Project service: Special Inspection & Testing Services
Project ID: 2014 Summer/Fall projects
Program ID: Measure B and Measure M

AGREEMENT FOR

PROFESSIONAL SERVICES

FOR

SAN LEANDRO UNIFIED SCHOOL DISTRICT

This "AGREEMENT" made and entered into this 21st day of May, 2014 by and between San Leandro Unified School District, a political subdivision of the State of California, herein called "District" acting through its Board of Education, herein called "Board" and

Testing Engineers, Inc.	
2811 Teagarden Street	
San Leandro, CA 94577	
General Manager	*Mr. Terry Egland, PE.*
DSA LEA-Certified labs	*TEI LEA #33*
Telephone No.	*510-835-3142*
Fax No.	*510-834-3777*
E-mail address	*terry@testing-engineers.com*
Taxpayer Id No.	***95-1786798***

herein called "Consultant",

WHEREAS, District proposes to undertake **new construction projects under Bond Measure B Projects and Measure M Projects, specifically seismic upgrades, hard landscape, solar panel installation and other projects on various school sites,** and

WHEREAS, Consultant represents that it possesses the requisite skill, experience, and resources to provide the services required by District, and

NOW, THEREFORE, District retains Consultant to perform, and Consultant agrees and undertakes to provide to District, under the terms and conditions of this Agreement, **Special Inspection and Testing**.

ARTICLE 1: SERVICES CONSULTANT AGREES TO PERFORM

Consultant agrees to perform the services described in Exhibit A, Project Description and Schedule, which is hereby incorporated by reference (hereinafter Project).

ARTICLE 2: TERM OF AGREEMENT

The term of the Agreement shall be from the Effective Date and concludes upon completion of services under the Agreement, unless terminated sooner. If the District has not issued Notice to Proceed by or before twelve (12) months from the Effective Date, this Agreement is void.

The District has no obligation to renew this Agreement. If funds are appropriated for this Agreement on an annual or other periodic basis, this Agreement will terminate, without penalty, at the end of the term for which funds are appropriated.

ARTICLE 3: COMPENSATION

a. Compensation to Consultant shall not exceed **fifty-two thousand six hundred and eighty-six dollars ($52,686.00**) for the special inspection & testing budget. DSA final approval comments related compensation will be determine at a later date and added to the contract as an Amendment, after the design of the project is completed and a budget can be established. The breakdown of costs and schedule of payment appears in Exhibit B, Calculation of Charges, which is incorporated by reference.

b. If the District and Consultant mutually agree that the scope of work is increased, the compensation to the Consultant may also be increased provided that there is a prior written amendment to the Agreement and a Board resolution authorizing the increase in compensation pursuant to Article 22.

c. Consultant shall not be compensated for any work performed after it has earned the maximum amount of compensation authorized by the Board. It shall be the Consultant's responsibility to ensure that it does not accrue any additional charges to the District above the approved amount.

d. No charge shall be incurred under this Agreement nor shall any payment become due the Consultant until the services required under this Agreement have been completed and accepted by the District.

e. Consultant further acknowledges that this Agreement is subject to the fiscal requirements of state

contracting laws and District's policies, and that no payment shall be due until and unless the Board has passed a resolution appropriating funds for this Agreement. Consultant shall have no obligation to perform services under this Agreement until the District has made the necessary funding appropriations. Consultant further assumes the risk that the Board does not appropriate funding for this Agreement.

ARTICLE 4: WITHOLDING OF PAYMENT

After written notice to Consultant, District may reasonably withhold payment to the Consultant pending resolution, in an amount equal to 100% of questioned, disputed or disapproved amounts, or for work not satisfactorily completed or delivered as required by this Agreement or for amounts incurred by the District in connection with the Consultant's negligent errors or omissions. Payments for other undisputed amounts due on the same or other invoices shall not be unreasonably withheld or delayed.

Such withholding shall not constitute a final determination or waiver of any rights or liabilities of District or Consultant with respect to responsibility for such loss, which rights and liabilities shall remain subject to determination in accordance with this Agreement. Consultant shall continue performance of its services pending final determination of disputes related to such withholding.

