

Mt. Diablo Unified School District

Independent Contract Agreement

Wilsey Ham, Inc.

For

Professional Services – Pavement
Improvements for Concord High School

Dated
December 14, 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 14th day of December, 2011, by and between the Mt. Diablo Unified School District (hereinafter "District") and Wilsey Ham, 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:

\$ 39,474.00 total fee for Services (NOT TO EXCEED)

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

- a. \$ X per hour (see Exhibit A1),
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 December 14, 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. Jeffrey M. Peterson</u>
1936 Carlotta Drive	Address: <u>Wilsey Ham, Inc.</u>
Concord, CA 94519-1397	<u>3130 La Selva Street, Suite 100</u>
Attn: Superintendent	<u>San Mateo, California 94403</u>
	Phone: <u>(650) 349-2151</u>
	Fax: <u>(650) 345-4921</u>
	Tax ID #: <u>94-1354599</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: _____
Date

Title: _____

Title: _____

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

326.7605.58.6210 - \$39,474 (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. Per proposal dated October 25, 2011 (exhibit A.1), Contractor shall provide the Civil Engineering Design and Surveying services for the Concord High School Pavement Improvements Project shall include but not be limited to the following tasks:

- 1.1. Topographic Survey and Base Mapping
- 1.2. Preliminary 50% Design Documents and estimate
- 1.3. Construction Documents and revised estimate
- 1.4. Construction Administration
- 1.5. Striping Alternative (optional)
- 1.6. Project Management
- 1.7. Meetings

Services of Contractor arranged by

Signature

2010 Measure C
Department / School

Exhibit A.1



October 25, 2011

Mitchell Stark
2010 Measure C – Assistant Program Manager
Mount Diablo Unified School District
3333 Ronald Way
Concord, CA 94521-1098

Re: Proposal for Survey and Civil Engineering Design for Pavement Improvements at Concord High School

Dear Mr. Stark:

Based on your request and our meeting on September 21st, we are pleased to provide you this proposal for Civil Engineering Design and Surveying services for the Concord High School Pavement Improvements Project.

Background

As a result of our meeting and site visit, we understand that the Mount Diablo Unified School District (MDUSD) is interested in paving a number of areas on the Concord High School campus with asphalt concrete paving. These areas are unimproved, consisting of soil or a combination of soil and aggregate base rock. During football games and other large events, these areas are needed for overflow parking. During the winter rainy season, these areas become saturated and result in mud tracking by vehicles and pedestrians onto other areas of the campus. Paving these areas with asphalt will provide much needed additional parking and will solve the mud tracking problem as well.

Six distinct areas have been identified as areas to be paved. All of these areas will be surveyed, mapped and designed for paving. The actual amount that will be paved will be determined based on the available construction budget. This could potentially be determined at the time of bidding by using additive alternate bid items. The appropriate strategy will be determined by the MDUSD with the assistance of Wilsey Ham.

After researching our records of past projects for the MDUSD, we located design plans for the Fire Road and Access Lane through this project area that was prepared by Wilsey Ham in 2008. In light of this existing survey information and the need to match the existing elevations of the hardscape, the most cost effective manner to perform the topographic survey for this project is by ground methods (without the use of aerial photogrammetry). This will allow us to collect all conform elevations to the accuracy needed, while also collecting invert elevations of the existing storm drain system in the new pavement area. The base maps will be prepared at 20-scale and will show all perimeter hardscape surfaces at the conform locations, all visible utility structures, fences, building corners and other visible topographic features within the project area. The base map will also show the record utilities adjusted to match the utility features surveyed on the site.

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Wilsey Ham has an Autocad version of the Concord High School utility and storm drain master record map that we received for the 2008 project, however, we should acquire the most up to date version of this map from the High School in case any changes have occurred in the last three years. The existing utility map shows a high pressure gas main and an electrical line passing through paving area #5. If this gas main and electrical service is buried at an appropriate depth, there should be no problems installing the paving section over the pipe and conduit. However, sometimes existing utilities are found to be very shallow, and they interfere with the paving section. It would be prudent to locate the utilities in the areas to be paved and pothole the gas main and electric lines to verify that the new pavement section will work. A utility location contractor would be needed to perform this work. One day of combined utility location and potholing has been included as an optional service so the School District can determine if this service is desired.

