Project: Measure M
Project No. Various
Program ID No. Various

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

FOR

SAN LEANDRO UNIFIED SCHOOL DISTRICT MEASURE M RENEWAL ENERGY PROGRAM

THIS AGREEMENT, hereinafter referred to as **"AGREEMENT,"** is made and entered into 19th day of April 16, 2013, by and between **SAN LEANDRO UNIFIED SCHOOL DISTRICT** hereinafter referred to as **"CLIENT"** and **NEWCOMB ANDERSON McCORMICK ENERGY ENGINEERING AND CONSULTING,** hereinafter referred to as **"NAM"** or as **"CONSULTANT."**

W I T N E S S E T H:

WHEREAS, **CLIENT** desires **CONSULTANT** to undertake the Consulting Services as described by Scope of Services relative to the **CLIENT'S PROJECT** hereinafter referred to as **"PROJECT"**

WHEREAS, **CONSULTANT** represents that it possesses the professional skills necessary to provide said services; and

WHEREAS, **CLIENT** and **CONSULTANT** desire to enter into an **AGREEMENT** whereby the foregoing may be accomplished.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, **CONSULTANT** agrees to perform the work hereinafter specified in this **AGREEMENT,** subject to and in accordance with the terms and conditions hereinafter set forth, and the parties hereto agree as follows:

ARTICLE 1

THE CONSULTANT'S TEAM

1.1 **CONSULTANT**, accepts the relationships of trust and confidence established between it and the **CLIENT** by this **AGREEMENT.** It covenants with **CLIENT** to furnish its skills and judgment in furthering the interests of the **CLIENT**. It agrees to furnish the Consulting Services authorized by Scope of Services and to coordinate activities so that the **PROJECT** will be completed in a manner consistent with the interest of the **CLIENT.**

ARTICLE 2

CONSULTANT'S SERVICES

2.1 **CONSULTANT** shall perform Consulting Services described in the Scope of Services as requested by the **CLIENT.**

2.2 It is understood and agreed that services for specific **PROJECT** elements will be defined, scheduled and compensation established using individual Scope of Services Scope of Services Orders for all services.

The **CLIENT** Representative, with assistance from **CONSULTANT**, will initially identify tasks to be performed and request **CONSULTANT** to propose a **PROJECT** scope, subtasks, schedule, staffing, deliverables, budget and costs to complete the task. A final Scope of Services scope proposal will be negotiated between the **CLIENT** Representative and **CONSULTANT**. Once agreement on a Scope of Service order has been reached, the **CLIENT** Representative will issue written notice to proceed. The development of a Scope of Service Order is not a compensable service under this Agreement, and **CONSULTANT** shall bear all of its costs associated with the development of a final Scope of Services Order. The **CLIENT** retains the right to refuse to issue any Scope of Service Order if, in the **CLIENT** Representative determines in her sole discretion, that it is in the best interest of the **CLIENT** to refuse to issue any Scope of Service Order. The **CLIENT** shall have no liability to **CONSULTANT** arising from any decision not to issue a Scope of Service Order.

Notwithstanding any other provision in this Agreement, **CLIENT** shall not be liable to **CONSULTANT** until and unless the **CLIENT**'s Board of Education appropriates funding for a specified Scope of Service Order.

2.3 **CONSULTANT** shall perform such services requested by the **CLIENT** upon receipt of a fully executed Scope of Service Order from the **CLIENT,** signed by the appropriate **CLIENT** Representative. Each Scope of Service Order shall detail the work to be performed, the Schedule for Performance, any special conditions and the form and conditions of compensation for services.

ARTICLE 3

COMPENSATION FOR SERVICES

3.1 For work performed under any Scope of Service Order, **CONSULTANT** shall be compensated on time and materials, not-to-exceed basis. The not-to-exceed fee shall include all indirect and direct charges to each Scope of Services Order, except as noted in the Scope of Services Order. Send checks payable to: **CONSULTANT**, 201 Mission Street, Suite 2000, San Francisco, CA 94105.

