

# **Mt. Diablo Unified School District**

Independent Contract Agreement

Consolidated Engineering Laboratories

Laboratory and Site Testing Services

SMART Classrooms

At

Concord and College Park High Schools

Dated

**May 25, 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 25th day of May, by and between the Mt. Diablo Unified School District (hereinafter "District") and Consolidated Engineering Laboratories (CEL) (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:

\$ 20,668.50 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 May 25, 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>Mr. Scott Thomas</u>
1936 Carlotta Drive	Address: <u>Consolidated Testing Laboratories</u>
Concord, CA 94519-1397	<u>2001 Crow Canyon Road, Suite 100</u>
Attn: Superintendent	<u>San Ramon, California 94583</u>
	Phone: <u>(925) 314-7100</u>
	Fax: <u>(925) 855-7140</u>
	Tax ID #: <u>94-2988193</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: [Signature] 05/12/2010  
Date

Title: \_\_\_\_\_

Title: President/CEO

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 - \$ 9,920.00 (NTE)  
326.8332.58.6290 - \$10,748.50 (NTE)

\_\_\_\_\_  
Budget Code

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

**EXHIBIT A**

**LIST OF SERVICES TO BE PERFORMED BY CONTRACTOR**

1. Provide inspection services during course of construction for:
  - 1.1. Scope of construction SMART Classrooms at Concord and College Park High School as described per attached proposal received April 23, 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



April 23, 2010

Mr. Timothy Cody  
Mt. Diablo Unified School District  
1480 Gasoline Alley  
Concord, California 94520

Via E-Mail: [codyt@mdusd.k12.ca.us](mailto:codyt@mdusd.k12.ca.us)

**Subject:** *New Modular Classrooms at Concord High School & College Park High School, 4200 Concord Boulevard, Concord, California  
CEL #10-23777PW; DSA Application #01-111070; File #7-H5  
Materials Testing and Construction Inspection, and Geotechnical Services*

Dear Mr. Cody:

Consolidated Engineering Laboratories (CEL) is pleased to submit our cost proposal to provide materials testing and construction inspection, and geotechnical services for the *Concord High School and College Park High School* projects, located at *4200 Concord Boulevard in Concord, 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:

- Architectural Drawings prepared by PHD Architects, dated March 24, 2010;
- Structural Drawings prepared by TSA Structural Engineers, dated March 24, 2010;

Thank you for giving CEL the opportunity to be a part of your project team. We are committed to giving our clients the best service for 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

Scott Thomas  
Business Development Executive

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This proposal, when signed by client at the space indicated below, shall constitute a legally enforceable contract on the precise, unaltered terms set forth in this proposal and the accompanying Contract Terms and Conditions.

**Client: Mt. Diablo Unified School District**

\_\_\_\_\_ Date

**EXHIBIT A.1  
CONTRACTOR PROPOSAL and FEE SCHEDULE**



*Concord High School & College Park High School  
CEL #10-23777PW \* April 23, 2010*

**CONCORD HIGH SCHOOL & COLLEGE PARK HIGH SCHOOL  
CONCORD, CALIFORNIA  
DSA APPLICATION #01-111070; FILE #7-H5**

**PRICING**

Description	Quantity	Unit Rate	Subtotals	
<b>REINFORCED CONCRETE</b>				
Mix Design Review	1 Each	\$ 100.00	\$ 100.00	
Sampling and Tagging Reinforcing Steel	8 Hours	\$ 75.00	\$ 600.00	
Rebar Tensile and Bend Test	8 Each	\$ 85.00	\$ 680.00	
Batch Plant Inspection	8 Hours	\$ 75.00	\$ 600.00	
Concrete Sampling	8 Hours	\$ 75.00	\$ 600.00	
Compression Tests	24 Cylinders / 6 Sets	\$ 35.00	\$ 840.00	
Sample Pick-Ups	4 Trips	\$ 50.00	\$ 200.00	
			<b>SUBTOTAL: \$</b>	<b>3,620.00</b>
<b>POST-INSTALLED ANCHORS</b>				
Placement of Post-Installed Anchors	8 Hours	\$ 75.00	\$ 600.00	
Proofload or Torque Testing	8 Hours	\$ 75.00	\$ 600.00	
			<b>SUBTOTAL: \$</b>	<b>1,200.00</b>
<b>STRUCTURAL STEEL</b>				
Weld Procedure Review	1 Each	\$ 100.00	\$ 100.00	
Shop Fabrication Inspection	28 Hours	\$ 75.00	\$ 2,100.00	
Field Welding inspection	24 Hours	\$ 75.00	\$ 1,800.00	
			<b>SUBTOTAL: \$</b>	<b>4,000.00</b>
<b>MISCELLANEOUS</b>				
Final Affidavit	1 Per Permit	\$ 350.00	\$ 350.00	
Project Engineering and Management Sni			\$ 458.50	
			<b>SUBTOTAL: \$</b>	<b>808.50</b>
<b>MAN-HOURS</b>		<b>92</b>	<b>GRAND TOTAL: \$ 9,628.50</b>	

