

Mt. Diablo Unified School District

Independent Contract Agreement

MatriScope Engineering Laboratories, Inc.

Laboratory and Site Testing Services

Pool Replacement

At

Mt. Diablo and College Park High Schools

Dated

July 21, 2010

MT. DIABLO UNIFIED SCHOOL DISTRICT
1936 Carlotta Drive
Concord, CA 94519

**AGREEMENT BETWEEN
MT. DIABLO UNIFIED SCHOOL DISTRICT
AND INDEPENDENT CONTRACTOR**

THIS AGREEMENT is made this 21st day of July 2010, by and between the Mt. Diablo Unified School District (hereinafter "District") and MatriScope Engineering Laboratories, Inc. (MatriScope) (hereinafter "Contractor").

District hereby engages Contractor to render described services under the terms and conditions of this Agreement.

1. Performance of Services

- (a) Contractor agrees to perform the services described on Exhibit "A" (hereinafter "Services") on page 4 of this Agreement as an independent contractor. Contractor will determine the means, manner, method, and details of performing the Services. Contractor shall be responsible for providing the materials, tools, transportation, and workspace necessary for the performance of the services. Contractor may, at Contractor's own expense, use non-District employees to perform the Services under this Agreement. Subcontractors may be used with the written approval of the District only.
- (b) Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of the District. Contractor shall be solely responsible for the professional performance of the services, and shall receive no assistance, direction, or control from District. Contractor shall have sole discretion and control of Contractor's services and the manner in which they are performed.

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

\$ 24,953.00 total fee for Services (NOT TO EXCEED)

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

- a. \$ See Exhibit A per hour,
b. \$ _____ per day, or
c. \$ _____ per engagement.

Check one:

- Partial Payments: Contractor shall invoice District on a monthly basis or as agreed to for all hours worked pursuant to this Agreement.
- Payment in Full: Contractor shall be paid upon completion of services after obtaining originator's signature at the bottom of this contract, indicating that services have been performed.

Contractor shall be responsible for all expenses incurred in association with the performance of the Services.

3. Term and Termination. This Agreement will become effective on July 21, 2010. This Agreement will terminate upon the completion of the Services or when terminated as set forth below.

Either party may terminate this Agreement at any time by giving thirty (30) days written notice to the other party. Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notice to the breaching party. Termination shall be effective immediately on receipt of said notice.

4. Relationship of the Parties. Contractor enters into this Agreement as, and shall continue to be, an independent contractor. Under no circumstances shall Contractor be considered an employee of District within the meaning of any federal, state, or local law or regulation including, but not limited to, laws or regulations governing unemployment insurance, old age benefits, workers' compensation, industrial illness or accident coverage, taxes, or labor and employment in general. Under no circumstances shall

Contractor look to District as his/her employer, or as a partner, agent, or principal. Contractor shall not be entitled to any benefits accorded to District's employees, including, without limitation, workers' compensation, disability insurance, vacation, or sick pay. Contractor shall be responsible for providing, at Contractor's expense, and in the Contractor's name, disability, workers' compensation or other insurance, as well as licenses and permits usual or necessary for conducting the Services hereunder.

Contractor shall pay, when and as due, any and all local, state and federal income or other taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide District with proof of said payments upon demand. Contractor hereby indemnifies District for any claims, losses, costs, fees, liabilities, damages, or injuries suffered by District arising out of Contractor's breach of this Section.

5. Fingerprinting and Criminal Records Check of Contractor's Employees. Contractor shall comply with the provisions of Education Code §45125.1 regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of the contractor and/or its employees. Contractor shall not permit any employee to have any contact with District pupils until such time as Contractor has verified in writing to the governing board of the District that such employee has not been convicted of a felony, as defined in Education Code §45125.1.
6. Rules and Regulations. All results and regulations of the Board of Education and all federal, state, and local laws, ordinances and regulations are to be observed strictly by Contractor pursuant to this Agreement.
7. Indemnification. Contractor shall and does hereby indemnify, defend, and hold harmless District, and District's officers, employees, agents and representatives from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities and damages, including, without limitation, interest, penalties, and reasonable attorneys fees and costs, that District may incur or suffer and that arise, result from, or are related to any breach or failure of Contractor to perform any of the representations, warranties, and agreements contained in this Agreement.
8. Insurance. Insurance shall be endorsed to include the District, its officers, officials, agents, employees and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Contractor. Such insurance shall contain a provision that the insurance afforded thereby to the District and its officers, officials, agents, employees and volunteers shall be primary insurance to the full limits of liability of the policy, and that if the District, its officers, officials, agents, employees and volunteers have other insurance against a loss covered by such a policy, such other insurance shall be excess insurance only.
9. Ownership of Designs and Plans. Contractor agrees that all designs, plans, reports, specifications, drawings, schematics, prototypes, models, inventions and all other information and items made during the course of this Agreement and arising from the Services shall be owned by and assigned to District as its sole and exclusive property.
10. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by telegram, overnight delivery service, or facsimile transmission, addressed as follows:

