

Board Office Use: Legislative File Info.	
File ID Number	12-1459
Committee	Facilities
Introduction Date	6-13-2012
Enactment Number	12-1669
Enactment Date	6-13-12 <i>TS</i>



OAKLAND UNIFIED
SCHOOL DISTRICT

Memo

To Board of Education

From Tony Smith, Ed.D., Superintendent
Timothy White, Associate Superintendent, Facilities Planning and Management

Board Meeting Date June 13, 2012

Subject Independent Consultant Agreement for Professional Services - Consolidated Engineering Laboratories - Montclair New Classroom Building Project

Action Requested Approval by the Board of Education of an Independent Consultant Agreement for Professional Services with Consolidated Engineering Laboratories for Geotechnical Services on behalf of the District at Montclair New Classroom Building project, in an amount not-to exceed \$133,153.00. The term of this Agreement shall commence on June 13, 2012 and shall conclude no later than February 12, 2014.

Background The above testing requirements are a DSA requirement to receive a final acceptance of the project when completed.

Local Business Participation Percentage 100.00%

Strategic Alignment Among the key purposes of the District's Facilities Master Plan is to provide an academic environment for the Oakland community that will give every student, educator, and community member using our facilities the best possible opportunity for learning.

Through implementation of the Facilities Master Plan, the District intends to improve the District's facilities in terms of structural integrity, safety, reliability of operating (mechanical) systems, access to modern resources, number and type of appropriate laboratories and specialized instruction rooms, opportunities for physical education, and attractiveness, such that the Oakland Public Schools are second to none. Operation of the District schools under the planned approach is intended to ensure safety, cleanliness, and orderliness for all individuals participating in the learning process.



The basic facility needs of students such as proper lighting, functional roofs, noise control and well maintained buildings, not only convey the message that we value our students and teachers but may foster a sense of school pride and community ownership which may improve attitudes towards learning. The implementation of the Facilities Master Plan is our first step in that direction.

Recommendation

Approval by the Board of Education of an Independent Consultant Agreement for Professional Services with Consolidated Engineering Laboratories for Geotechnical Services on behalf of the District at Montclair New Classroom Building project, in an amount not-to exceed \$133,153.00. The term of this Agreement shall commence on June 13, 2012 and shall conclude no later than February 12, 2014.

Fiscal Impact

Measure B

Attachments

- Independent Consultant Agreement including scope of work

**INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES
(CONSTRUCTION RELATED)**

MONTCLAIR NEW CLASSROOM BUILDING PROJECT

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the **19th day of April, 2012** by and between the Oakland Unified School District, Oakland, California ("District") and **Consolidated Engineering Laboratories** ("Consultant"), (together, "Parties").

NOW, THEREFORE, the Parties agree as follows:

Services. The Consultant shall provide the services as described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work"). The scope of services will generally consist of the following:

The scope of services is more specifically indicated on **Exhibit "A."**

1.1. The Services shall be performed on the following project(s) / site(s) ("Project"):

The scope of the project is to provide geotechnical engineering during soil preparation for the installation of the foundations consisting of soil density testing, testing placement of asphalt, concrete testing, shop and field welding, rebar and glu-lam inspections, and preparing final reports of all testing activities.

2. **Term.** The term of this Agreement shall be no longer than the period of construction of the Project, unless this Agreement is terminated and/or otherwise cancelled prior to that time.

The term of the contract shall commence May 23, 2012 and concluding no later than February 12, 2014.

3. **Submittal of Documents.** The Consultant shall not commence the Work under this Contract until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<u> X </u>	Signed Agreement
<u> X </u>	Workers' Compensation Certification
<u> X </u>	Fingerprinting/Criminal Background Investigation Certification
<u> X </u>	Insurance Certificates and Endorsements

4. **Compensation.** Consultant's fee for the performance of Consultant's Services shall be on an hourly basis and/or a per unit basis, as indicated in **Exhibit "B"** (Prices for Services). District agrees to pay the Consultant for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed **One hundred thirty-three thousand, one hundred fifty-three dollars and no cents (\$133,153.00).** District shall pay Consultant according to the following terms and conditions:

4.1. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Consultant submits an invoice to the District

for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.