_____ CEL	_____ Client
Initials	Initials

**EXHIBIT A.1**  
**CONTRACTOR PROPOSAL and FEE SCHEDULE**



*Concord High School and College Park High School  
CEL #10-23777PW \* April 23, 2010*

**SCOPE OF SERVICES**

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**REINFORCED CONCRETE**

**Mix Review**

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

**Sampling and Tagging 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 ASTM A-615. 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.

**Batch Plant Inspection**

Our inspector will check for batch weights, moisture content of aggregates, proper use of admixtures, and batching procedures, then follow the first truck to the jobsite.

**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.

**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**

**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.

\_\_\_\_\_  
CEL  
Initials

\_\_\_\_\_  
CLIENT  
Initials



**CONTRACTOR PROPOSAL and FEE SCHEDULE**

Concord High School and College Park High School  
CEL #10-23777PW \* April 23, 2010

**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.

**High-Strength Bolting**

As required by the UBC, 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 ASTM guidelines.

**POST-INSTALLED ANCHORS**

As required, we will perform visual examination of anchor placement to determine whether holes are clean, of the proper depth and diameter, and installed as specified by the manufacturer. In addition, we will perform proof load/torque testing of the expansion 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.

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CLIENT  
Initials

**EXHIBIT A.1**  
**CONTRACTOR PROPOSAL and FEE SCHEDULE**



**CONSOLIDATED ENGINEERING  
 LABORATORIES**

*"Partners in Quality"*

April 21, 2010  
 Revised April 29, 2010  
 Revised May 6, 2010

Mr. Timothy Cody  
 Mt. Diablo Unified School District  
 Maintenance, Operations & Facilities  
 1480 Gasoline Alley  
 Concord, California 94520

**Subject: Proposal for Geotechnical Services during Construction**  
 Portable Classroom Replacements  
 College Park High School (84-02502-PW)  
 Concord High School (84-02503-PW)  
 CEL Proposal Numbers 84-02502-PW and 84-02503-PW

**References:** Geotechnical Engineering and Geologic Hazards Studies, College Park and Concord High School  
 – Portable Classroom Replacement, prepared by **Geosphere Consultants, Inc.** dated  
 December 23<sup>rd</sup> and 21<sup>st</sup> (respectively), 2009

Dear Mr. Cody,

Pursuant to your request, **Consolidated Engineering Laboratories (CEL) Geotechnical Division** has prepared this cost estimate to provide construction phase geotechnical services for the proposed classrooms at the subject sites.

Our scope of work would involve:

- Observation and moisture/density testing of building pad grading.
- Observation and moisture/density testing of underground utility trench backfilling.
- Observation and moisture/density testing of exterior hardscape preparation.
- Laboratory testing.
- Consultation, site visits, plan review, and daily field report review by professional staff.
- Preparation of final summary report.

The estimated Time and Materials fees for these services are summarized on the attached. Technician time will be charged at 2 hour minimum increments for the first 4 hours and at actual time after 4 hours. Professional time will be charged at actual time increments.

A separate proposal will be prepared by the Materials Testing Division of Consolidated Engineering Laboratories (CEL) for special inspection services.


**EXHIBIT A.1**  
**CONTRACTOR PROPOSAL and FEE SCHEDULE**



CEL Proposal No. 84-02502-PW & 84-02503-PW  
April 21, 2010  
Revised: April 29, 2010  
Revised: May 6, 2010

If this proposal is acceptable please provide a Purchase Order or contract for our review. We look forward to working with you on this project. If you have any questions regarding this proposal, please contact the undersigned at (925) 314-7100; [mah@geosphereinc.net](mailto:mah@geosphereinc.net). We appreciate the opportunity of providing this proposal to Mt. Diablo Unified School District.