3.2 If **CONSULTANT** utilizes subconsultants, said subconsultants and their anticipated scope of work shall be disclosed in the relevant Scope of Service Order, and said consultant's services shall be invoiced at cost plus a percentage as indicated in each Scope of Service Order. **CONSULTANT** use of subconsultants is subject to the prior approval from the **CLIENT**.

3.3 Total compensation under this Agreement shall not exceed $231,125, unless amended in writing, authorized, approved or ratified in the same manner that this Agreement was authorized, approved, or ratified.

ARTICLE 4

FEES AND PAYMENT

4.1 As consideration for providing services, the **CLIENT** shall pay to **CONSULTANT** a fee that shall not exceed the total budgeted amount detailed in each Scope of Service Order. However, should a good faith question or dispute arise over the fees or portion of fees due under a Scope of Service Order, the disputed amount shall not be counted against the total budgeted amount detailed in each Scope of Service Order.

4.2 The actual compensation paid to **CONSULTANT** for providing the services required by each Scope of Service Order shall be in accordance with Article 3 and the Scope of Service Order(s).

4.3 Payments will be made monthly by the **CLIENT** for approved services within sixty (60) days from receipt of detailed invoice from **CONSULTANT**. Payments shall be for the invoiced amount.

4.4 In the event a dispute arises relating to the services performed, costs incurred or any other item related to compensation of **CONSULTANT**, such dispute will not delay compensation for those services and costs not in dispute. Any such dispute will be resolved by the parties through negotiations or, if not resolved, in accordance with Article 8.

ARTICLE 5

TIME OF COMPLETION

5.1 This **AGREEMENT** shall remain in force until such time as such services are no longer needed by **CLIENT**, until termination by **CLIENT,** it is terminated by operation of law or the scope of services for the scope of service order is complete.

5.2 Each Scope of Service Order shall establish a schedule of completion for services listed within the order.

5.3 **CONSULTANT** shall not begin work on any service listed within a Scope of Service Order until written authorization is received in accordance with Article 2.3. Any work performed without prior written authorization of **CLIENT** shall be at **CONSULTANT**'S risk; **CLIENT** shall not be liable to compensate **CONSULTANT** for unauthorized work.

5.4 The duration for these services is estimated to be approximately eighteen (18) months. Upon approval of this by the Board of Education, the term of this Agreement will be from April 16, 2013 to December 31, 2014, unless extended by written amendment.

ARTICLE 6

CONSULTANT'S RESPONSIBILITY

6.1 **CONSULTANT** agrees that **CONSULTANT** shall use its professional efforts and that its services shall be performed with due diligence in accordance with generally accepted engineering practices of the San Francisco Bay Area, but makes no other warranty either expressed or implied.

6.2 **CONSULTANT** is employed to render professional services only, and payments made are compensation solely for such services. **CONSULTANT** is an independent contractor and not an employee of the **CLIENT.**

6.3 **CONSULTANT** understands that the **CLIENT** may retain the services of other professional consultants to accomplish other requirements of the **PROJECT.**

6.4 The work product and other documents prepared by **CONSULTANT** for this **PROJECT** are instruments of service for use solely with respect to this **PROJECT**. **CONSULTANT** agrees that its work product, completed or in-progress, in accomplishing each Scope of Services Order is the property of the **CLIENT**. This work product shall include all **PROJECT** files, daily reports, related documents and materials exclusive of proprietary computer programs and related data files. **CLIENT** shall have the right to use **CONSULTANT'S** work product or other documents on other **PROJECTS**, for additions to this **PROJECT,** or for completion of this **PROJECT** by others. Any use of the work product and other documents prepared by **CONSULTANT** for other project without specific written authorization from **CONSULTANT** will be at **CLIENT**'s 's sole risk and without liability to **CONSULTANT**. Further, any and all liability arising out of changes made to, or reuse of, **CONSULTANT**' deliverables under this Agreement by **CLIENT** or persons other than **CONSULTANT** is waived as against **CONSULTANT** and **CLIENT** assumes full responsibility for such changes unless **CLIENT** has given **CONSULTANT** prior notice and has received from **CONSULTANT** written consent for such changes."