5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing services for District, except as follows: Not applicable.
6. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees. In the performance of the work herein contemplated, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.
7. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows: Not applicable.
8. **Performance of Services.**
 - 8.1. **Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.
 - 8.2. **Meetings.** Consultant and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.
 - 8.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
 - 8.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.
9. **Originality of Services.** Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.
10. **Copyright/Trademark/Patent.** Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in

said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

11. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.

12. **Termination.**

- 12.1. **Without Cause By District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three days after the day of mailing, whichever is sooner.
- 12.2. **Without Cause By Consultant.** Consultant may, upon thirty (30) days notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Consultant for services satisfactorily rendered to the date of termination. Written notice by Consultant shall be sufficient to stop further performance of services to District. Consultant acknowledges that this thirty (30) day notice period is acceptable so that the District can attempt to procure the Services from another source.
- 12.3. **With Cause By District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
- 12.3.1. material violation of this Agreement by the Consultant; or
 - 12.3.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or
 - 12.3.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another Consultant. If the expense, fees, and/or costs to the District exceeds the cost of providing the service pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

13. Indemnification. To the furthest extent permitted by California law, Consultant shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim"), to property or persons, including personal injury and/or death, to the extent that any of the above arise out of, pertain to, or relate to the negligence, recklessness, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement, including without limitation the payment of all consequential damages.

14. Insurance.

14.1. The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

14.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Consultant, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

14.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

14.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Consultant's profession.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
Automobile Liability Insurance - Any Auto	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
Professional Liability	\$ 1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

14.2. **Proof of Carriage of Insurance.** The Consultant shall not commence performing any

portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

14.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

14.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

14.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District.

14.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

14.3. **Acceptability of Insurers.** 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.

15. **Assignment.** The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant.

16. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Consultant observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.

17. **Certificates/Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement.

18. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.

19. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the

Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).

20. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing of any portion of the Services.
21. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Consultant must submit, upon request by District, appropriate documentation to the District identifying the steps the Consultant has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
22. **Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE):** There is a twenty percent (20%) minimum participation requirement for all District contracts. Consultant shall comply with the twenty percent (20%) local business participation requirement at a rate of ten percent (10%) local and 10% small local and/or small local resident business participation. The requirement may be wholly satisfied by a City of Oakland certified business. Business entities must be certified by the City of Oakland in order to earn credit toward meeting the twenty percent participation requirement. Please refer to the District's S/SL/SLRBE Policy; a copy can be obtained for the OUSD website: www.ousd.k12.ca.us
23. **No Rights In Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
24. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
 - 24.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
 - 24.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
25. **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.
26. **Confidentiality.** The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the

termination of this Agreement.

27. **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 overnight delivery service, or facsimile transmission, addressed as follows:

District:

Oakland Unified School District
955 High Street
Oakland, CA 94601
ATTN: **Tadashi Nakadegawa,**
Director of Facilities

Consultant:

Eric J. Swenson
Consolidated Engineering Labs
534-23rd Avenue
Oakland, CA 94606

Any notice personally given or sent by 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.

28. **Integration/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.

29. **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 the county in which the District's administrative offices are located.

30. **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.

31. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

32. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

33. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

34. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its

legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

35. Calculation of Time. For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

36. Signature Authority. Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.

37. Counterparts. This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

38. Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

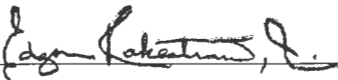
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

OAKLAND UNIFIED SCHOOL DISTRICT




Jody London, President, Board of Education

Date: 6/14/12



Edgar Rakestraw, Jr., Secretary, Board of Education

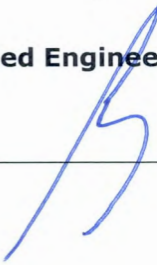
Date: 6/14/12



Timothy White, Associate Superintendent Facilities Planning and Management

Date: 1

Consolidated Engineering Laboratories



05/09/12

APPROVED AS TO FORM:



