

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 1st day of March, by and between the Mt. Diablo Unified School District (hereinafter "District") and PHM Laboratory, Inc. (hereinafter "Contractor").

District hereby engages Contractor to render 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 7 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 and transportation 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 only with the written approval of the District.

(b) Contractor represents and warrants to District that Contractor and all of Contractor's employees, agents or volunteers (the "Contractor Parties") have in effect and shall maintain in full force throughout the Term of this Agreement all licenses, credentials, permits and any other legal qualifications required by law to perform the Services and to fully and faithfully satisfy all of the terms of this Agreement. If any of the Services are performed by any of Contractor's Parties, such work shall only be performed by competent personnel under the supervision of and in the employment of Contractor.

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

Not to exceed \$ 0.00 for Services.

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

a. \$ 0 per hour, b. \$ 0 per day, or c. \$ 0 per engagement.

_____ - _____ - _____ - _____ - _____ - _____ - _____ - _____ - _____ - _____ \$ _____

_____ - _____ - _____ - _____ - _____ - _____ - _____ - _____ - _____ - _____ \$ _____

_____ - _____ - _____ - _____ - _____ - _____ - _____ - _____ - _____ - _____ \$ _____

BUDGET CODE(S)

Check One: N/A

- Partial Payments: Contractor shall invoice District on a monthly basis or as agreed to for all hours worked pursuant to this Agreement.
- Partial Payments: District shall make a payment per schedule detailed in Exhibit A. District Administrator will verify invoice indicating that all required services have been performed by each timeline.
- 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. California Residency/Nonresidency. If Contractor and Contractor Parties are not residents of the State of California, payment made may be subject to nonresident withholding as defined by the Franchise Tax Board Revenue and Taxation Code, section 18662.

4. Term and Termination. This Agreement will become effective on March 1, 2021. 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. Upon termination of this Agreement, District will compensate Contractor only for services satisfactorily rendered to the date of termination.

5. Relationship of the Parties. Contractor enters into this Agreement as, and shall continue to be, an independent contractor. Under no circumstances shall Contractor or Contractor Parties be considered employees of the 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 or Contractor Parties 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.

6. Rules and Regulations. All rules, policies, and regulations of the Mt. Diablo Unified School District 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 hold harmless, defend and indemnify District and its officers, elected and appointed officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in this agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the District.

8. Equipment and Materials. Contractor at its sole cost and expense shall provide and furnish all tools, labor, materials, equipment, transportation services and any other items (collectively "Equipment") which are required or necessary to perform the Services in a manner, which is consistent with generally accepted standards of the profession for similar services. Notwithstanding the foregoing, District shall not be responsible for any damages to persons or property as a result of the use, misuse or failure of any Equipment used by Contractor or the Contractor Parties, even if such Equipment is furnished, rented, or loaned to Contractor or the Contractor Parties by District. Furthermore, any Equipment or workmanship that does not conform to the regulations of this Agreement may be rejected by District and in such case must be promptly remedied or replaced by Contractor at no additional cost to District and subject to District's reasonable satisfaction.

9. Insurance. Contractor shall procure and maintain for the duration of the agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit (with aggregate limit no less than **\$2,000,000**).
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with a limit no less than **\$1,000,000** per accident for bodily injury and property damage and \$2,000,000 in the aggregate.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

4. **Other Coverages When Applicable:**

- a. **Professional Liability/Errors & Omissions Liability:** N/A
- b. **Sexual Abuse and Molestation Coverage:** N/A
- c. **Cyber Insurance:** N/A
- d. **Other:** N/A

If the contractor maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the contractor.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The District, its officers, officials, employees, and volunteers are to be named as additional insured by endorsement to the Commercial General Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations.

Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the District.

INSURANCE REQUIREMENTS

No waiver will be granted to eliminate the insurance requirements outlined in this contract. However, in special circumstances, certain insurance requirements may be modified or waived. The following items in Insurance, Section 8, are hereby waived or modified as follows (note, a waiver for one type of insurance does not constitute waiver for all):

Limits: _____

Other: _____

The initials of the Superintendent, or his/her designee, and the General Counsel, are **required** to waive or modify any Insurance requirements in this Agreement:

Superintendent or
his designee

General Counsel

- 10. **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.
- 11. **Confidential Information.** Contractor shall maintain the confidentiality of and protect from unauthorized disclosure of any and all individual student information received from the District, including but not limited to, student names and other identifying information. Contractor shall not use such student information for any purpose other than carrying out the obligations under this Agreement. Upon termination of this Agreement, Contractor shall turn over to District all educational records related to the services provided to any District student pursuant to this Agreement.

- 12. Assignment/Successors and Assigns. Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of District. Subject to the foregoing, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.
- 13. Severability. If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.
- 14. Amendments. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by both parties.
- 15. Limitation of District Liability. Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
- 16. 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	Bus. Name: <u>PMH Laboratory</u>
1936 Carlotta Drive	Attn: <u>Jeffrey Greenman</u>
Concord, CA 94519-1397	Address: <u>5862 Edinger Ave.,</u>
Attn: Superintendent	<u>Huntington Beach, CA 92649</u>
	Phone: <u>562.592.2890</u>
	Fax: _____
	Email: <u>Jeffreygreenman@gmail.com</u>
	Tax ID #: <u>N/A</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 next business day 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.

- 17. 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.
- 18. 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.
- 19. 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 as awarded by a court of competent jurisdiction, 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.
- 20. 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.

Purchase Requisition # N/A

21. Equal Employment Opportunity. It is the policy of the District that, in connection with all work performed under District agreements, there shall be no discrimination against any employee or applicant for employment because of race, color, religious creed, national origin, ancestry, marital status, sex, sexual orientation, age, disability or medical condition and therefore the Contractor agrees to comply with applicable federal and state laws. In addition, the Contractor agrees to require like compliance by all subcontractors employed on the work.

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


MT. DIABLO UNIFIED SCHOOL DISTRICT

By: _____
Signature of Principal/Budget Administrator Date

Title: _____
Lisa Gonzales, Ed.D, Chief Business Officer

PMH Laboratory

Name of Company/Organization or Independent Contractor/Consultant

By:  _____ 2.19.21
Signature of Contractor/Consultant Date

Title: Jeffrey Greenman, CLC
Print Name and Title

Purchase Requisition # N/A

Authorized and Approved by:

Superintendent/Designee Date

Prior to commencement of service, sign and forward completed original contract packet to Purchasing.

Originator's Signature Date

Site/Department Originating this Contract

Lisa Gonzales, Ed.D, Chief Business Officer

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

<i>Distribution</i>
<i>original: Purchasing with Purchase Order</i>
<i>copy: Contractor</i>
<i>copy: Accounts Payable/Fiscal</i>
<i>copy: Originator/Budget Administrator</i>

EXHIBIT “A”

LIST OF SERVICES, INCLUDING DATE(S), TO BE PERFORMED BY CONTRACTOR

**IF PARTIAL PAYMENTS ARE TO BE MADE TO CONTRACTOR ON A SCHEDULE
AS INDICATED ON PAGE 1, PLEASE LIST PAYMENT SCHEDULE HERE
(NOTE THAT ALL PAYMENTS ARE GENERATED FROM AN INVOICE).**

1. Provide COVID-19 testing to students/staff/family members/contractors and other necessary persons in compliance with the requirements set forth by the Contra Costa County Health Department
2. Date of service: March 1, 2021 to June 30, 2021.