CLIENT shall have the right to access and inspect **CONSULTANT'S** work product and supporting information at any time during the progress of each Scope of Services Order. **CONSULTANT** shall be permitted to retain copies, including reproducible copies, of **CONSULTANT'S** work product for information and reference purposes only.

ARTICLE 7

CLIENT'S RIGHT AND RESPONSIBILITIES

7.1 The **CLIENT** shall provide all reasonably available information including reports, preliminary plans, maps, surveys, and other related information regarding its requirements for the **PROJECT** upon written request to the **CLIENT. CONSULTANT** shall be entitled to reasonably rely on the accuracy and completeness of such information.

7.2 The **CLIENT** shall designate a representative who shall be fully acquainted with the **PROJECT** and have authority within limits of existing **CLIENT** policy and the requirements of the law to render decisions promptly and furnish information expeditiously.

7.3 **CLIENT** will cooperate with **CONSULTANT** and provide reasonable access to the site and all records.

ARTICLE 8

DISPUTES

8.1 Disputes related to **CONSULTANT'S** fees and compensation shall be resolved in accordance with Article 4.4.

8.2 It is agreed that all claims, disputes and other matters in question between the parties to this **AGREEMENT**, arising out of or relating to this **AGREEMENT** or the breach thereof, shall be submitted to non-binding mediation under the auspices of the American Arbitration Association

prior to initiation of any lawsuit or other litigation, unless the parties mutually agree otherwise. The cost of said mediation shall be split equally between the parties. This agreement to mediate shall be specifically enforceable under the prevailing law of the jurisdiction in which this **AGREEMENT** was signed. This provision does not preclude the parties from engaging in other dispute resolution methods in addition to or in place of non-binding mediation, as the parties may agree.

8.3 Should such non-binding mediation fail to resolve any dispute concerning **CONSULTANT'S** fees and compensation, then such fee disputes, and only such fee disputes, shall be submitted to mandatory, binding arbitration under the auspices of the American Arbitration Association Construction Industry Arbitration Rules in effect at the time the arbitration is filed. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. This agreement to first mediate and then, if necessary, arbitrate disputes regarding **CONSULTANT'S** fees and compensation, shall be specifically enforceable under California law.

8.4 Should such non-binding mediation not result in resolution of disputes not related to **CONSULTANT'S** fees and compensation then all such disputes shall be litigated. The prevailing party shall be entitled to attorney's fees and costs as additional damages. This **AGREEMENT** to mediate such disputes shall be specifically enforceable under California law.

ARTICLE 9

AGREEMENT AMENDMENTS

9.1 This **AGREEMENT,** or any portion thereof, may be amended by written Amendment to Master Agreement, approved and executed in the same manner as this **AGREEMENT.**

ARTICLE 10

ASSIGNMENT OF CONTRACT

10.1 Neither the **CLIENT** nor **CONSULTANT** shall assign or permit, the assignment by operation of law or otherwise, this **AGREEMENT** or any portion of the work, without prior written consent of the other.

10.2 Where the **CLIENT** and **CONSULTANT** have consented to an assignment, this **AGREEMENT** shall be binding upon **CONSULTANT** and the heirs, executors, administrators, successors and assigns of all parties.

ARTICLE 11

INDEMNITY

11.1 It is expressly understood that **CONSULTANT** is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the **CLIENT.**

11.2 **CONSULTANT** shall be responsible for the payment of all taxes, workers' compensation insurance, and unemployment insurance.