Catherine Boskoff, Facilities Counsel

Date: 6-4-12

Information regarding Consultant:

Consultant: Consolidated Engineering Laboratories

94-2988193

License No.: City of Oakland: 3332632

Employer Identification and/or Social Security Number

Address: 2001 Crow Canyon Rd #100
San Ramon, CA 94583

Telephone: 925-314-7100

Facsimile: 925-855-7140

E-Mail: RM@ce-labs.com

Type of Business Entity:

- Individual
- Sole Proprietorship
- Partnership
- Limited Partnership
- Corporation, State: California
- Limited Liability Company
- Other: _____

NOTE: Title 26, Code of Federal Regulations, sections 6041 and 6209 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the District requires your federal tax identification number or Social Security number, whichever is applicable.

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

Date:

05/09/12

Proper Name of Consultant:

Consolidated Engineering Laboratories

Signature:

Gary M. Cappa

Print Name:

Gary M. Cappa

Title:

President / CEO

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of the Consultant currently under contract ("Contract") with the District; that I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant.

Consultant certifies that it has taken at least one of the following actions with respect to the construction Project that is the subject of the Contract (check all that apply):

_____ The Consultant has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Consultant's employees and all of its sub-consultants' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of Consultant's employees and of all of its sub-consultants' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

_____ Pursuant to Education Code section 45125.2, Consultant has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Consultant's employees and District pupils at all times; and/or

_____ Pursuant to Education Code section 45125.2, Consultant certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Consultant who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Consultant's employees and its sub-consultants' employees is

Name: _____

Title: _____

_____ The Work on the Contract is at an unoccupied school site and no employee and/or sub-consultant or supplier of any tier of Contract shall come in contact with the District pupils.

Consultant's responsibility for background clearance extends to all of its employees, Sub-consultants, and employees of Sub-consultants coming into contact with District pupils regardless of whether they are designated as employees or acting as independent Consultants of the Consultant.

Date: _____
Proper Name of Consultant: Consolidated Engineering Laboratories
Signature: _____
Print Name: Grant M. Cappa
Title: President/CEO

DRUG/SMOKE-FREE WORKPLACE CERTIFICATION

The District and all District projects are "drug-free" and "smoke-free" workplaces and, as such, require that the Project Manager be subject to the requirements mandated by California Government Code Section 8340, et seq., when on the Project site. The Drug-Free Workplace Act of 1990 requires that every person or entity awarded a contract or grant for the procurement of any property or service from a State agency certify that it will provide a drug-free workplace and, in that respect, comply with certain obligations set forth in that Act. In addition, the Drug-Free Workplace Act provides that each contract or grant awarded by the State agency may be subject to suspension of payments or termination for failure to comply with such Act. It is the sole responsibility of the Project Manager to police and oversee its personnel on the Project. If the Project Manager fails to comply with the Drug-Free Workplace Act or the smoke-free workplace policy of the District, the District may enforce its lawful rights to suspend pending or subsequent payments and to terminate this Agreement and may pursue all other rights and remedies it may have against the Project Manager at law and/or in equity.

Date: 05/09/12
Proper Name of Consultant: Consolidated Engineering Laboratories
Signature: _____
Print Name: Gary M. Cappa
Title: President / CEO

EXHIBIT "A"
DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT

Consultant's entire Proposal is **not** made part of this Agreement.

(See Attached Proposal)



CONSOLIDATED ENGINEERING
LABORATORIES

April 12, 2012

Mr. John Esposito, Senior Project Manager
Oakland Unified School District
955 High Street
Oakland, California 94601

Via E-Mail: john.esposito@consultant.ousd.k12.ca.us

**Subject: Montclair Elementary School – New Classroom Multipurpose Cafeteria Building
1757 Mountain Boulevard, California 94611
CEL #10-25985PW
Materials Testing and Construction Inspection Services**

Dear Mr. Esposito:

Consolidated Engineering Laboratories (CEL) is pleased to submit our cost proposal to provide materials testing and construction inspection services for the **Montclair Elementary School – New Classroom Multipurpose Cafeteria Building project, located at 1757 Mountain Boulevard in Oakland, California**. CEL would be proud to be part of your team, helping to ensure the construction quality and success of this project.