There are several existing drainage inlets that were visible during our site walk. These inlets are shown on the record storm drain map and are located at the upstream end of the storm drain system of the High School campus. As a result, the pipe sizes are small and the pipe inverts are shallow. We anticipate that these inlets will be used to collect runoff from the newly paved surfaces with some modifications to the grate elevations. Additional inlets and pipe extensions may also be required from these existing boxes. With the increased runoff from over an acre of new impervious paved area, the additional storm water may exceed the capacity of the existing pipes in the system. This condition could potentially cause the hydraulic grade line to rise, causing storm water to flow out of some existing catch basins on campus during heavy storms. Once the preliminary grading and storm drain design is completed, a hydraulic model will be run on the existing storm drain system throughout the High School property to verify that there is sufficient capacity in the existing system. The existing storm drain records will be used in conjunction with a Google Earth Image for the hydraulic model base mapping. The invert elevations and most pipe sizes are shown on the High School's storm drain records. Since the site is very flat, we will extrapolate between the record top of grate elevations to estimate the assumed top of grate elevations where this information is missing on the records.

A structural pavement section consisting of 3" A.C. over 4" A.B. was discussed at our site meeting. Looking back through project records, we see that Wilsey Ham designed a parking lot extension for Concord High School in the southeast corner of the school site in 2003. Although this pavement section was 3" A.C. over 8" A.B., we realize that the front parking lot will receive a higher volume of traffic. The final pavement section will be determined through discussions with MDUSD.

Due to future planned improvements for a snack shack/ticket booth in the vicinity of the football stadium, the parking lot improvements will require the installation of conduit under the pavement to allow for the future installation of an electrical service. In addition, a water service and sewer force main will also be installed under the pavement from the future snack shack and restrooms to the appropriate connection points. A 2" waterline will be used for the snack shack and restrooms. Since the force main size is contingent upon the characteristics of the pump station, the pump station wet well and pumps

Exhibit A.1

October 25, 2011

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will need to be preliminarily sized to determine the diameter of the force main. This preliminary design is included in this proposal. Wilsey Ham will work with MDUSD to determine the best locations for the electrical conduit, water service and sewer force main based on the anticipated location of the snack shack and rest rooms.

The additional impervious surface area will require the preparation of a Storm Water Pollution Prevention Plan (SWPPP), a Notice of Intent and performing a risk assessment of the site in conformance with the State Water Resources Board requirements. The SWPPP will be accompanied by an erosion control plan for all areas of construction. The storm water runoff will also need to be treated to improve storm water runoff quality per the Clean Water Act and the Municipal Storm Water permit. We will discuss the methods that can be used to treat the storm water and meet these requirements.

The additional paved areas will be used as overflow parking for special events, however, these areas will not be striped as parking lot spaces. This will give the school the flexibility of use these areas as needed.

Based upon this understanding, Wilsey Ham proposes the following scope of work for the civil engineering and surveying portion of the project.

Scope of Services

Task 1 – Topographic Survey and Base Mapping

The following tasks will be performed as part of this task:

1. Perform one day of combined utility location and potholing of the gas main and electric line that traverse the site in pavement area #5. The locations and depths to the facilities will be marked above ground and the potholes will be backfilled with existing material.
2. Set up a control network on site based on the control used for the 2008 project.
3. Perform supplemental topographic survey of the parking lot areas. In addition to the elevation shots, the survey will pick up perimeter hardscape surfaces at the conform locations, all visible utility structures, fences, building corners, the utility markings from utility locator, and the pothole depths of the high pressure gas main, electric line and the sewer connection as well as the other visible topographic features within the project area. We anticipate that 1 ½ days will be required to collect the necessary information.
4. Create base maps for the project and add utility information from the School District.
5. Prepare a base map for the hydraulic model using the High School storm drain map superimposed over a Google Earth image of the High School.

Deliverables

Project base sheets with record utility and topographic survey information.

Exhibit A.1

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Task 2– Preliminary Design – 50%

The following tasks will be performed as part of this task:

