

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT
AGREEMENT FOR PROFESSIONAL SERVICES
PROJECT TESTING AND SPECIAL INSPECTION SERVICES

This Agreement for Project Testing and Special Inspection Services ("Agreement") is dated _____, 2016 for reference purposes only and is entered into between the **Santa Monica-Malibu Unified School District** ("District") and _____ ("Testing Consultant"). The District and Testing Consultant may be individually referred to herein as a "Party" or collectively referred to herein as the "Parties."

RECITALS

WHEREAS, District is [brief description of Project, e.g., renovating a classroom building, constructing a new science building, etc. at the District's _____ campus] under the jurisdiction of the Division of State Architect ("DSA"), commonly known as the _____ ("Project" or "Site"), and has awarded a construction contract to _____ to perform the work of the Project ("Construction Work"); and

WHEREAS, District has retained the services of _____ as the architect and design professionals of the Construction Work ("Architect"); and

WHEREAS, the Construction Work shall be performed pursuant to District-approved plans, drawings, specifications, rules, regulations, and statutes applicable to school construction and other contract documents ("Contract Documents"); and

WHEREAS, the District requires the services of a Testing Consultant approved by DSA in accordance with Section 4-335 of Title 24 of the California Code of Regulations to provide testing and special inspections during the Work; and

WHEREAS, the Testing Consultant warrants and represents that the individuals it is assigning to perform the duties and responsibilities required by this Agreement and by applicable laws and regulations for the inspection of Work at the Project site, including those providing special inspections ("Special Inspector") are competent and qualified.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1 TESTING CONSULTANT'S SERVICES AND RESPONSIBILITIES

1.1 Scope of Services. Testing Consultant shall perform consulting services as set forth in this Agreement and specifically described in the "Scope of Work" attached hereto as **Exhibit A** and incorporated herein by this reference ("Services"). The Scope of Work together with this Agreement shall constitute the "Agreement".

1.1.1 Notwithstanding anything express or implied to the contrary, the Testing Consultant shall comply with all federal, state, county and local governmental requirements, including but not limited to Sections 4-333, 4-335 and 4-336 of Title 24.

1.1.2 At completion of the Project, Testing Consultant shall deliver a copy of all inspection and testing records and project correspondence to the District.

- 1.1.3 The Testing Consultant shall submit all verified reports to DSA in compliance with State law, including but not limited to Section 4-336 of Title 24, which reports shall be based on upon actual personal knowledge obtained through personal inspection of the Work.
- 1.1.4 The Testing Consultant shall maintain detailed, comprehensive, organized, accessible, and timely documentation of all testing and inspections performed for the District (“Testing and Inspection Records”). The Testing and Inspection Records shall include, without limitation, a systematic record of the tests inspections performed by the Testing Consultant and a job log of the Testing Consultant’s time spent the Project.

1.2 Qualified Personnel. Testing Consultant represents and warrants that it, and each of the Testing Consultant’s personnel performing Services pursuant to this Agreement, is skilled in the professional calling necessary to perform all Services, duties and obligations required by this Agreement and is fully qualified to complete the Services. All Special Inspectors shall be subject to DSA approval. All Testing Consultant personnel provided under this Agreement shall be subject to approval by the District, and any changes in personnel from those initially provided by Testing Consultant shall require District approval. The District reserves the right to require the substitution of personnel if, in the judgment of the District, the personnel should at any time prove unsatisfactory to the needs of the District.

1.3 Standard of Care. Testing Consultant shall perform the Services and duties in conformance and consistent with the standards generally recognized as being employed by professionals in the same type of work for school districts in the State of California. Testing Consultant shall be responsible for the professional and technical soundness, accuracy and adequacy of all work, Services and materials furnished under this Agreement.

1.4 Licenses/Qualifications. Testing Consultant represents and warrants to the District that it has all licenses, permits, qualifications and approvals of whatever nature which are legally required to practice its profession. Testing Consultant further represents that it shall keep all such licenses and approvals in effect during the term of this Agreement.