Following are our cost estimate and scope of services. We assembled this proposal based on the following sources:

- Structural Drawings prepared by Kam Yan & Associates dated December 2, 2011;
- Project Specifications;
- Preliminary Construction Schedule prepared by West Bay Builders;
- Conversations with Kwan Wo Iron Works regarding the shop fabrication and field welding schedule.

Thank you for giving CEL the opportunity to be a part of your project team. We are committed to providing our clients the very best service possible to fulfill their testing and inspection needs, and are eager to prove this commitment to you. Should you have any questions or require additional information, please do not hesitate to contact me.

Respectfully submitted,

CONSOLIDATED ENGINEERING LABORATORIES

Rob Morse
Director, Business Development

Eric J. Swenson, P.E., P.G., G.E., C.E.G.
Geotechnical Engineer

RM/EJS/clr

**MONTCLAIR ELEMENTARY SCHOOL
NEW CLASSROOM MULTIPURPOSE CAFETERIA BUILDING
OAKLAND, CALIFORNIA
CEL #10-25985PW
PRICING**

Description	Quantity	Unit Rate	Subtotals	
GEOTECHNICAL ENGINEER OF RECORD				
Site reconnaissance, document review, transfer letter preparation, project management, field consultation, and report preparation.				
Senior Engineer	16 Hours	\$ 160.00	\$ 2,560.00	
Staff Engineer - Foundation Observation	10 Hours	\$ 125.00	\$ 1,250.00	
Administrative	8 Hours	\$ 65.00	\$ 520.00	
Observation and testing during mass grading operations.				
Technician - 15 Full Time Days	120 Hours	\$ 80.00	\$ 9,600.00	
Lab, Max Density/Opt Moisture	2 Each	\$ 300.00	\$ 600.00	
Observation and testing during underground operations.				
Technician - 20 Half Days	80 Hours	\$ 80.00	\$ 6,400.00	
Lab, Max Density/Opt Moisture	2 Each	\$ 300.00	\$ 600.00	
Observation and testing during hardscape and parking lot operations.				
Technician - 25 Half Days	100 Hours	\$ 80.00	\$ 8,000.00	
Lab, Max Density/Opt Moisture	2 Each	\$ 300.00	\$ 600.00	
Observation and testing during retaining wall backfill.				
Technician - 10 Half Days	40 Hours	\$ 80.00	\$ 3,200.00	
Lab, Max Density/Opt Moisture	2 Each	\$ 300.00	\$ 600.00	
SUBTOTAL:			\$	33,930.00
REINFORCED CONCRETE				
Mix Design Review	3 Each	\$ 150.00	\$ 450.00	
Sampling and Tagging Reinforcing Steel	28 Hours	\$ 79.00	\$ 2,212.00	
Rebar Tensile and Bend Test	22 Each	\$ 60.00	\$ 1,320.00	
Batch Plant Inspection (unless waived)	88 Hours	\$ 79.00	\$ 6,952.00	
Concrete Sampling	136 Hours	\$ 79.00	\$ 10,744.00	
Compression Tests	160 Cylinders / 40 Sets	\$ 30.00	\$ 4,800.00	
Sample Pick-Ups	21 Trips	\$ 10.00	\$ 210.00	
SUBTOTAL:			\$	26,688.00
STRUCTURAL STEEL AND MISCELLANEOUS STEEL				
Welding Procedure Specification Review	2 Each	\$ 150.00	\$ 300.00	
Shop Fabrication Inspection (8 weeks)	320 Hours	\$ 79.00	\$ 25,280.00	
High Strength Bolt Assemblies	15 Each	\$ 210.00	\$ 3,150.00	
Field Welding Inspection (8 weeks)	320 Hours	\$ 79.00	\$ 25,280.00	
SUBTOTAL:			\$	54,010.00

