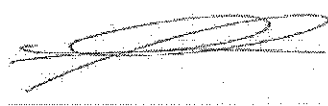
11. Entire Agreement of Parties. This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both parties.
12. California 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: 
 Title: Director – Measure C

By: 
 Date: 2/26/18

Name/ Title: Ralph Caputo/ President

Approved: _____
 MDUSD 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 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 _____

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

See Attachment "A" RGM and Associates Fee Estimate Break-Down with construction managers tasks listed in the matrix.

Exhibit "B"



Program and Construction Managers
Contractors and Builders

RGM and ASSOCIATES

3230 Monument Way

Concord, CA 94518

(925) 671-7717

FAX (925) 671-7788

PROGRAM and CONSTRUCTION MANAGEMENT SERVICES

STANDARD FEE SCHEDULE

Effective February 26, 2018

	<u>2018 Hourly Rates</u>
Principals	\$165.00
Senior Program/Project Manager	\$155.00
Project Manager/General Superintendent	\$145.00
Estimator/Scheduler/Plan Review	\$135.00
Project Superintendent	\$135.00
Project Engineer	\$110.00
Project Coordinator	\$ 95.00
Contract Administrator	\$ 75.00
Administrative Assistant	\$ 65.00
Secretarial/Clerical	\$ 55.00

Aforementioned rates include all taxes, insurance, health and welfare benefits, overhead and profit. Rates also include cell phone, usage rates, Laptop/PC for staff, PM truck & mileage.

Annual fee increases will be based on data provided by the Bureau of Labor Statistics, Consumer Price Index.

Reimbursables: at cost plus 12%, as approved by Owner.

Budget can be provided for reimbursable costs/services not provided by Owner, including:

- *Site Office, Equipment, Utility Services*
- *Postage/Mail/Overnight*
- *Reproducailes/Plan Reproduction*

ATTACHMENT "A" - RGM and Associates Fee Estimate Break-Down

Construction Manager's Tasks	CHS Bleacher Replacement				Restrooms Retrofit (10 sites)				Warehouse Retrofit				Hardscape and Doors (13 sites)				Total Hours			
	PM Hours	Principal Hours	PE Hours	Admin Hours	PM Hours	Principal Hours	PE Hours	Admin Hours	PM Hours	Principal Hours	PE Hours	Admin Hours	PM Hours	Principal Hours	PE Hours	Admin Hours	PM Hours	Principal Hours	PE Hours	Admin Hours
Design Phase/Bidding:																				
Program Development, General Planning, Advisory Support, and Program Oversight Assistance - All Projects, Perform Plan reviews and review budget cost estimate updates when asked.	0	0	0	0	24	4	4	12	8	4	0	12	8	4	0	8	40	12	4	32
Support the District's bid package Assembly in conjunction with Architect and District (Legal Counsel if required). Includes support to develop phasing schedules, definition of alternates, and review of final plans and specifications when requested.	0	0	0	0	24	0	8	12	8	0	0	12	8	0	0	8	40	0	24	32
Assist the District with developing the Advertisements for Bid. Solicit qualified contractors for bidding. District will publish in local paper and trade journals.	0	0	0	0	8	0	0	16	8	0	0	12	0	0	0	8	24	0	24	36
Assist District/Architect in Pre-bid RFIs when requested. District/Architect will facilitate distribution of plans, and will log and track plan-holder's list (Informal Projects). Support District/Architect (Formal Projects).	0	0	0	0	8	0	4	8	8	0	4	8	0	0	4	8	24	0	12	24
Assist to schedule, coordinate, and conduct Pre-bid conference at Project sites. Develop conference agenda and sign-in sheets.	0	0	0	0	8	0	8	4	8	0	8	4	8	0	8	4	24	0	24	12
Assist District in the bid opening, review bids with Architect, and make recommendations to the District.	0	0	0	0	12	0	8	12	16	0	8	12	8	0	8	4	36	0	24	28
Support the District in drafting the contracts and issuing the Notices to Proceed (Informal projects). Support District in review of DRAFT contracts produced by District (Formal Projects).	0	0	0	0	12	0	8	12	16	0	8	4	8	0	8	4	36	0	24	20
Construction Oversight:																				
Schedule and conduct a pre-construction conference. Type meeting notes, identify action items and distribute Meeting Minutes to team (Informal Projects). Support for Preconstruction Meetings (Formal).	12	0	0	12	12	0	12	12	12	0	12	12	12	0	12	12	48	0	48	48
Assist District and support Architect in reviewing project submittals.	4	0	4	12	4	0	4	12	4	0	4	0	4	0	4	0	16	0	16	36
Perform day-to-day oversight of construction activities and coordinate construction activities with the District Staff. (CHS Bleachers: 23 weeks, 8 hrs - DA, 4 hrs - BD, 0 hrs - RC, 4 hrs - JH); Restrooms Retrofit: 10 weeks, 8 hrs - DA, 4 hrs - BD, 0 hrs - RC, 4 hrs - JH; Warehouse Improvements: 15 weeks, 8 hrs - DA, 4 hrs - BD, 0 hrs - RC, 4 hrs - JH; Hardscape and Doors: 10 weeks, 2 hrs - DA, 4 hrs - BD, 0 hrs - RC, 4 hrs - JH).	92	0	184	92	40	0	80	40	60	0	120	60	20	0	40	20	212	0	424	212
Support all project meetings as requested.	8	0	24	8	8	0	24	8	16	0	48	0	4	0	12	0	36	0	112	0
Monitor the activities of the contractor for compliance with the schedule and other requirements.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.
Review contractor RFIs (Requests for Information) with Energy Manager, investigate, and respond to contractor Requests for Information. No log.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.
Review, log, and track change order requests and make recommendations to the District. <i>Note: Inc. sent by architect (Formal)</i>	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.
Assist Architect on punch list walk and list development. Present to contractor and follow up on items until complete.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.	Inc.
Project Close-Out:																				
Review status of project completion with Architect and District, and make recommendations to the District regarding the issuance and recording of a Notice of Completion.	8	0	8	4	8	0	8	4	16	0	16	4	8	0	8	4	40	0	40	16
Collect all close-out documents from the Contractor for review and comment by the Architect. Assist in review.	8	0	8	4	8	0	8	4	8	0	8	4	8	0	8	4	32	0	32	16
Coordinate any warranty follow up work that might be required. Not included.																				
Summary																				
Total Hours																	600	12	608	612
Hourly Rate																	\$166	\$166	\$110	\$78
Total Fee Estimate																	\$99,360	\$1,992	\$66,880	\$47,424
																				\$223,500