

Subject: Contracts and Agreements - Capital Projects	Enclosure: Schedule
Category: ORGANIZATIONAL EFFECTIVENESS	Reason for Board Consideration: Action

The California Education Code provides that the Board can designate District staff the authority to execute contracts. The Board has made the appropriate designations for contract signing by staff as per guidelines provided by Education Code Sections 81655 and 81656, as well as Board Policy 6340. Because of time constraints and various other factors, capital project contracts and agreements may be executed prior to Board approval. A schedule of contracts and agreements, as listed below, accompanies this agenda item that will require appropriate action by the Board. The staff will be in attendance to review the various contracts and agreements and answer questions.

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A. CONTRACTS FOR APPROVAL	
1. Contract/Agreement: Thomas Durbrow	28
2. Contract/Agreement: MHL Enterprises	28

RECOMMENDATION:

It is recommended that the Board approve the capital project contracts and amendments which are listed on the accompanying schedule.

A. **CONTRACTS FOR APPROVAL**

1. **Contract/Agreement: Thomas Durbrow**

Term: May 9, 2012 - June 30, 2012

Amount: \$12,000

Funding Source: Capital Projects

Agreement: Additional Division of State Architects (DSA) inspector services for the Nevada County Campus solar project. Project work was significantly extended due to the schedule delays resulting from additional DSA review time; additional inspections were also added by DSA.

2. **Contract/Agreement: MHL Enterprises**

Term: May 15, 2012 - November 1, 2012

Amount: \$36,000

Funding Source: SFID Bond No. 2, Campus Wide Upgrades

Agreement: Inspector of Record (IOR) services, as required by Division of State Architects (DSA), for the Additional Work projects at the Nevada County Campus. Inspector will conduct inspections, attend construction site meetings, submit reports and complete all required IOR related forms to DSA to certify the projects.

INDEPENDENT CONTRACTOR AGREEMENT...

between

SIERRA JOINT COMMUNITY COLLEGE DISTRICT

and

THOMAS DURBROW

AGREEMENT is made this 9th day of May, 2012, by and between Sierra Joint Community College District (hereafter referred to as "DISTRICT"), and Thomas Durbrow (hereafter referred to as "CONTRACTOR.")

In consideration of the mutual promises contained in this document, the DISTRICT and CONTRACTOR agree as follows:

1. SCOPE OF WORK. CONTRACTOR will perform the services described on Schedule A – Statement of Work attached to this Agreement. CONTRACTOR may determine the methods, details and means of performing the services. The DISTRICT shall not have the right to, and shall not, control the manner or determine the method by which CONTRACTOR accomplishes these services.
2. TERM. The term of this Agreement shall commence on May 9, 2012 and end on June 30, 2012.
3. PAYMENT. For satisfactory performance of the Statement of Work described in the attached Schedule A, the DISTRICT shall pay CONTRACTOR the fees for services provided for in the attached Schedule B - Fees for Service. Payment shall be made within thirty (30) days after the DISTRICT's receipt and approval of CONTRACTOR's statement of services and costs, prepared in such form and detail as the DISTRICT may specify. CONTRACTOR shall not incur costs for performance of services in excess of \$12,000 without the prior written authorization of the DISTRICT's Director of Finance.
4. INDEPENDENT CONTRACTOR STATUS. In performing services under this Agreement, CONTRACTOR shall be deemed an independent contractor and shall not act as nor be an agent or employee of the DISTRICT. As an independent contractor, CONTRACTOR will be solely responsible for determining the means and methods for performing the services described in Schedule A. All of CONTRACTOR's activities will be at its own risk and CONTRACTOR is hereby given notice of responsibility for arrangements to guard against physical, financial, and other risks as appropriate.
5. STANDARD OF SERVICES. CONTRACTOR agrees to perform the services with that standard of professional care, skill, and diligence normally provided in the performance of similar services.
6. OWNERSHIP OF MATERIALS AND REPORTS. Except as specifically authorized by the DISTRICT in writing, all materials produced under this Agreement shall be the property of the District to reproduce, distribute, modify and use in any manner desired by the DISTRICT.