**MONTCLAIR ELEMENTARY SCHOOL
NEW CLASSROOM MULTIPURPOSE CAFETERIA BUILDING
OAKLAND, CALIFORNIA
CEL #10-25985PW
PRICING**

Description	Quantity	Unit Rate	Subtotals	
GLU-LAM FABRICATION				
Wood Frabrication Inspection (Continuous)	40 Hours	\$ 95.00	\$ 3,800.00	
SUBTOTAL:			\$ 3,800.00	
POST-INSTALLED ANCHORS AND CEILING WIRES				
Proofload or Torque Testing	80 Hours	\$ 79.00	\$ 6,320.00	
SUBTOTAL:			\$ 6,320.00	
NON-SHRINK GROUT				
Non-Shrink Grout Placement	16 Hours	\$ 79.00	\$ 1,264.00	
Non-Shrink Grout Compression Tests	12 Each / 4 Sets	\$ 30.00	\$ 360.00	
Sample Pick-Ups	4 Trips	\$ 10.00	\$ 40.00	
SUBTOTAL:			\$ 1,664.00	
MISCELLANEOUS				
Final Affidavit	1 Per Permit	\$ 400.00	\$ 400.00	
Project Engineering and Management 5%			\$ 6,340.60	
SUBTOTAL:			\$ 6,740.60	
MAN-HOURS		1402	GRAND TOTAL:	\$ 133,152.60

Basis of Charges: The proposed unit rates will be in effect through June 30, 2013. Thereafter, the unit rates are subject to an annual increase of five percent (5%) per year to mitigate the annual operating cost increases:

Work over 8 Hours per day, or on Saturdays	Time and One-Half
Work over 12 Hours	Double Time
Work on Sundays/Holidays	Double Time
Swing or Graveyard Shift Premium	\$10.00 per Hour
Work from 0-4 Hours	4-Hour Minimum Billing
Work from 4-8 Hours	8-Hour Minimum Billing
Show-Up Time	2-Hour Minimum Billing
Sample Pick-Up	\$10.00/Trip
Laboratory Testing – Rush Fee	Add 50% to Testing Cost
Final Affidavit (per permit number) (request six working days advanced notice)	\$400.00
Extra Copies (over four per issue date) of Inspection Reports and Final Affidavit	\$20.00/each
Project Engineering and Management	5% of Fees
Reimbursables	Cost + 15%
QA/QC Plan Written Procedures	Quotation upon Request
Out of Area Services (beyond 40-mile radius)	As Listed Below:
Travel Time	Basic Hourly Rate
Mileage	\$0.60/Mile
Per-Diem, including lodging	\$90.00/Day

SCOPE OF SERVICES

SOILS - GEOTECHNICAL ENGINEER OF RECORD AND SOIL OBSERVATION AND TESTING

Based on our review of the project documents, we understand that the geotechnical construction aspects of the project will include grading for a new 10-room 2-story classroom building along with site development which includes new utilities, retaining walls, hardscape, and parking areas. A previous geotechnical report was prepared by PSI. In accordance with DSA regulations, we will review and assume the recommendations and prepare a DSA form 1-EOR.

The geotechnical portions of this project will be performed under the direction of CEL's Geotechnical Engineer, which will be the Geotechnical Engineer of Record for the project. A technician with a nuclear gauge will perform density and moisture testing in the field during grading, utility trench backfilling, and pavement operations utilizing the American Society for Testing and Materials (ASTM) D6938, and ASTM D1556 methods. Laboratory maximum density and optimum moisture determination will be performed in accordance with ASTM D1557 or D698.

- Perform a site reconnaissance, review the geotechnical engineer report prepared for this project, review the drawings, and prepare a transfer of geotechnical engineer of record responsibility letter;
- Project management, consultation during construction, preparation of daily field, foundation excavation observation, and final grading reports;
- Observation and testing during site clearing and mass grading;
- Observing the foundations excavations for structures;
- Observation and testing during backfilling of utility trenches;
- Observation and testing during backfilling around retaining walls;
- Observation and testing during subgrade preparation and baserock placement in asphalt paved areas;
- Observation and testing during asphalt concrete placement.