ARTICLE 5: DISALLOWANCE

If the Consultant claims or receives payment from the District, which is later disallowed by the District, the Consultant shall promptly refund the disallowed amount to the District upon District's request. At its option the District may offset the amount disallowed from any payment due or to become due to the Consultant.

ARTICLE 6: PAYMENT DOES NOT IMPLY ACCEPTANCE

Payment by District does not imply acceptance of Consultant's work and shall not lessen the liability of the Consultant to correct unsatisfactory work although the unsatisfactory nature of such work may or may not have been apparent or detected at the time such payment was made.

ARTICLE 7: QUALIFIED PERSONNEL

Work under this Agreement shall be performed only by competent personnel under the supervision for and in the employ of Consultant. Consultant will comply with the District's reasonable requests regarding staffing. Consultant shall adequately staff the project in order to complete the work in accordance with the project schedule.

ARTICLE 8: RESPONSIBILTY FOR EQUIPMENT

The District shall not be responsible for any damage to person or property as a result of the use, misuse, or failure of any equipment used by Consultant, or by any of its Subconsultants or employees, even though such equipment be provided by the District.

ARTICLE 9: INDEMNITY

To the fullest extent allowed by law, Contractor shall indemnify, defend (with counsel acceptable to the District), and hold harmless District, the Board, each member of the Board, and their officers, agents and employees (collectively Indemnitees) from and against all claims, loss, expense, damage, injury (including without limitation, injury to or death of an employee of Contractor or its subconsultants), cost and liability of any kind (including, without limitation, incidental and consequential damages, court costs, reasonable attorney's fees, litigation expenses, expert consultant or witness fees in litigation, and costs of investigation), up to the limits of insurance coverage required under this Agreement that arise out of, pertain to, or relate to any (a) personal injury or property damage, directly or indirectly, that arises out of the negligence, recklessness, or willful misconduct of Contractor, subconsultant, their agents or employees; or (b) by infringement of any patent right, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons as a consequence of the use by District, or any member of its Board, its officers, employees and agents of articles or services provided by Contractor under this Agreement. This indemnification obligation survives the performance of Contractor's services under this Agreement or any termination under the provisions of this Agreement except as specifically stated in this Agreement.

ARTICLE 10: INSURANCE

a. Without in anyway limiting Consultant's liability pursuant to the "Indemnification" section of this Agreement, Consultant shall procure and maintain during the full term of this Agreement the following insurance amounts and coverage:

(1) Commercial General Liability Insurance with limits not less than $1,000,000 (one million dollars) each occurrence and $2,000,000 in annual aggregate Combined Single Limit for Bodily Injury and Property Damage (Occurrence Form CG001)

(2) Commercial Automobile Liability Insurance with limits not less than $1,000,000 (one million dollars) each occurrence and $2,000,000 in annual aggregate Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable (Insurance Services Office Form CA 0001, Code 1).

(3) Workers' Compensation Insurance, with Employer's Liability limits not less than

$1,000,000 (one million dollars) each accident.

b. Commercial General Liability and Business Automobile Liability policies must provide the following:

(1) Name as Additional Insured the District, its Board, officers and employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this Agreement and that such policies apply separately to each insured against whom claim is made or suit is brought.

c. All policies shall provide thirty (30) days advance written notice to the District of cancellation.

d. If any policies are written on a claims-made form, Consultant agrees to maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, such that should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in such general annual aggregate limit, such annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the District receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the District may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Consultant must provide the District with the certificates of insurance, and additional insured policy endorsements in form (CG 20 10 11 85 or its equivalent) and with insurers satisfactory to the District, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon the District's request. Consultant also understands and agrees that the District may withhold payment for services performed for any violations of the insurance provisions of this Agreement.

h. Approval of the insurance by the District shall not relieve or decrease the liability of Consultant hereunder.