1.5 Independent Contractor. The District retains Testing Consultant as an independent contractor and neither the Testing Consultant nor its agents or employees are deemed to be employees of the District. Personnel performing the Services under this Agreement on behalf of the Testing Consultant shall at all times be under the Testing Consultant’s exclusive direction and control. Testing Consultant shall pay all wages, salaries and other amounts due such personnel in connection with their performance for Services and as required by law, including but not limited to payment of prevailing wages as required by Labor Code §1771. Testing Consultant shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers’ compensation insurance.

1.6 Safety Precautions. Testing Consultant shall take all reasonable safety precautions related to performance of the Services under this Agreement, and shall provide reasonable protection to prevent damage, injury or loss to its employees or personnel providing Services hereunder and other persons who may be affected thereby. Testing Consultant shall promptly provide notice to the District Representative of any accidents arising out of or in connection with the Services, causing death, personal injury or property damage including full details and statements of any witnesses. In addition, if death, serious personal injuries or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the District Representative.

- 1.7 Fingerprinting.** Testing Consultant shall comply with the provisions of Education Code §45125.01 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. Testing Consultant shall not permit any employee to have any contact with District pupils until such time as the Testing Consultant has verified in writing that the employee has not been convicted of a felony, as defined in Education Code §45122.1. Testing Consultant's responsibility shall extend to all employees, substitute Testing Consultants, agents and employees or agents of substitute Testing Consultants regardless of whether those individuals are paid or unpaid or acting as independent consultants of the Testing Consultant. Verification of compliance with this section and the Criminal Background Investigation Certification shall be provided in writing to the District prior to each individual's commencement of employment or participation on the Project and prior to permitting contact with any student.
- 1.8 Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, Testing Consultant must submit, upon request by District, appropriate documentation to District identifying the steps Testing Consultant has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
- 1.9 Conflict of Interest.** Testing Consultant shall not have a financial or investment interest in any person, contractor, entity, or their employees, agents, or subcontractors with responsibilities for the construction of, design of, or other work or duties related to the Project. Testing Consultant shall not have the authority to assist any person, contractor, entity, or their employees, agents, or subcontractors in the performance of any Construction Work on the Project. Testing Consultant shall not undertake any responsibilities of any person, contractor, entity, or their employees, agents, or subcontractors for the Construction Work of the Project.

2 RESPONSIBILITIES OF DISTRICT

- 2.1 District Representative.** The District Representative for purposes of this Agreement is _____ . All communication and correspondence for the District shall be through the District Representative.
- 2.2 District Information.** The District shall provide the Testing Consultant with documented information in its possession which is reasonably necessary for the performance of the Services described herein; however, the District makes no representations with respect to the reliability, accuracy or completeness of an information or data it may furnish to Testing Consultant.

3 TESTING CONSULTANT COMPENSATION

- 3.1 Contract Price.** The District shall pay Testing Consultant the sum of \$ _____ for the Services. The Contract Price includes Testing Consultant's fee, personnel expenses, inclusive of all benefits and burdens, fees of any sub-consultant or subcontractor to Testing Consultant, insurance and all other administrative or overhead costs and all other direct and indirect expenses incurred in the performance of this Agreement.
- 3.2 District Payments to Testing Consultant.** Invoices for compensation shall be submitted monthly, in arrears, for fees for Services provided during the previous month. For invoices where

work is performed at more than one (1) school, fees shall be identified by school and/or project. Within thirty (30) days of receipt and acceptance of a properly submitted invoice from the Testing Consultant, the District shall review and pay all approved charges thereon. If the District requires additional information or documentation to verify and approve the compensation request, the Testing Consultant shall promptly provide such information or documentation, and the payment period shall be extended by the number of days needed to provide such information or documentation. The District may, however, withhold or deduct from amounts otherwise due Testing Consultant hereunder if Testing Consultant shall fail to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after Testing Consultant has fully cured its failure of performance, less costs, damages or losses sustained by the District as a result of such failure of performance of a material obligation hereunder.