Observation and testing will consist of visual observation of earthwork activities and taking field density and moisture tests for the purpose of ascertaining that the work is in substantial conformance with the contract documents. Such observation and testing shall not be relied upon by others as acceptance of the work nor shall it be construed to relieve the contractor in any way from his obligation and responsibilities under the construction contract. Specifically, but without limitations, observation and testing shall not require the technician and engineer to assume responsibilities for the means and methods of construction nor for safety on the job site.

REINFORCED CONCRETE - SCHOOLS

Mix Review

We will review the proposed concrete mixes in our laboratory for conformance with specifications.

Sample, Tag and Test Reinforcing Steel

Prior to fabrication of the steel, we will make a visit to the reinforcing steel supplier and collect mill certificates and sample reinforcing steel from the unbroken bundles, prior to fabrication of the steel. Testing will be as per American Society for Testing and Materials (ASTM) A615. Once the steel is ready for shipment, we will make another trip to the supplier and inspect to determine the steel has identical heat numbers to that already tested, and tag the steel so that it may be shipped to the job site.

Scope of Services, Reinforced Concrete-Schools (cont'd)

Batch Plant Inspection

Our inspector will periodically check for batch weights, moisture content of aggregates, proper use of admixtures, and batching procedures.

Reinforcing Steel Placement

Will be performed by the Inspector of Record (IOR).

Concrete Placement

Will be performed by the IOR.

Concrete Sampling

Our inspector will be on-site to perform casting of concrete cylinders for compression testing at a frequency of four cylinders for every 50 cubic yards placed.

Concrete Compression Testing

We will transport all samples to our laboratory for compression testing in strict accordance with ASTM requirements. Compression test reports will be distributed to the appropriate parties.

STRUCTURAL STEEL AND MISCELLANEOUS STEEL

Shop Inspection

- Review of welding procedure specifications;
- Material identification and mill certificate review;
- Observe the utilization of certified welders and approved welding procedures;
- Visual inspection of welding to determine compliance with contract documents;
- Nondestructive testing of moment welds and column splices;
- Confirm approximate preheat temperature;
- Continuous inspection of multi-pass fillet welds, groove welds and reinforcing steel welding.

Field Inspection

- Observe the utilization of certified welders and approved procedures;
- Confirm approximate preheat temperature;
- Nondestructive testing of moment welds and column splices;
- Inspect to determine and observe proper installation and tightening of high strength bolts;
- Visual inspection of welding to determine compliance with contract documents;
- Continuous inspection of multi-pass fillet welds, groove welds and reinforcing steel welding.

Metal Deck|Shear Studs

Intermittent visual inspection will be conducted for metal deck and shear stud welding.

High Strength Bolting

As required by the California Building Code (CBC), at least two bolts per connection, or a minimum of ten percent (10%) of all high-strength bolts in slip critical connections, will be tested to the required torque per American Society for Testing and Materials (ASTM) guidelines.

Scope of Services, Structural Steel and Miscellaneous Steel (cont'd)

Laboratory Testing of High Strength Bolt Assemblies (ASTM A325 | A490)

We will sample a set of three (3) high strength bolt assemblies per size, lot and heat number from sealed kegs at the supplier or steel fabrication plant. We will perform proofload, ultimate and hardness tests on the assemblies in our laboratory.

GLU-LAM FABRICATION

Our inspectors will perform the following inspection services:

- Inspect to determine that the proposed lumber grades, adhesive and end-joint details meet with code requirements;
- Determine that materials with lumber-grade marks are being used;
- Measure moisture content of lumber and observe compliance with acceptance range specified;
- Determination of preservative treatment requirements;
- Inspection of gluing and curing;
- Inspection of lamination for glue spread and skips;
- Observe and record finishing procedures;
- Submit written progress reports describing the tests and inspections made and documentation of the action taken to correct non-conforming work.

POST-INSTALLED ANCHORS AND CEILING WIRES

As required, we will perform visual examination of anchor placement to determine if post-installed anchor holes are clean, of the proper depth and diameter, and installed as specified by the manufacturer. In addition, we will perform proofload/torque testing of the anchors at the percentage defined by the plans and specifications.