ARTICLE 11: MAINTENANCE/INSPECTION OF RECORDS

Consultant shall maintain and make available to the District complete and accurate books and records with respect to services, costs, expenses, receipts and other information necessary to verify the scope or charges for any services provided under this Agreement. Consultant shall permit the District to audit, examine and make excerpts and transcripts from such books and records. All such books and records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Such records shall be kept in an accessible location and condition separate from other documents and records unrelated to the Project for a period of at least four (4) years after a final payment under this Agreement has been made.

ARTICLE 12: OWNERSHIP OF DOCUMENTS

Any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer data files and media or other documents prepared by Consultant in connection with services to be performed under this Agreement, shall be the property of and be promptly transmitted to the District. Consistent with Section 17316 of the Education Code, Consultant irrevocably assigns and transfers, in perpetuity and without reservation, all copyrights over all design documents, including, but not limited to, interim and record drawings and the designs depicted in them, specifications, and estimates prepared by Consultant pertaining to the Project pursuant to this Agreement. Consultant may retain and use copies for promotional purposes.

ARTICLE 13: TERMINATION FOR CONVENIENCE

a. The District shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause upon ten (10) days prior written notice specifying the date on which termination shall become effective.

b. Upon receipt of the District's notice under Article 13.a, Consultant shall cease all work as may be directed in the District's notice, and diligently commence and perform, all actions necessary on the part of Consultant to effect the termination of this Agreement on the date specified in the notice in a manner which minimizes the liability of Consultant and District to third parties as a result of termination. All such actions shall be subject to prior approval by District and shall include, without limitation: canceling orders, assigning interests to the District, settling outstanding liabilities and claims, securing and safe-guarding District property, and halting or completing services in the manner specified by the District.

c. Within 30 days after the specified termination date, Consultant shall submit to District an itemized invoice detailing the unpaid costs incurred for the services rendered up to the date of termination.

d. In no event shall District be liable for costs incurred by Consultant or any of its Subconsultants after the termination date specified by District, except for those costs specifically approved by the District as necessary to effect the termination in a manner acceptable to the District. Non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest.

e. The District's payment obligation under this Article shall survive termination of this Agreement.

ARTICLE 14: TERMINATION FOR DEFAULT

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Consultant fails or refuses to perform or observe any term, covenant or condition contained in this Agreement.

(2) Consultant (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage or any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Consultant or of any substantial part of Consultant's property, (E) takes action for the purpose of any of the foregoing, or (F)is the subject of any order of a court or government authority related to the Federal Bankruptcy Act.

b. On and after any Event of Default, the District shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, District shall have the right, but no obligation, to cure any Event of Default. Consultant shall pay to the District on demand all costs and expenses incurred by the District in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. The District shall have the right to offset from any amounts due to Consultant under this Agreement or any other agreement between District and Consultant all damages, losses, costs, or expenses incurred by the District as a result of such Event of Default.

c. All remedies provided for in this Agreement may be exercised individually or in combination with

any other remedy available hereunder or under applicable laws, rules, regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

ARTICLE 15: ADMINISTRATIVE REMEDY

Should a question arise as to the meaning and intent of the Agreement, the matter shall, prior to any action or resort to any other legal remedy, be referred to the District's Superintendent who shall decide the true meaning and intent of the Agreement.

ARTICLE 16: CONSULTANT AN INDEPENDENT CONSULTANT

It is expressly understood and agreed that in the making and performance of this Agreement, Consultant is an independent Consultant and is not and shall not be construed to be an officer or employee or partner or joint venturer of District.

ARTICLE 17: TAXES

Consultant shall remain responsible for all taxes levied in connection with this Agreement.

ARTICLE 18: SUCCESSORS AND ASSIGNS

This Agreement is binding upon and inures to the benefit of the successors, executors, administrators, and assigns of each party to this Agreement, provided, however, that Consultant shall not assign or transfer by operation of law or otherwise any or all of Consultant's rights, burdens, duties, or obligations, professional or otherwise, without the prior written consent of the Board. Any attempted assignment without such consent shall be invalid. It is understood and agreed that the services to be performed by Consultant are professional in character.