11.3 To the fullest extent allowed by law, **CONSULTANT** shall indemnify, defend, and save and hold **CLIENT,** its directors, officers, and employees harmless from any and all claims or causes of action for death or injury to persons, or damage to property to the extent resulting from negligence, errors, or omissions of itself or its employees, contractors, subconsultants, and all others acting for or on behalf of **CONSULTANT**, arising out of and during the performance of this **AGREEMENT.**

11.4 **CLIENT** shall require the contractors and the subcontractors to list **CONSULTANT** as additional insured.

ARTICLE 12

INSURANCE

12.1 **CONSULTANT** shall furnish to **CLIENT** evidence of, and maintain throughout the term of this **AGREEMENT,** the following insurance:

1. Commercial general liability insurance of at least $1,000,000 combined single limit per occurrence for bodily injury, personal injury, or property damage and $2,000,000 annual aggregate.

   The policy shall contain, or be endorsed to contain the following provisions:

   The **CLIENT**, its officers, officials, and employees are covered as named additional insured as respects liability arising out of activities performed by or on behalf of **CONSULTANT**.

   CONSULTANT'S insurance coverage shall be primary insurance as respects the **CLIENT**. Any insurance or self insurance maintained by the **CLIENT** or its insured shall be excess of **CONSULTANT'S** insurance, and shall not contribute with it.

   CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Professional liability insurance in an amount of at least $1,000,000 per claim and in the aggregate per year.

3. Commercial automobile liability insurance of at least $1,000,000 combined single limit per accident, for bodily injury and property damage.

4. **Workers' Compensation and Employer's Liability Coverage**.

   The limit for employers' liability is $1,000,000.

12.2 Each insurance policy required by this article shall be endorsed to state that coverage shall not be canceled by **CONSULTANT,** except after thirty (30) days prior to written notice has been given to the **CLIENT.**

12.3 **CLIENT** shall require contractor(s) to name **CONSULTANT** as additional named insured with respect to general liability. The limits of coverage shall be the same as for the **CLIENT**.

ARTICLE 13

TERMINATION

13.1 This **AGREEMENT** may be terminated by either party after thirty (30) days written notice.

13.2 In the event of any termination, **CONSULTANT** shall be paid for approved services rendered through the date of termination.

ARTICLE 14

NOTICES

14.1 Any notice provided for herein shall be given in writing and by personal delivery or prepaid first class, registered or certified mail, addressed as follows:

TO CLIENT: **San Leandro Unified School District**
Attention: John Dominguez
Bond Director
14735 Juniper Street
San Leandro, CA 94579

TO CONSULTANT: **NEWCOMB ANDERSON McCORMICK**
Attention: John Newcomb
Principal
201 Mission Street, Suite 2000
San Francisco, CA 94105

ARTICLE 15

ARTICLE HEADINGS

15.1 Article, paragraph and subparagraph headings are used for convenience only and shall not be deemed to alter or modify the content or intent of the articles, paragraphs, or subparagraphs which they head.

ARTICLE 16

MISCELLANEOUS PROVISIONS

16.1 **CONSULTANT** agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, or national origin. **CONSULTANT** agrees to take affirmative action to assure that applicants are employed or retained, and that employees are treated without regard to their race, color, religion, sex, sexual orientation, or national origin. Such action shall include, but not be limited to, the following: recruitment or recruitment advertising; layoff or termination; rates of pay or other form of compensation and selection for training.

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IN WITNESS WHEREOF, the **CLIENT** has caused this **AGREEMENT** to be executed and **CONSULTANT** has caused this **AGREEMENT** to be executed, all as of the day and year first above written.