Sincerely,  
**CONSOLIDATED ENGINEERING LABORATORIES**

  
Eric J. Swenson, GE, CEG  
Principal Geotechnical Engineer  
Attachments:

Fee Schedule  
Report Distribution

Distribution: 2 plus PDF to Addressee ([codyt@mdusd.k12.ca.us](mailto:codyt@mdusd.k12.ca.us))

EJS/pmf  
R:\Geotech Projects by Number\2500-2599\91-02502-A College Park HS\PW-Construction\Construction Proposal.doc

## CONTRACTOR PROPOSAL and FEE SCHEDULE

CEL Proposal No. 84-02502-PW & 84-02503-PW  
 April 21, 2010  
 Revised: April 29, 2010  
 Revised: May 6, 2010

**SOILS INSPECTION AND TESTING FEE ESTIMATE****College Park High School – 91-02502-PW**

Description	Personnel/Test	Rate	Hours	Subtotal
<b>Building Pad Grading</b>				
Building Pads, 1 days	Soil Technician	\$ 85/hr	8	\$ 680.00
Field Supervision	Field Supervisor	\$ 100/hr	1	\$ 100.00
Maximum Density/Optimum Moisture	Lab Test	\$ 300/ea	2	\$ 600.00
<b>Subtotal:</b>				<b>\$ 1,360.00</b>
<b>Underground Utility Trench Backfilling</b>				
Underground Utility Backfilling, 4 days	Soil Technician	\$ 85/hr	16	\$ 1360.00
Maximum Density/Optimum Moisture	Lab Test	\$ 300/ea	1	\$ 300.00
Field Supervision	Field Supervisor	\$ 100/hr	2	\$ 200.00
<b>Subtotal:</b>				<b>\$ 1,860.00</b>
<b>Exterior Hardscapes and Pavements</b>				
Exterior Hardscapes and Pavements, 2 days	Soil Technician	\$ 85/hr	8	\$ 1,020.00
Field Supervision	Field Supervisor	\$ 100/hr	2	\$ 200.00
Maximum Density/Optimum Moisture	Lab Test	\$ 300/ea	2	\$ 600.00
<b>Subtotal:</b>				<b>\$ 1,820.00</b>
<b>Consultation, Final, Field Daily Review</b>				
Consultation, Letters, Field Daily Review, Plan Review	Senior Eng/Geol	\$ 170/hr	4	\$ 680.00
<b>Subtotal:</b>				<b>\$ 680.00</b>
<b>TOTAL ESTIMATED TIME AND MATERIALS FEES</b>				<b>\$ 5,720.00</b>

**Concord High School – 91-02503-PW**

Description	Personnel/Test	Rate	Hours	Subtotal
<b>Building Pad Grading</b>				
Building Pads, 2 days	Soil Technician	\$ 85/hr	12	\$ 1020.00
Field Supervision	Field Supervisor	\$ 100/hr	2	\$ 200.00
Maximum Density/Optimum Moisture	Lab Test	\$ 300/ea	2	\$ 600.00
<b>Subtotal</b>				<b>\$ 1640.00</b>
<b>Underground Utility Trench Backfilling</b>				
Underground Utility Backfilling, 3days	Soil Technician	\$ 85/hr	12	\$ 1,020.00
Maximum Density/Optimum Moisture	Lab Test	\$ 300/ea	1	\$ 300.00
Field Supervision	Field Supervisor	\$ 100/hr	2	\$ 200.00
<b>Subtotal</b>				<b>\$1,520.00</b>
<b>Exterior Hardscapes and Pavements</b>				
Exterior Hardscapes and Pavements, 2 days	Soil Technician	\$ 85/hr	8	\$ 680.00
Field Supervision	Field Supervisor	\$ 100/hr	2	\$ 200.00
Maximum Density/Optimum Moisture	Lab Test	\$ 300/ea	2	\$ 600.00
<b>Subtotal</b>				<b>\$1480.00</b>
<b>Consultation, Final, Field Daily Review</b>				
Consultation, Letters, Field Daily Review, Plan Review	Senior Eng/Geol	\$ 170/hr	4	\$680.00
<b>Subtotal</b>				<b>\$ 680.00</b>
<b>TOTAL ESTIMATED TIME AND MATERIALS FEES</b>				<b>\$ 5,320.00</b>