ARTICLE 19: SUBCONTRACTING

Consultant shall not subcontract any portion of this Agreement without the prior consent of the District.

ARTICLE 20: SCHOOL SITE CONDITIONS

District has determined that fingerprinting is not applicable to this Agreement, however, Consultant expressly acknowledges that the following conditions shall apply to any work performed by Consultant and/or Consultant's employees on a school site: (1) Consultant and Consultant's employees shall check in with the school office each day immediately upon arriving at the school site; (2) Consultant and Consultant's employees shall inform school office staff of their proposed activities and location at the school site; (3) Once at such location, Consultant and

Consultant's employees shall not change locations without contacting the school office; (4) Consultant and Consultant's employees shall not use student restroom facilities; and (5) if Consultant and/or Consultant's employees find themselves alone with a student, Consultant and Consultant's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

ARTICLE 21: NOTICES

All notices, demands or requests shall be addressed to the parties as follows:

To District:

San Leandro Unified School District
Attn: John Dominquez, Bond Director
14735 Juniper St
San Leandro, CA 94579
Phone 510.895-4695
Fax 510.678.5368
Email bonddirector@sanleandro.k12.ca.us

With a copy to:

Harris & Associates
Attn: Serafin Fernandez
14735 Juniper St
San Leandro, CA 94579
Phone 510-678-6437
Fax 510-678.5368
Email sfernandez@harris-assoc.com

To Consultant:

Testing Engineers, Inc.
Attn: Terry Egland
2811 Teagarden Street
San Leandro, CA 94577
Phone 510-835-3142
Fax 510-834-3777
Email terry@testing-engineers.com

The Parties expressly acknowledge and agree that attempts to transmit electronic mail and

facsimiles will not be sufficient to constitute notice under this Agreement.

ARTICLE 22: AMENDMENTS AND MODIFICATIONS

The parties reserve the right to amend or modify this Agreement in writing at any time by mutual consent. A written amendment shall be approved, authorized and executed in the same manner as this Agreement. Any changes, including any increase or decrease in the amount of compensation to be paid to Consultant shall be effective upon execution of duly authorized written amendments to this Agreement. Amendments shall be numbered sequentially.

ARTICLE 23: CONFLICT OF INTEREST

a. Consultant understands and certifies that it does not know of any facts which constitute a violation of the California Political Reform Act, which states in part "[N] o public official at any level of state or local government shall make, participate in making or in any way attempt to use its official position to influence a governmental decision in which he/she knows or has reason to know he/she has a financial interest." California Government Code Section 87100, *et seq*. Furthermore, Consultant certifies that no such current or former Board member or employee will derive any compensation, directly or indirectly, from this Agreement.

b. Consultant also hereby certifies that to its knowledge, except as noted below, no current Board member or employee of the District, and no one who has been a Board member or an employee of the District within the last two years, has influenced or sought to influence the awarding of this Agreement to Consultant, except as allowed under his/her official duties. Consultant understands that any violation of this Section shall make the Agreement voidable by the District.

ARTICLE 24: GOVERNING LAW AND VENUE

This Agreement shall be construed in accordance with, and governed by the laws of the State of California. Venue shall be in the Superior Court of the State of California in the County of Alameda.

ARTICLE 25: ENTIRE AGREEMENT

This Agreement with its exhibits supersedes any and all other prior or contemporaneous oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person, which are not incorporated herein, and that any other agreement shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.

ARTICLE 26: SEVERABILITY

Should any provision in this Agreement be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect.

ARTICLE 27: NON-WAIVER

None of the provisions of the Agreement shall be considered waived by either party unless made by written statement expressing that it is intended as a waiver of specified provisions of the Agreement. In the case of the District, any waiver of any provision of this Agreement must also have been approved by affirmative vote of the Board. District's failure to enforce any provision of this Agreement, or the District's waiver of any provision in a particular instance shall not be construed as a general waiver of any part of such provision.