<u>DISTRICT</u>	<u>CONTRACTOR</u>
Mt. Diablo Unified School District	Name: <u>Ms. Carla Collins</u>
1936 Carlotta Drive	Address: <u>MatriScope Engineering Laboratories, Inc.</u>
Concord, CA 94519-1397	<u>3102 Industrial Blvd.</u>
Attn: Superintendent	<u>West Sacramento, California 95691</u>
	Phone: <u>(916) 375-6700</u>
	Fax: <u>(916) 375-6702</u>
	Tax ID #: <u>20-0239251</u>

Any notice personally given or sent by telegram or facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

- 11. Entire Agreement of Parties. This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both parties.
- 12. California Law. This Agreement shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Contra Costa County, California.
- 13. Attorneys' Fees. If either party files any action or brings any proceedings against the other arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to its costs or attorneys' fees.
- 14. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

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

MT. DIABLO UNIFIED SCHOOL DISTRICT

CONTRACTOR:

By: _____
Budget Administrator Date

By:  7/8/10
Date

Title: _____

Title: General Manager

Authorized by: _____
Assistant or Associate Superintendent Date

Approved: _____
Assistant Superintendent of Personnel Date

TO BE COMPLETED BY DISTRICT BUDGET ADMINISTRATOR

It is my determination that this contractor is not required to comply with Ed. Code §45125.1 regarding the submission of fingerprints to the Department of Justice.

OR

This contractor is subject to the requirements of Ed. Code §45125.1 and will not begin services until I have received evidence that the Department of Justice has completed its criminal background investigation.

Administrator's Signature Date

Upon completion of Services, sign below and forward original contract to Fiscal Services for payment.

Originator's Signature Date Phone

324.8332.58.6290 - \$12,476.50 (NTE)
355.8332.58.6290 - \$12,476.50 (NTE)

Budget Code

Distribution
original: Fiscal Services for payment
copy: Contractor
copy: Originator/Budget Administrator

EXHIBIT A

LIST OF SERVICES TO BE PERFORMED BY CONTRACTOR

1. Provide inspection services during course of construction for:
 - 1.1. Scope of construction Pool Replacement at Mt. Diablo and College Park High School as described per attached proposal P062310CCRev2, dated July 2, 2010 (Exhibit A.1).
2. The Testing Laboratory services shall include but not be limited to the following tasks:
 - 2.1. Provide laboratory materials testing and resident inspection services to insure construction compliance with code, plans, and specifications as required of public schools in the State of California.
 - 2.2. Provide Geotechnical Services as identified in Exhibit A.1.
 - 2.3. All required reports through close-out.

Services of Contractor arranged by



Signature

MO&F

Department / School

EXHIBIT A.1
CONTRACTOR PROPOSAL and FEE SCHEDULE



July 2, 2010

Proposal No: P062310CCRev2

Mr. Timothy Cody
 Project Manager
 Mt. Diablo Unified School District
 1480 Gasoline Alley
 Concord, CA 94520

Phone No.: (925) 825-7440 x 3810

Subject: Revised Proposal to Provide Material Testing and Special Inspection Services
Bid 1562 - Swimming Pool Replacement
Mt. Diablo and College Park High School
Concord, CA

Dear Mr. Cody:

MatriScope Engineering Laboratories, Inc. (MatriScope) is pleased to present the Mt. Diablo Unified School District (District) with our revised proposal to provide Special Inspections and Materials Testing Services for the Swimming Pool Replacement project, located at the Mt. Diablo and College Park High School in Concord, California.

MatriScope provides geotechnical and environmental engineering, construction inspection and material testing services complete with a DSA (LEA#138), Caltrans, USACE, AMRL, and CCRL accredited laboratory. We provide proactive service to our clients through efficient management and cost control, and by providing excellent personnel to each assignment. We believe that our extensive experience and ability to respond timely to your firm's requests for services will result in superior customer service throughout the duration of this contract.

We have summarized a few areas that highlight our proposal as well as a few competitive areas allowing our firm to provide the highest quality during construction:

1. MatriScope is **committed to quality results which protect our clients**. MatriScope was the first to discover and report to DSA defective tube steel seam welds which sparked an industry alert, throughout California and the nation. The related tube steel was fabricated in China.
2. MatriScope's assigned staff are **multi-certified inspector(s)**, which will potentially off-set multiple inspector costs.
3. Our **web based Client-Access** located on our website at www.matriscope.com allows the client to access progress-to-date information for reporting.

