

**ROSS VALLEY SCHOOL DISTRICT
INDEPENDENT CONTRACTOR AGREEMENT FOR SPECIAL SERVICES**

This Independent Contractor Agreement for Professional Services (“Agreement”) is made and entered into as of the 19th day of July, 2012 between the Ross Valley School District, San Anselmo, California (“District”) and Consolidated Engineering Laboratories (“Contractor”), (together, “Parties”).

WHEREAS, the District is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advise in financial, economic, accounting, engineering, legal or administrative matters, if such persons are specially trained and experienced and competent to perform the special services required; and

WHEREAS, the District is in need of such special services and advice; and

WHEREAS, the Contractor is specially trained, experienced and competent to perform the special services required by the District, and such services are needed on a limited basis;

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** Contractor shall provide Materials Testing Services (“Services”) at White Hill Middle School as described in **Exhibit “A,”** attached hereto and incorporated herein by this reference (“Services” or “Work”):
2. **Term.** Contractor shall commence providing services under this Agreement on July 9, 2012, and will diligently perform as required and complete performance by August 1, 2013.
3. **Submittal of Documents.** Contractor shall not commence the Work under this Agreement until the Contractor 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
<u> X </u>	W-9 Form

- _____ [OTHER]
4. **Compensation.** District agrees to pay the Contractor for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed Seventy-Eight Thousand Dollars (\$78,000). District shall pay the Contractor 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 Contractor 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 the Contractor for any costs or expenses paid or incurred by the Contractor in performing services for District, except as follows:

5.1. Not applicable.

No expenses shall be allowable without the prior written approval of the District.

6. **Order of Precedence.** Where terms of the Agreement, conflict with terms of other incorporated documents, including **Exhibit “A”**, the terms of this Agreement shall take precedence.
7. **Independent Contractor.** Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor 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 the District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor 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 the Contractor's employees. In the performance of the work herein contemplated, the Contractor is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, and the District is interested only in the results obtained.

8. **Materials.** Contractor 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:
 - 8.1. Not applicable.
9. **Performance of Services.**
 - 9.1. **Standard of Care.** Contractor represents that the Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of the District. Contractor'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.
 - 9.2. **Meetings.** Contractor and the District agree to participate in meetings to discuss the District's Strategic Plan, timetables, implementations of services, and any other issues deemed relevant to the operation of Contractor's performance of Services.
 - 9.3. **District Approval.** The Services 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.
10. **Originality of Services.** Except as to standard generic details, the Contractor 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 the Contractor and shall not be copied in whole or in part from any other source, except that submitted to the Contractor by the District as a basis for such services.
11. **Copyright/Trademark/Patent.** Contractor understands and agrees that all matters produced under this Agreement shall become the property of the District and cannot be used without the 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. Contractor consents to use of the Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
12. **Audit.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations that the Contractor transacted under this Agreement. The Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Contractor 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 the Contractor and shall conduct audit(s) during the Contractor's normal business hours, unless the Contractor otherwise consents.
13. **Termination.**
 - 13.1. **Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement and compensate the Contractor only for services satisfactorily rendered to the date of termination. Written notice by the District shall be sufficient to stop further performance of services by

the Contractor. Notice shall be deemed given when received by the Contractor or no later than three (3) days after the day of mailing, whichever is sooner.

13.2. **Without Cause by Contractor.** Contractor may, upon thirty (30) days notice, with or without reason, terminate this Agreement. Upon this termination, the District shall only be obligated to compensate the Contractor for services satisfactorily rendered to the date of termination. Written notice by the Contractor shall be sufficient to stop further performance of services to the District after the expiration of the thirty (30) day notice period. Contractor acknowledges that this thirty (30) day notice period is acceptable so that the District can attempt to procure the Services from another source.

13.3. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

13.3.1. material violation of this Agreement by the Contractor; or

13.3.2. any act by the Contractor exposing the District to liability to others for personal injury or property damage; or

13.3.3. the Contractor is adjudged a bankrupt, the Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of the Contractor's insolvency.

Written notice by the 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 Contractor. If the expense, fees, and/or costs to the District exceeds the cost of providing the Services pursuant to this Agreement, the Contractor 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 the District.

14. **Indemnification.** To the furthest extent permitted by California law, the Contractor shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, Contractors, 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 the Contractor, its officials, officers, employees, subcontractors, Contractors, 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.

15. **Insurance.**

15.1. Contractor 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.

15.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Contractor, 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.)

15.1.2. **Workers' Compensation.** Workers' Compensation 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 Contractor 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.