ARTICLE 28: DISCRIMINATION PROHIBITED

It is the policy of District that in connection with all work or services performed under contracts, there will be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, handicap, or marital status. Consultant agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment Practice Act, beginning with Government Code Section 12900, et seq. Consultant shall familiarize itself with all District policies relating to nondiscrimination, harassment-free workplaces, and other work related policies, and agrees to adhere to those policies in executing this Agreement and in performing the obligations hereunder. Consultant agrees to require like compliance by any consultants or Subconsultants employed on the Project.

ARTICLE 29: DISABLED VETERANS

In accordance with Education Code section 17076.11, the District has a participation goal for disabled veteran business enterprises ("DVBE") of at least three percent (3%) per year of the overall dollar amount of funds allocated to District by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act of 1998 for construction or modernization and expended each year by the District. Prior to, and as a condition precedent for final payment under any contract for such Project, Consultant shall provide appropriate documentation to District identifying the amount paid to disabled veteran business enterprises in conjunction with the contract, so that District can assess its success at meeting this goal.

ARTICLE 30: NO THIRD PARTY BENEFICIARIES

This Agreement is as between Consultant and District and no other party, individual or entity is

intended to be or is a third party beneficiary of this Agreement.

ARTICLE 31: CONFIDENTIALITY

Consultant shall treat all information and data furnished to it by District or otherwise obtained or prepared by Consultant concerning the Project as strictly confidential and shall not disclose any of the same to any other person or entity unless required to do so in connection with Consultant's performance of this Agreement or any governmental filings or applications. Consultant shall not engage in or permit any public references or statements to the Project, District or Consultant's services hereunder, including, without limitation, granting interviews to broadcast, print or other media, without the prior written consent of District, which may be granted or withheld in the sole discretion of the District. Consultant shall instruct all of its employees of the foregoing confidentiality obligation.

ARTICLE 32: SURVIVAL.

The provisions of this Agreement which by their nature survive completion of the Services or termination of this Agreement, including, without limitation, all warranties, indemnities and payment obligations, shall remain in full force and effect after completion or termination of this Agreement.

ARTICLE 33: COMPLIANCE WITH LAWS

Consultant shall keep itself fully informed of the applicable state and federal law affecting the performance of this Agreement, and shall at all times comply with such laws as they may be amended from time to time.

ARTICLE 34: ADA COMPLIANCE

Consultant acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services, and other activities provided by a public entity to the public, whether directly or through a Consultant, must be accessible to persons with disabilities. Consultant agrees not to discriminate against persons with disabilities in the provision of services, products, benefits, or activities provided in this Contract, and further agree that any violation of this prohibition on the part of the Consultant shall constitute a material breach of this Contract.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed this _____ day of _____, 2014.

Consultant	District
By: _____	By: _____
Terry Egland, PE	Dr. Michael McLaughlin Superintendent

Exhibit A – Project Description and Schedule

I. General Description of the Project – Several school sites limited improvement and renovation.

II. Project Scope:

a. Solar panel system installation.
b. New paving and hardscape and landscape improvements
c. Seismic upgrades
d. Other Measure B Projects
e. Other Measure M Projects

III. Construction Budget:

Not applicable to this scope of services

IV. Construction Schedule:

Not applicable to this scope of services

V. Detailed Description of Services, Deliverables: Special inspections and testing, including:

a. DSA required testing and reporting
b. Final reports, six (6) hard copies, bound separately & stamped; one (1) pdf copy.

Exhibit B – Calculation of Charges

Total compensation to Consultant under this Agreement is not to exceed: **$52,686.00.**

Consultant agrees to invoice each program # separately as projects are DSA approved for construction and numbered for tracking.

Compensation is due upon acceptance of invoicing.

All testing and special inspection in the field is subject to the Project Stabilization Agreement and is prevailing wage.

Schedule of Standard Hourly Billing Rates for Additional Services

The following hourly rates apply for all Additional Services:

For DSA Lab#33, see attached Exhibit.

Consultant represents and warrants that during the calendar year this agreement is executed and in the geographic region of the proposed project, these are the lowest hourly rates for the services being offered by Consultant to other school districts for similar work. (Most Favored Rate).