The attached budget proposal details our proposed services and fees for this project. We will assume normal conditions will prevail and work will progress free of any disruptions or unforeseen obstacles. Please consider that we are dependent upon your construction schedule, and that is a factor in determining our ultimate cost. We propose to conduct our services on a time-and-materials basis.

3102 Industrial Blvd. • West Sacramento, CA 95691 • 916.375.6700 • Fax: 916.375.6702 • web@matriscope.com
 436 14th Street, Suite 1429 • Oakland, CA 94612 • 510.763.3601 • Fax: 510.763.1388 • oak@matriscope.com
 1959 N. Village Drive • Truckee, CA 96161 • 530.562.0355 • Fax: 530.562.0370 • web@matriscope.com

EXHIBIT A.1
CONTRACTOR PROPOSAL and FEE SCHEDULE

Proposal to Provide Material Testing and Special Inspection Services
Bid 1562 - Swimming Pool Replacement
Mt. Diablo and College Park High School
Concord, CA

July 2, 2010

Page 2 of 2

MatriScope must conform to the project specifications, as well as to the contractors' and subcontractors' work schedules, which can vary according to job conditions. If additional services are required beyond the scope of this proposal, those services would be billed in accordance with the unit prices quoted and/or our 2010 Schedule of Fees and Services.

MatriScope has a minimum billing increment for our field technicians. Field technicians' charges are billed at a two-hour minimum plus actual time. Overtime (work over 8 hours and Saturdays) or premium time (Sundays and Holidays) are billed at 1.5x and 2.0x, respectively, of our stated hourly rates.

MatriScope Engineering Laboratories, Inc. will provide a certificate of insurance providing our standard coverage, which consists of:

Commercial General Liability (CGL)	\$1,000,000 each occurrence
Bodily Injury & Property Damage	\$2,000,000 aggregate
Workers Compensation	\$1,000,000
Automobile Liability	\$1,000,000

Any request for additional coverage and/or endorsement requirements imposed by the Technical Services Agreement shall be billed by MatriScope at cost plus ten percent. All inspectors and/or materials testing will be provided upon 12 hours prior notice of the time and date of the requested service. Same day request for service will be billed at 1.5 x hourly rate.

We will provide an itemized listing of all tests and inspections performed. All billing services performed in the field will be charged on an hourly basis. An administration fee has been waived for this assignment. All payments are net-30 days from the date of invoice and are considered past due thereafter. A finance charge of one and a half percent per month service charge (eighteen percent per annum) may be assessed on past due accounts.

It is our common goal to complete the Swimming Pool Replacement project, with particular attention to time and budget, and we look forward to participating and contributing to the project's success. Should you have any questions regarding our services or require additional information, please do not hesitate to contact our corporate office at (916) 375-6700.

Respectfully Submitted,

MatriScope Engineering Laboratories, Inc.



Carla Collins
Business Development Manager



EXHIBIT A.1
CONTRACTOR PROPOSAL and FEE SCHEDULE



Structural Tests and Inspection Services
Swimming Pool Replacement
Mt. Diablo / College Park High School - Bid 1562
Mt. Diablo USD