SAN LEANDRO UNIFIED SCHOOL DISTRICT **APPROVED AS TO FORM**

By: _____ By:_____
Print Name _____
Title: _____
Date: _____

NEWCOMB ANDERSON McCORMICK ENERGY ENGINEERING AND CONSULTING

By:_____
John M. Newcomb
Principal

Date: _____

*****END OF AGREEMENT*****

SCOPE OF SERVICES #01
ENVIRONMENTAL MANAGEMENT & CONSULTING SERVICES
RELATED TO
AGREEMENT FOR
MEASURE M CAPITAL IMPROVEMENT PROGRAM

THIS **SCOPE OF SERVICES ORDER #01**, hereinafter referred to as **"SCOPE OF SERVICES"** is made and entered into **16th, of April, 2013**, by and between **NEWCOMB ANDERSON McCORMICK ENERGY ENGINEERING AND CONSULTING,** hereinafter referred to as **"CONSULTANT"** and **SAN LEANDRO UNIFIED SCHOOL DISTRICT**, hereinafter referred to as **"CLIENT."**

W I T N E S S E T H:

WHEREAS, **CLIENT** and **CONSULTANT** have entered into an Agreement, hereinafter referred to as **"AGREEMENT,"** for Consulting Services dated April 16th, 2013, wherein **CONSULTANT** is agreeing to perform certain services in managing the **CLIENT'S** Measure M Renewable Energy Projects, hereinafter referred to as **"PROJECTS,"** and;

WHEREAS, this **SCOPE OF SERVICE** is subject to the terms and conditions of the Agreement. Where there is a conflict between the Agreement and this Scope Of Service Order No. 1 the Agreement shall have precedence.

WHEREAS, **CLIENT** desires **CONSULTANT** to perform certain tasks as hereinafter listed in completing the program element defined as **PROJECTS** Measure M Renewal Energy Program Professional Consulting Services and;

WHEREAS, all of the terms, conditions and covenants of the **AGREEMENT** shall apply to this **SCOPE OF SERVICES**, **CONSULTANT** shall provide the following services:

SCOPE OF SERVICES

PART A – Solar Photovoltaic Project
The following services shall be performed upon written authorization and notice to proceed from the **CLIENT** and shall be paid for as provided for in the **AGREEMENT** and this Scope of Service:

Provide miscellaneous consulting and other services:
1. Solar Feasibility
2. Develop RFP
3. Solicitation Support
4. Proposal Evaluation
5. Contract Negotiations
6. Project Management
7. Design Review
8. Technical Oversight During Construction

9. QA, System Testing and Commissioning
10. Project Closeout
11. Performance Management

PART B - ADDITIONAL SERVICES

The following services shall be performed upon written authorization and notice to proceed from the **CLIENT** and shall be paid for as provided for in the **AGREEMENT** and this Scope Of Service:

1. Provide miscellaneous consulting and other services not included in, or incidental to, the consulting and other services specified elsewhere in this Scope Of Service, when requested by the **CLIENT,** in writing.
2. A Scope Of Service Amendment shall be required if these services cannot be performed within the Scope Of Service Order No. 1 Budget or, if amended prior, the revised Scope Of Service Budget. No additional service is to be performed without the prior written consent or authorization of the Board.
3. Dispute resolution support, including serving as the **CLIENT's** expert consultant/witness, preparing expert reports, preparing for and attending depositions and trial.

PART C - TIME OF COMPLETION

All work will be completed in a timely manner. The duration for these services is estimated to be approximately eighteen (18) months. The **CLIENT'S** Master Schedule will determine the actual duration for these services

PART D - COST

The authorized amount for this Scope Of Service is a lump sum fee of **$231,125.**

IN WITNESS WHEREOF, the **CLIENT** has caused this Scope Of Service to be executed and **NEWCOMB ANDERSON McCORMICK ENERGY ENGINEERING AND CONSULTING,** has caused this Scope Of Service to be executed, all as of the day and year first above written.

SAN LEANDRO UNIFIED SCHOOL DISTRICT **APPROVED AS TO FORM**

By: _____ Date:_____
Song Chin-Bendib, Assistant Superintendent for Business & Operations

NEWCOMB ANDERSON McCORMICK ENERGY ENGINEERING AND CONSULTING

By:_____ Date:_____
John Newcomb, Principal

*****END OF SCOPE OF SCOPE OF SERVICE*****