- 15.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor’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 General Aggregate	\$ 1,000,000 \$ 1,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	\$ 1,000,000 \$ 1,000,000
Professional Liability	\$ 2,000,000
Workers Compensation	Statutory Limits

- 15.2. **Proof of Carriage of Insurance.** Contractor 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:

- 15.2.1. 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.”
- 15.2.2. 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.
- 15.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, Contractors, 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 Contractor’s insurance policies shall be primary to any insurance or self-insurance maintained by District.
- 15.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

- 15.3. **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.

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

17. **Compliance with Laws.** Contractor 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. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If the Contractor observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules or regulations, the Contractor 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 Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon the Contractor’s receipt of a written termination notice from the District. If the Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, the Contractor shall bear all costs arising therefrom.

18. **Certificates/Permits/Licenses.** Contractor and all Contractor'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.
19. **Employment with Public Agency.** Contractor, if an employee of another public agency, agrees that the Contractor 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.
20. **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 Contractor 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 Contractor agrees to require like compliance by all its subcontractor(s).
21. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Contractor's performing of any portion of the Services.
22. **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.
23. **District's Evaluation of Contractor and Contractor's Employees and/or Subcontractors.** District may evaluate the Contractor in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
 - 23.1. Requesting that the District employee(s) evaluate the Contractor and the Contractor's employees and subcontractors and each of their performance.
 - 23.2. Announced and unannounced observance of the Contractor, the Contractor's employee(s), and/or subcontractor(s).
24. **Limitation of District Liability.** Other than as provided in this Agreement, the 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 the 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.
25. **Confidentiality.** Contractor and all Contractor's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Contractor 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.
26. **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:
 Ross Valley School District
 110 Shaw Drive
 San Anselmo, California 94960
Attn: Eileen Rohan, Superintendent

Contractor:
 Consolidated Engineering Laboratories
 7757 Bell Road
 Windsor, CA 94592
 Attn: Virgil Garner

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.

- 27. 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.
- 28. 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.
- 29. 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.
- 30. 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.
- 31. 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.
- 32. 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.
- 33. 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.
- 34. Calculation of Time.** For the purposes of this Agreement, “days” refers to calendar days unless otherwise specified.
- 35. 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.
- 36. 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.
- 37. 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.

Dated: _____, 20__

Dated: _____, 20__

Ross Valley School District

Consolidated Engineering Laboratories

By: _____

By: _____

Name: Eileen Rohan

Print Name: _____

Title: Superintendent

Print Title: _____

Information regarding Contractor:

Contractor: _____

Employer Identification and/or Social Security
Number

License No.: _____

Address: _____

NOTE: Federal Code of 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.

Telephone: _____

Facsimile: _____

E-Mail: _____

Type of Business Entity:

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

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:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.

- 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 its 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 Agreement.

Date: _____

Name of Contractor or Company: _____

Signature: _____

Print Name and Title: _____

(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 District prior to performing any Work under this Agreement.)

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Independent Contractor Agreement for Professional Services (“Agreement”):

[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.] Contractor’s employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Contractor’s employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Contractor for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 (c))

Date: _____
District Representative’s Name and Title: _____
Signature: _____

The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Contractor’s services under this Agreement and Contractor certifies its compliance with these provisions as follows: *“Contractor certifies that the Contractor has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Contractor’s employees, subcontractors, agents, and subcontractors’ employees or agents (“Employees”) regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor, who may have contact with District pupils in the course of providing services pursuant to the Agreement, 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 all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto.”*

Contractor’s services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:

- _____ The installation of a physical barrier at the worksite to limit contact with pupils.
- _____ Continual supervision and monitoring of all Contractor’s on-site employees of Contractor by an employee of Contractor, _____, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.
- _____ Surveillance of Employees by District personnel.

[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]

Date: _____
District Representative’s Name and Title: _____
Signature: _____

[MUST BE COMPLETED BY CONTRACTOR’S AUTHORIZED REPRESENTATIVE.] I am a representative of the Contractor entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Contractor.

Date: _____
Name of Contractor or Company: _____
Signature: _____
Print Name and Title: _____

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

Consultant's entire Proposal is **not** made part of this Agreement. **IF A CONSULTANT PROVIDES AN ACCEPTABLE DESCRIPTION OF SERVICES AS PART OF A PROPOSAL, THAT DESCRIPTION OF SERVICES CAN BE ATTACHED WITHOUT ANY TERMS, CONDITIONS, LIMITATIONS, ETC., FROM THAT PROPOSAL.**

Scope of services to be provided are as enumerated in the consultant's response to Request for Proposals dated April 17, 2012 except are limited to Material Testing as detailed in the response.

Note: For reference, copies of pages outlining estimated fees and Scope of services are attached.