7. CONFIDENTIAL INFORMATION. CONTRACTOR acknowledges that it may be necessary for DISTRICT to disclose certain confidential and proprietary information to CONTRACTOR in order for CONTRACTOR to perform duties under this Agreement. CONTRACTOR acknowledges that any disclosure to any third party or any misuse of this proprietary or confidential information may irreparably harm the DISTRICT. Accordingly, CONTRACTOR will not disclose or use, either during or after the term of this Agreement, any proprietary or confidential information of the DISTRICT without the DISTRICT's prior written permission.
8. TERMINATION. Either the DISTRICT or CONTRACTOR may terminate performance under this Agreement at any time by notifying the other party in writing. In the event of early termination, CONTRACTOR shall be paid for work performed to the date of termination. The DISTRICT may then proceed with the work in any manner the DISTRICT deems proper.
9. DELAYS. CONTRACTOR shall notify the DISTRICT promptly of any expected delay in performance of services. However, CONTRACTOR shall not be liable for delays in performance beyond reasonable control.
10. TAXES. CONTRACTOR agrees that CONTRACTOR has no entitlement to any future work from the DISTRICT or to any employment or fringe benefits from the DISTRICT. Payments to the CONTRACTOR pursuant to this agreement will be reported to Federal and State taxing authorities as required. DISTRICT will not withhold any money from CONTRACTOR's compensation for payment of taxes or benefits. In particular, DISTRICT will not withhold FICA (social security); state or federal unemployment insurance contributions, state or federal income tax or disability insurance premiums. CONTRACTOR is independently responsible for the payment of all applicable taxes.
11. COMPLIANCE WITH LAW. CONTRACTOR agrees to perform the services contemplated by this agreement in a professional and competent manner and in compliance with all State and Federal laws or regulations governing the services to be rendered pursuant to this Agreement.
12. LICENSES. CONTRACTOR represents that CONTRACTOR and all agents and employees of CONTRACTOR are properly licensed by the State of California to perform all of the services, which CONTRACTOR has agreed to render pursuant to this Agreement.
13. NOTICES. All notices and other communications pertaining to this Agreement shall be in writing and shall be deemed to have been given by a party hereto if personally delivered to the other party or if sent by certified mail, return receipt requested. A notice sent by certified mail shall be deemed to be given on the third business day after the mailing date. All notices or communications between DISTRICT and CONTRACTOR pertaining to this Agreement shall be addressed as shown below:

DISTRICT:

Sierra Joint Community College District

Director of Finance

5000 Rocklin Road

Rocklin, CA 95677

CONTRACTOR:

Thomas Durbrow

2460 Clarksville Road

Rescue, CA 95672

14. CHANGE NOTICE. The DISTRICT may at any time, through a written Change Notice to this Agreement by the DISTRICT's Director or Finance, make changes within the scope of work or period of performance of this Agreement. CONTRACTOR and DISTRICT's Director of Finance shall negotiate an equitable adjustment, if appropriate, in the terms of this Agreement to cover any such change. No payment for extras shall be made unless such are performed pursuant to a written Change Notice.
15. INDEMNITY. CONTRACTOR agrees to defend, indemnify, and hold harmless the DISTRICT, its officers, agents, employees, and volunteers from all losses, costs, and expense arising out of any liability or claim of liability for personal injury, bodily injury to persons, contractual liability and damage to property sustained or claimed to have been sustained arising out of activities of the CONTRACTOR, its subcontractors, or those of any of its officers, agents, or employees, whether such act is authorized by this Agreement or not; and CONTRACTOR shall pay for any and all damages to the property of the DISTRICT, or loss or theft of such property, done or caused by such persons. DISTRICT assumes no responsibility whatsoever for any property placed on the premises. CONTRACTOR further agrees to waive all rights of subrogation against the DISTRICT. The provisions of the Article do not apply to any damage or losses caused solely by the negligence of the DISTRICT or any of its agents or employees.
16. INSURANCE. The CONTRACTOR, at the CONTRACTOR's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies:
 - a. The CONTRACTOR shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for its employees in accordance with the laws of the State of California. In addition, the CONTRACTOR shall require any and every subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the

State of California for all of the subcontractor's employees. This provision shall not apply if the CONTRACTOR has no employees performing work under this Agreement.