1. Perform site visit to review existing conditions and meet with the client on site.
2. Prepare a project title sheet with general notes.
3. Prepare a preliminary grading and drainage plan showing proposed pavement elevations, drainage patterns, locations of existing and proposed inlets and any storm drain extensions if required. The plan will also show the proposed locations and depths of the future utility sleeves.
4. Perform hydrologic and hydraulic calculations to verify the capacity of the storm drain system on the High School campus. This will require the construction of a hydraulic model.
5. Perform storm water treatment calculations.
6. Prepare an erosion control plan view and detail sheet.
7. Prepare preliminary detail sheets showing the pavement typical section, drainage inlets, storm drain treatment measures.
8. Coordination with MDUSD and Concord High School regarding the anticipated location of the snack shack and restrooms.
9. Preparation of utility plan to show layout and size of future utilities lines and conduits.
10. Estimate restroom sewer flow rates for events. Calculate size of pump station wet well, required pump cycling, determine preliminary pump size and type, and calculate size of sewer force main.
11. Prepare sewer connection details to existing system.
12. Prepare preliminary technical specifications in the format requested by MDUSD.
13. Prepare an engineer's preliminary estimate of construction costs.
14. Submit the plans, specifications and engineer's estimate to MDUSD for review.

Deliverables

Electronic set of 50% plans, specifications and estimate will be submitted to the School District for review.

Task 3 – 95% & Final PS&E

The following tasks will be performed as part of this task:

1. Develop project title sheet with general notes.
2. Develop grading and drainage plan
3. Develop erosion control plan view and detail sheet.
4. Develop utility plan.
5. Develop detail sheets
6. Develop technical specifications.
7. Update engineer's preliminary estimate of construction costs.
8. Perform site risk evaluation of storm water runoff.
9. Prepare Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP).
10. Perform earthwork quantity calculations using an outside subconsultant.
11. Perform Quality Control Review and revisions

Exhibit A.1

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12. Submit 95% plans, specifications and engineer's estimate to MDUSD for review.
13. Revisions to PS&E package per MDUSD comments.
14. Submit final PS&E package to MDUSD.

Deliverables

Electronic sets of 95% plans and final plans will be submitted to the School District for review.

Task 4 – Construction Administration Phase

The following tasks will be performed as part of this task:

1. Review and respond to submittals and shop drawings.
2. Respond to RFI's.
3. Perform periodic site visits during construction. (2 assumed).
4. Prepare substantial completion inspection and prepare punch list. (1 site visit)
5. Preparation of Record Drawings from Contractor Markups.
6. Preparation of Notice of Termination for SWPPP.

Deliverables

Reponses to RFI's, submittals, Notice of Termination, Record Drawings and punch list.

Optional Service

Task 5 –Prepare Striping Alternates & Striping Plan

This task involves the preparation of up to two schematic striping plan alternatives for the paved areas and one construction document striping plan.

- Prepare schematic striping plans (up to 2)
- Prepare final striping plan (1)

Deliverables: Schematic striping plan with up to two options, and a construction drawing striping plan.

Assumptions and Exclusions

The following assumptions are made in the preparation of this proposal.

1. Four site visit meetings are proposed for the project including a kickoff site visit, two site visits during construction, and a substantial completion inspection. If additional meetings are needed, additional fees will be requested.
2. No environmental documentation, landscape design or regulatory permitting is included in this proposal.
3. We assume that all application fees will be paid by the School District.
4. The storm drain hydraulic model will check the capacity of the existing system through the High School property. We do not know the outcome of this evaluation. This proposal does not

Exhibit A.1

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include design for modifications to the existing system that may be needed if the system is under capacity.

- 5. This proposal includes minor construction related services, but does not include construction inspection.
- 6. Only the tasks specifically described above are included in this proposal. Any additional services desired that are not in this scope of work will be provided on a T & M basis according to our current Charge Rate Fee Schedule.
- 7. The locations of the utility services and conduits will be based on the locations of the snack shack and restrooms as determined by the School District and/or Concord High School.

Fee

Wilsey Ham's lump sum fee for Tasks 1 – 4 of the foregoing described Scope of Services is **\$39,474**. A breakdown of the hours and fees is attached. Billings will be monthly based on the percentage complete of each task during the billing period. We will not exceed this budget without your prior authorization.

Optional Service

The lump sum fee for Task 5 - Prepare Striping Alternates & Striping Plan is \$1,516 _____
If this Optional Service is desired, please indicate so by initialing next to the fee shown above to authorize this service.

Authorization

You may authorize Wilsey Ham to proceed in accordance with this proposal and our attached contract provisions by returning a signed copy of this proposal to us for our files. Work will commence upon receipt of your written authorization. We appreciate the opportunity to participate on your project.

Very truly yours,

Accepted: Mount Diablo Unified School District

WILSEY HAM
A California Corporation

By: _____



Title: _____

Jeffrey M. Peterson
Principal
RCE #41385

Date: _____

Attached: Fee Estimate
Standard Contract Provisions