July 2, 2010

02221	Excavation, Aggregate Base, Asphalt Paving, & Utilities	Visits	Estimated Units	Rate	Amount
Field Compaction Testing & Observation:					
	Swimming Pool Preparation (Over-Ex & Recompact)	6	48 \hours	\$ 65.00	\$ 3,120.00
	Trench Backfill, & Flatwork Preparation	8	32 \hours	\$ 65.00	\$ 2,080.00
Laboratory Services:					
	Geotechnical Engineer - Final Report & Affidavit		4 \hours	\$ 160.00	\$ 640.00
	Compaction Curves (ASTM D 1557)		5 \each	\$ 225.00	\$ 1,125.00
	Nuclear Gauge Equipment		80 \each	\$ 10.00	\$ 800.00
Subtotal:					\$ 7,765.00
03301	Swimming Pool Cast-In-Place Concrete	Visits	Estimated Units	Rate	Amount
Rebar & Hold Down Inspection:					
	Rebar Sampling & Tagging	2	8 \hours	\$ 72.00	\$ 576.00
	Post Installed Anchors	2	8 \hours	\$ 72.00	\$ 576.00
Concrete Sampling & Cylinder Preparation:					
	Foundation Footings - Mechanical Room	2	8 \hours	\$ 72.00	\$ 576.00
	Slab On Grade - Swimming Pool / Pool Deck	6	36 \hours	\$ 72.00	\$ 2,592.00
	Sump Pit, Light Pole, & Misc Pour2	2	8 \hours	\$ 72.00	\$ 576.00
	Batch Plant Observation (Periodic/NRMA Approved)	2	2 \hours	\$ 72.00	\$ 144.00
	Sample Transportation To Laboratory		10 \hours	\$ 72.00	\$ 720.00
Laboratory Services:					
	Concrete Compression Test (10 Sets of 4)		40 \each	\$ 25.00	\$ 1,000.00
	Rebar Tensile & Bend (Greater than #5 Bar)		4 \each	\$ 125.00	\$ 500.00
	Mix Design Review		1 \hours	\$ 150.00	\$ 150.00
Subtotal:					\$ 7,410.00
03361	Swimming Pool Shotcrete	Visits	Estimated Units	Rate	Amount
Preconstruction Nozzleman Evaluation (If Required):					
	Nozzleman Certification		0 \hours	\$ 72.00	\$ -
Construction Evaluation & Inspection:					
	Substrate, Rebar, & Shotcrete Placement	2	16 \hours	\$ 80.00	\$ 1,280.00
	Sample Transportation To Laboratory		6 \hours	\$ 72.00	\$ 432.00
Laboratory Services:					
	Shotcrete Mix Design Review		1 \hours	\$ 150.00	\$ 150.00
	Coring of Test Panels		2 \hours	\$ 125.00	\$ 250.00
	Preconstruction Test Panel (If Required)		0 \each	\$ 35.00	\$ -
	Construction Test Panels (2 Sets of 4 Cores)		8 \each	\$ 35.00	\$ 280.00
Subtotal:					\$ 2,392.00
04220	Masonry	Visits	Estimated Units	Rate	Amount
Placement Inspection:					
	Masonry Units and Grouting (Continuous Inspection)	5	40 \hours	\$ 80.00	\$ 3,200.00
	Masonry Wall Coring	1	6 \hours	\$ 150.00	\$ 900.00
	Sample Transportation To Laboratory		4 \hours	\$ 60.00	\$ 240.00
Laboratory Services:					
	CMU Compressive Strength (ASTM C140)		3 \each	\$ 125.00	\$ 375.00
	Masonry Prism Compression		5 \each	\$ 85.00	\$ 425.00
	Masonry Core Face Shear & Compression		2 \each	\$ 110.00	\$ 220.00
	Grout Compression (2 Sets of 4)		8 \each	\$ 35.00	\$ 280.00
	Mortar Compression (3 Sets of 4)		12 \each	\$ 35.00	\$ 420.00
Subtotal:					\$ 6,060.00

MatriScope Engineering Laboratories, Inc.

EXHIBIT A.1
CONTRACTOR PROPOSAL and FEE SCHEDULE



Structural Tests and Inspection Services
 Swimming Pool Replacement
 Mt. Diablo / College Park High School - Bid 1562
 Mt. Diablo USD

July 2, 2010

05500	Metal Fabricating	Visits	Estimated Units	Rate	Amount
Structural Steel Fabrication & Erection:					
	Shop Welding Inspection	2	8 \hours	\$ 72.00	\$ 576.00
	Field Welding Inspection	2	8 \hours	\$ 75.00	\$ 600.00
Laboratory Services:					
	Final Report & Affidavit		1 \hours	\$ 150.00	\$ 150.00
Subtotal:					\$ 1,326.00
Professional Services Estimated Total:					\$ 24,953.00

ENGINEERING & PROJECT MANAGEMENT		Unit	Rate
	Geotechnical Engineer	Hours	\$ 150.00
	Project Manager	Hours	\$ 125.00
	Field Supervisor	Hours	\$ 95.00

CONSTRUCTION & DESIGN TEAM:

- ❑ **Owner: Mt. Diablo Unified School District**
- ❑ **Architecture: PHd Architects**
- ❑ **Structural: TSA Structural Engineers**
- ❑ **Geotechnical: Geosphere**

ADDITIONAL COMMENTS:

1. The unit rates for laboratory testing include all required laboratory technician costs, sample storage and disposal charges.
2. Regular work day is from 7:00 a.m. to 4:00 p.m., Monday through Friday.
3. This estimate was based upon review of the available project documents consisting of the project Plans and Specifications (dated 03/24/2010). A construction schedule was not provided at the time we prepared our estimate. Upon request, and receipt of a detailed construction schedule, we will update our fee estimate.
4. Services will be performed on a time and material basis in accordance with this estimate and our standard schedule of fees and services, including the general conditions contained therein.
5. Labor rates are based upon prevailing wage requirements (Department of Labor Relations Determination dated 08/22/2009).

MatriScope Engineering Laboratories, Inc.