3.3 Disputes; Continuation of Services. Any claim, dispute or controversy that the Testing Consultant may have regarding the performance, or any term or provision, of this Agreement including, but not limited to, claims for additional compensation, shall be submitted to the District in writing within thirty (30) days after its occurrence. The District and the Testing Consultant shall attempt to negotiate a resolution of such claim, dispute or controversy. However, except in the event of the District's failure to make payment of undisputed amounts of the sums due Testing Consultant hereunder, notwithstanding any disputes between District and Testing Consultant, Testing Consultant shall continue to provide and perform Services pending a subsequent resolution of such disputes.

4 TERM OF AGREEMENT; TERMINATION

4.1 Term. The Term of this Agreement ("Term") shall commence upon the approval or ratification by the District's Board of Education and execution by the District and Testing Consultant ("Effective Date") and continue until the time set forth in the Scope of Work; however, the term may be extended upon further written agreement of the parties.

4.2 Termination. This Agreement may be terminated at the sole discretion of the District, for the District's convenience, at any time by written notice to the Testing Consultant. The District may terminate this Agreement for cause upon written notice to the Testing Consultant where the Testing Consultant is in material violation of this Agreement or performs any act exposing the District to liability for personal injury or property damage. If the Agreement is terminated pursuant to this Article, the Testing Consultant shall be compensated for all authorized Services performed to the District's satisfaction prior to the effective date of termination. Upon receipt of a termination notice, the Testing Consultant shall promptly discontinue services as directed by the notice and shall deliver to the District all test data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Testing Consultant in performing the Services authorized hereunder, whether completed or in progress. The Testing Consultant shall cooperate fully with the District in the Testing Consultant's replacement, as may be required to maintain the timely prosecution of the Services.

5 INSURANCE AND INDEMNITY

5.1 Insurance. Commencing with the execution of this Agreement, Testing Consultant and its sub-consultants shall maintain the following insurance coverage amounts and limits:

<i>Workers Compensation</i>	<i>In accordance with applicable law</i>
<i>Employers Liability</i>	<i>\$1,000,000</i>
<i>Commercial General Liability (including Bodily</i>	

<i>Injury or Death and Property Damage)</i>	
<i>Per Occurrence</i>	\$1,000,000
<i>Aggregate</i>	\$2,000,000
<i>Automobile Liability - Bodily Injury or Death</i>	
<i>Per Occurrence</i>	\$1,000,000
<i>General Aggregate</i>	\$2,000,000
<i>Professional Liability</i>	\$1,000,000

The District shall be named as an additional insured on the Commercial General Liability policy, with respect to the Testing Consultant’s Services. The District shall be provided with thirty (30) days’ written notice before cancellation of or any material change in such insurance. Prior to commencement of Services, Testing Consultant shall provide the District with a Certificate of Insurance and, as applicable, an endorsement naming the District as additional insured on all required policies including: (a) a statement of the services and location for which the insurance coverage is for; (b) a provision for thirty (30) calendar days’ written notice to the District before cancellation, suspension, or reduction in coverage or limits; and (c) a provision that such insurance is primary and that the District’s self-insurance and insurance programs shall be non-contributory.