NOTE: These estimates assume that adequate access will be provided for performing the work at maximum production, i.e., scaffolding. Should any anchor fail, additional tests will be required per plans.

NON-SHRINK GROUT

Non-Shrink Grout Placement

During the pours, our inspector will periodically monitor the placement. Our inspector will be performing the following duties:

- Determine the adequacy of placement and vibratory equipment;
- Observe proper delivery rate of non-shrink grout and monitor batch times;
- Observe that the correct mix is being utilized;
- Record temperature of air and concrete;
- Cast cubes for compression tests at the specified frequency.

Compression Testing

We will transport all samples to our laboratory for testing in strict accordance with the American Society for Testing and Materials (ASTM) requirements. Reports of compression tests will be distributed to the appropriate parties.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/31/12

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Butwin Insurance Group Suite 414 60 Cutter Mill Road Great Neck, NY 11021-3104 Richard S. Butwin	516-466-4200	CONTACT NAME:	
	516-466-4213	PHONE (A/C No, Ext):	FAX (A/C, No):
		E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A : The Hartford Insurance Co	NAIC # 34690
		INSURER B : National Union Fire Ins. Co.	19445
		INSURER C : Admiral Insurance Company	24856
		INSURER D :	
		INSURER E :	
		INSURER F :	

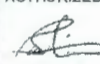
INSURED **Geosphere Consultants Inc**
2001 Crow Canyon Road #100
San Ramon, CA 94583

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO. JEST <input type="checkbox"/> LOC	X	X	12UENOH1550	07/01/11	07/01/12	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV NJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	X	X	12UENOH1551	07/01/11	07/01/12	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> RETENTION \$ 10000			BE080609017	07/01/11	07/01/12	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	12WEOH1549	07/01/11	07/01/12	<input checked="" type="checkbox"/> WC STATE TOBY LIMITS <input type="checkbox"/> OTHER E.L EACH ACCIDENT \$ 1,000,000 E.L DISEASE - EA EMPLOYEE \$ 1,000,000 E.L DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liab			EO00001416201	07/01/11	07/01/12	Ea Claim 2,000,000 Aggregate 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Montclair Elementary School - New Classroom Building, 1757 Mountain Blvd, Oakland, CA 94611
The District and the State and their agents, representatives, employees, trustees, officers, consultants and volunteers are additional insureds on a primary and non contributory basis

CERTIFICATE HOLDER OAKLAMO Oakland Unified School District- Dept of Facilities Planning & Management 955 High Street Oakland, CA 94601	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

INDEPENDENT CONSULTANT AGREEMENT ROUTING FORM

Project Information			
Project Name	Montclair New Classroom Building	Site	Montclair ES
Basic Directions			
Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.			
Attachment Checklist	<input type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider		

Contractor Information							
Contractor Name	Consolidated Engineering Laboratories	Agency's Contact	Eric J. Swenson				
OUSD Vendor ID #	I023870	Title	Project Manager				
Street Address	534-23 rd Avenue	City	Oakland	State	CA	Zip	94606
Telephone	925-314-7100	Policy Expires					
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
OUSD Project #	07050						

Term			
Date Work Will Begin	6-13-2012	Date Work Will End By (not more than 5 years from start date)	2-12-2014

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$133,153.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$
Other Expenses		Requisition Number	

Budget Information				
If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.				
Resource #	Funding Source	Org Key	Object Code	Amount
9299, 9399, 9499, 9599, 9699	Measure B	1439901811	6265	\$133,153.00

Approval and Routing (in order of approval steps)				
Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.				
1.	Division Head	Charles Love	Phone	510-535-7081
			Fax	510-535-7082
	Capital Program Contract & Accounting Manager			
	Signature		Date Approved	6-1-12
2.	General Counsel, Department of Facilities Planning and Management			
	Signature		Date Approved	6-4-12
	Associate Superintendent, Facilities Planning and Management			
3.	Signature			
	Date Approved			
	President, Board of Education			
4.	Signature			
	Date Approved			