- b. The CONTRACTOR shall maintain commercial general liability insurance in an amount of not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) aggregate for bodily injury, personal injury, and property damage. The CONTRACTOR shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the CONTRACTOR arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired, and non-owned vehicles, in an amount of not less than three hundred thousand dollars (\$300,000) combined single limit for each occurrence. If CONTRACTOR or CONTRACTOR's employees will use personal autos in any way on this project, CONTRACTOR shall obtain evidence of personal auto liability coverage for each such person.
 - c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the DISTRICT. At the DISTRICT's option, the CONTRACTOR shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
 - d. Certificates of Insurance. The CONTRACTOR shall provide certificates of insurance with original endorsements to the DISTRICT as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the DISTRICT on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the DISTRICT at all times during the term of this Agreement. The CONTRACTOR shall provide written evidence of current automobile coverage to comply with the automobile insurance requirement.
 - e. Endorsements. Each general liability and automobile liability insurance policy shall be issued by insurers possessing a Best's rating of no less than A-:VII. Each general liability insurance policy shall be endorsed with the specific language naming the DISTRICT as an additional insured.
 - f. Failure to Procure Insurance. Failure on the part of the CONTRACTOR to procure or maintain required insurance shall constitute a material breach of contract under which the DISTRICT may terminate this Agreement.
17. SEVERABILITY. If any provision of this Agreement or any portion thereof is held to be invalid and unenforceable, the balance of this Agreement shall nevertheless remain in full force and effect.
18. ASSIGNMENT. Neither CONTRACTOR nor DISTRICT may assign or transfer any interest in this Agreement without the prior written consent of the other party.

- 19. CERTIFIED PAYROLL. CONTRACTOR shall comply with state prevailing wage law, shall maintain Certified Payroll records and shall submit a copy of their weekly Certified Payroll records to Laura Doty, Director of Facilities, 5000 Rocklin Road, Rocklin, CA 95677.
- 20. ENTIRE AGREEMENT. This Agreement and any attached Schedules constitutes the entire agreement and understanding by and between the parties with respect to its subject matter. This Agreement supersedes any other prior agreements, and shall be governed by the laws of the State of California.
- 21. AMENDMENT. The term of this Agreement shall not be amended in any manner whatsoever, except by written agreement signed by the parties.

IN WITNESS THEREOF, the parties have executed this Agreement of the day and year above written.

Validity of the contract is dependent upon formal approval by the Governing Board per Education Code Section 81655.

<u>DISTRICT</u>	<u>CONTRACTOR</u>
Sierra Joint Community College District	Thomas Durbrow
Signature: _____	Signature: _____
Name & Title: Kerri Hester, Director of Finance	Name & Title: Thomas Durbrow, Owner
Date: _____	Date: _____
Address: 5000 Rocklin Road Rocklin, CA 95677	Address: 6420 Clarkesville Road Rescue, CA 95672
Phone: (916) 660-7603	Phone: 916-835-9572

SCHEDULE A - STATEMENT OF WORK

This sets forth the objectives to be reached in accordance with the Agreement.

The CONTRACTOR, Thomas Durbrow, will provide DSA inspector services for the Nevada County Campus Solar Project. All inspection services are to be performed in accordance with DSA regulations and all applicable laws and codes.

The DISTRICT's technical representatives under this agreement shall be (if applicable):

President

Director of Finance

Director of Facilities

William H. Duncan IV

Kerri Hester

Laura Doty

SCHEDULE B – FEES FOR SERVICES

This sets forth the fees for services payable by the DISTRICT to CONTRACTOR in accordance with the terms set forth in the Agreement:

Fees for Services * - Not to Exceed	\$12,000.00
Total	\$12,000.00

* Billed at an hourly rate of \$75 per hour

Monthly invoices may be submitted to Amanda Mellett, Sierra Joint Community College District, 5000 Rocklin Road, Rocklin, CA 95677.

INDEPENDENT CONTRACTOR AGREEMENT...

between

SIERRA JOINT COMMUNITY COLLEGE DISTRICT

and

MHL ENTERPRISES

AGREEMENT is made this 15th day of May, 2012, by and between Sierra Joint Community College District (hereafter referred to as "DISTRICT"), and MHL Enterprises (hereafter referred to as "CONTRACTOR.")

In consideration of the mutual promises contained in this document, the DISTRICT and CONTRACTOR agree as follows:

1. SCOPE OF WORK. CONTRACTOR will perform the services described on Schedule A – Statement of Work attached to this Agreement. CONTRACTOR may determine the methods, details and means of performing the services. The DISTRICT shall not have the right to, and shall not, control the manner or determine the method by which CONTRACTOR accomplishes these services.
2. TERM. The term of this Agreement shall commence on May 15, 2012 and end on November 1, 2012.
3. PAYMENT. For satisfactory performance of the Statement of Work described in the attached Schedule A, the DISTRICT shall pay CONTRACTOR the fees for services provided for in the attached Schedule B - Fees for Service. Payment shall be made within thirty (30) days after the DISTRICT's receipt and approval of CONTRACTOR's statement of services and costs, prepared in such form and detail as the DISTRICT may specify. CONTRACTOR shall not incur costs for performance of services in excess of \$36,000 without the prior written authorization of the DISTRICT's Director of Finance.
4. INDEPENDENT CONTRACTOR STATUS. In performing services under this Agreement, CONTRACTOR shall be deemed an independent contractor and shall not act as nor be an agent or employee of the DISTRICT. As an independent contractor, CONTRACTOR will be solely responsible for determining the means and methods for performing the services described in Schedule A. All of CONTRACTOR's activities will be at its own risk and CONTRACTOR is hereby given notice of responsibility for arrangements to guard against physical, financial, and other risks as appropriate.
5. STANDARD OF SERVICES. CONTRACTOR agrees to perform the services with that standard of professional care, skill, and diligence normally provided in the performance of similar services.