5.2 Indemnity. To the fullest extent permitted by law, the Testing Consultant shall, defend, indemnify, protect, and hold harmless the District, and its employees, officers, trustees and agents from and against any and all claims, demands, losses, responsibilities, liabilities, costs, damages, fines, penalties of any kind (“Claim”), arising out of, pertaining to or relating to, in whole or in part, the negligent, reckless or willful acts, omissions or other misconduct of the Testing Consultant, its sub-consultants, or their respective agents or employees in performing the Services. The indemnification specified herein excludes Testing Consultant’s liability as to the active or sole negligence or willful misconduct of the District. The foregoing shall include without limitation, attorneys’ fees, experts’ fees and costs, investigation expenses and costs incurred by the District, and any defense afforded pursuant to this paragraph will be provided by counsel acceptable to the District. This obligation is not limited in any way by the amount or type of damages or compensation payable to Testing Consultant or its sub-consultant(s) under applicable policies of insurance, workers’ compensation acts, disability benefits acts or other employee benefits acts. This obligation shall apply during the Term of the Agreement and shall survive any termination of this Agreement until any such Claim is barred by the applicable statute of limitation and is in addition to any other rights or remedies that the District may have under the law or under this Agreement.

6 MISCELLANEOUS

6.1 Governing Law; Interpretation. This Agreement shall be governed and interpreted in accordance with the laws of the State of California in accordance with its fair meaning and not strictly for or against the District or Testing Consultant.

6.2 Successors; Non-Assignability. This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors and assigns of Testing Consultant and the District. Neither the Testing Consultant nor District shall assign rights or obligations hereunder without the prior written consent of the other, which consent may be withheld or granted in sole discretion of the Party requested to grant such consent. This Agreement may not be orally amended, modified or terminated.

6.3 Attorneys’ Fees. Except as authorized by law or as provided in Article 5 hereunder, neither the District nor the Testing Consultant shall recover from the other any attorneys’ fees or other costs

associated with or arising out of any legal, administrative or other proceedings filed or instituted in connection with or arising out of this Agreement or the performance of either the District or the Testing Consultant thereunder.

- 6.4 Ownership of Records; Copies.** All reports, maps, surveys, logs, field data, field notes, calculations, estimates and other documents prepared by Testing Consultant under this Agreement shall remain the property of the District and shall be made available upon request to the District at any time. Testing Consultant may retain copies of such documents.
- 6.5 Audit.** Testing Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Testing Consultant transacted under this Agreement. Testing Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Testing Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Testing Consultant and shall conduct audit(s) during Testing Consultant's normal business hours, unless Testing Consultant otherwise consents.
- 6.6 Anti-Discrimination.** It is the policy of the District that in connection with all work performed under this Agreement there be no discrimination against any employee engaged in the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status and therefore the Testing Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Testing Consultant agrees to require like compliance by all its subcontractor(s).
- 6.7 Severability.** If any provision of this Agreement is deemed illegal, invalid, unenforceable or void by any court of competent jurisdiction, such provision shall be deemed stricken and deleted here from, but all remaining provisions will remain and continue in full force and effect.
- 6.8 Notices.** Notices under this Agreement shall be addressed and delivered as follows:

If to District: Santa Monica-Malibu Unified School District
1651 16th Street
Santa Monica, California 90404
ATTN: _____
Facsimile: (____) _____
Telephone: (____) _____

If to Consultant:

6.9 Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2016

Dated: _____, 2016

Santa Monica-Malibu Unified School District _____

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

SAMPLE

EXHIBIT A – SCOPE OF SERVICES

SAMPLE

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Services of this Agreement.

Date: _____

Proper Name of Testing Consultant: _____

Signature: _____

Print Name: _____

Title: _____

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Services under this Agreement.)

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

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

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

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

The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Testing Consultant’s services under this Agreement and Testing Consultant certifies its compliance with these provisions as follows: *“Testing Consultant certifies that the Testing Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Testing Consultant’s employees, subcontractors, agents, and subcontractors’ employees or agents (“Employees”) regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Testing Consultant, who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto.”*

Megan’s Law (Sex Offenders). I have verified and will continue to verify that the employees of Testing Consultant that will be on the Project site and the employees of its subcontractor(s) that will be on the Project site are **not** listed on California’s “Megan’s Law” Website (<http://www.meganslaw.ca.gov/>).

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

Date: _____
Name of Testing Consultant: _____
Signature: _____
Print Name and Title: _____