6. OWNERSHIP OF MATERIALS AND REPORTS. Except as specifically authorized by the DISTRICT in writing, all materials produced under this Agreement shall be the property of the District to reproduce, distribute, modify and use in any manner desired by the DISTRICT.
7. CONFIDENTIAL INFORMATION. CONTRACTOR acknowledges that it may be necessary for DISTRICT to disclose certain confidential and proprietary information to CONTRACTOR in order for CONTRACTOR to perform duties under this Agreement. CONTRACTOR acknowledges that any disclosure to any third party or any misuse of this proprietary or confidential information may irreparably harm the DISTRICT. Accordingly, CONTRACTOR will not disclose or use, either during or after the term of this Agreement, any proprietary or confidential information of the DISTRICT without the DISTRICT's prior written permission.
8. TERMINATION. Either the DISTRICT or CONTRACTOR may terminate performance under this Agreement at any time by notifying the other party in writing. In the event of early termination, CONTRACTOR shall be paid for work performed to the date of termination. The DISTRICT may then proceed with the work in any manner the DISTRICT deems proper.
9. DELAYS. CONTRACTOR shall notify the DISTRICT promptly of any expected delay in performance of services. However, CONTRACTOR shall not be liable for delays in performance beyond reasonable control.
10. TAXES. CONTRACTOR agrees that CONTRACTOR has no entitlement to any future work from the DISTRICT or to any employment or fringe benefits from the DISTRICT. Payments to the CONTRACTOR pursuant to this agreement will be reported to Federal and State taxing authorities as required. DISTRICT will not withhold any money from CONTRACTOR's compensation for payment of taxes or benefits. In particular, DISTRICT will not withhold FICA (social security); state or federal unemployment insurance contributions, state or federal income tax or disability insurance premiums. CONTRACTOR is independently responsible for the payment of all applicable taxes.
11. COMPLIANCE WITH LAW. CONTRACTOR agrees to perform the services contemplated by this agreement in a professional and competent manner and in compliance with all State and Federal laws or regulations governing the services to be rendered pursuant to this Agreement.
12. LICENSES. CONTRACTOR represents that CONTRACTOR and all agents and employees of CONTRACTOR are properly licensed by the State of California to perform all of the services, which CONTRACTOR has agreed to render pursuant to this Agreement.
13. NOTICES. All notices and other communications pertaining to this Agreement shall be in writing and shall be deemed to have been given by a party hereto if personally delivered to the other party or if sent by certified mail, return receipt requested. A notice sent by certified mail shall be deemed to be

given on the third business day after the mailing date. All notices or communications between DISTRICT and CONTRACTOR pertaining to this Agreement shall be addressed as shown below:

DISTRICT:

Sierra Joint Community College District
Director of Finance
5000 Rocklin Road
Rocklin, CA 95677

CONTRACTOR:

MHL Enterprises
10200 Omega Way
Grass Valley, CA 95949-9148

14. CHANGE NOTICE. The DISTRICT may at any time, through a written Change Notice to this Agreement by the DISTRICT's Director or Finance, make changes within the scope of work or period of performance of this Agreement. CONTRACTOR and DISTRICT's Director of Finance shall negotiate an equitable adjustment, if appropriate, in the terms of this Agreement to cover any such change. No payment for extras shall be made unless such are performed pursuant to a written Change Notice.
15. INDEMNITY. CONTRACTOR agrees to defend, indemnify, and hold harmless the DISTRICT, its officers, agents, employees, and volunteers from all losses, costs, and expense arising out of any liability or claim of liability for personal injury, bodily injury to persons, contractual liability and damage to property sustained or claimed to have been sustained arising out of activities of the CONTRACTOR, its subcontractors, or those of any of its officers, agents, or employees, whether such act is authorized by this Agreement or not; and CONTRACTOR shall pay for any and all damages to the property of the DISTRICT, or loss or theft of such property, done or caused by such persons. DISTRICT assumes no responsibility whatsoever for any property placed on the premises. CONTRACTOR further agrees to waive all rights of subrogation against the DISTRICT. The provisions of the Article do not apply to any damage or losses caused solely by the negligence of the DISTRICT or any of its agents or employees.
16. INSURANCE. The CONTRACTOR, at the CONTRACTOR's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies:
 - a. The CONTRACTOR shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for its employees in accordance with the laws of the State of California. In addition, the CONTRACTOR shall require any and every subcontractor to similarly maintain Workers'

Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. This provision shall not apply if the CONTRACTOR has no employees performing work under this Agreement.

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 - c. The CONTRACTOR shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the CONTRACTOR arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired, and non-owned vehicles, in an amount of not less than three hundred thousand dollars (\$300,000) combined single limit for each occurrence. If CONTRACTOR or CONTRACTOR's employees will use personal autos in any way on this project, CONTRACTOR shall obtain evidence of personal auto liability coverage for each such person.
 - d. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the DISTRICT. At the DISTRICT's option, the CONTRACTOR shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
 - e. Certificates of Insurance. The CONTRACTOR shall provide certificates of insurance with original endorsements to the DISTRICT as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the DISTRICT on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the DISTRICT at all times during the term of this Agreement. The CONTRACTOR shall provide written evidence of current automobile coverage to comply with the automobile insurance requirement.
 - f. Endorsements. Each general liability and automobile liability insurance policy shall be issued by insurers possessing a Best's rating of no less than A-VII. Each general liability insurance policy shall be endorsed with the specific language naming the DISTRICT as an additional insured.
 - g. Failure to Procure Insurance. Failure on the part of the CONTRACTOR to procure or maintain required insurance shall constitute a material breach of contract under which the DISTRICT may terminate this Agreement.
17. SEVERABILITY. If any provision of this Agreement or any portion thereof is held to be invalid and unenforceable, the balance of this Agreement shall nevertheless remain in full force and effect.
18. ASSIGNMENT. Neither CONTRACTOR nor DISTRICT may assign or transfer any interest in this Agreement without the prior written consent of the other party.

- 19. CERTIFIED PAYROLL. CONTRACTOR shall comply with state prevailing wage law, shall maintain Certified Payroll records and shall submit a copy of their weekly Certified Payroll records to Laura Doty, Director of Facilities, 5000 Rocklin Road, Rocklin, CA 95677.
- 20. ENTIRE AGREEMENT. This Agreement and any attached Schedules constitutes the entire agreement and understanding by and between the parties with respect to its subject matter. This Agreement supersedes any other prior agreements, and shall be governed by the laws of the State of California.
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IN WITNESS THEREOF, the parties have executed this Agreement of the day and year above written.

Validity of the contract is dependent upon formal approval by the Governing Board per Education Code Section 81655.

<u>DISTRICT</u>	<u>CONTRACTOR</u>
Sierra Joint Community College District	MHL Enterprises
Signature: _____	Signature: _____
Name & Title: <u>Kerri Hester, Director of Finance</u>	Name & Title: _____
Date: _____	Date: _____
Address: <u>5000 Rocklin Road</u> <u>Rocklin, CA 95677</u>	Address: <u>10200 Omega Way</u> <u>Grass Valley, CA 95949-9148</u>
Phone: <u>(916) 660-7603</u>	Phone: <u>(530) 273-4166</u>

SCHEDULE A - STATEMENT OF WORK

This sets forth the objectives to be reached in accordance with the Agreement.

The CONTRACTOR, MHL Enterprises, will provide Inspector of Record (IOR) services, as required by Division of State Architects (DSA), for the Additional Work projects at the Nevada County Campus. Inspector will conduct inspections, attend construction site meetings, submit reports and complete all required IOR related forms to DSA to certify the projects.

The DISTRICT's technical representatives under this agreement shall be (if applicable):

President
Director of Finance
Director of Facilities

William H. Duncan IV
Kerri Hester
Laura Doty

SCHEDULE B – FEES FOR SERVICES

This sets forth the fees for services payable by the DISTRICT to CONTRACTOR in accordance with the terms set forth in the Agreement:

Fees for Services * - not to exceed \$36,000

Total \$36,000

* Billed at a rate of \$75 per hour

Monthly invoices may be submitted to Kristie Purdy, Sierra Joint Community College District, 5000 Rocklin Road, Rocklin, CA 95677.