

**Foothill Intermediate and Loma Rica Elementary
Report to The Board of Trustees
September 12, 2017**

The Mission of Foothill School:

Our mission is to provide a quality education for *ALL* students that encourages a passion for learning, while striving to meet their academic, emotional and social needs

Collective Commitments from our Foothill Staff:

- Give students the confidence to learn by being challenged academically
- Support & teach students to learn and explore new ideas
- Provide a quality education for students that encourages a lifelong passion for learning, while meeting their academic, emotional, and social needs
- Help students enter the world feeling successful at academic content and reading to contribute as responsible citizens
- Educate young minds to help them grow and succeed to their maximum potential
- Instill the skills and knowledge to be kind, responsible, and productive members of society

The Mission of Loma Rica School:

Our mission is '*Working Together for Success*'

Collectives Commitments from our Loma Rica Staff:

- Ensure students are accountable for their learning and take responsibility for their actions.
- Create a positive, safe place where all ideas are valued.
- Provide my students with the support they need to be successful, both academically and socially.
- Help my students learn by doing through hands-on activities.
- Create a positive community by treating my students with respect.
- Actively teach collaboration and cooperation.
- Do my best to show each student I care about them.
- Help my students grow in their education each day.

Academic Achievement and Instructional Focus:

Instructional focus is driven by analyzing our students' academic performance. One measure of performance is our annual state testing (CAASPP) A three-year study of our school's testing results shows a steady increase in the number of students who are meeting or exceeding standards. Specifically, at Foothill School students meeting or exceeding standards in math has gone from 29% to 34%... a growth of 5%. In ELA, proficiency rates grew from 48% to 56%.... a growth of 8%.

At Loma Rica School, the number of students meeting or exceeding proficiency in math went from 40% in 2015 to our latest achievement of 45%... an improvement of 5%. ELA scores at Loma Rica have seen the largest growth. Between 2015 and 2017, the percentage of students who have met California's proficiency target went from 30% to 48%... a growth of 18%.

While this current trend of improvement is something to celebrate, our work continues. Intervention for our struggling learners is on the radar of every teacher at Foothill and Loma Rica. Foothill teachers continue to volunteer their time for additional academic support during their lunch period. Formalizing dedicated, strategic intervention during the regular instructional period has been a kick-off conversation this year.

At Loma Rica, we just launched our school-wide intervention program. Teachers are using collaboration time on Wednesdays to analyze student work and determine which students are in need of intervention for the upcoming week. Dedicated intervention time will occur 30 minutes per day, four days per week. Support staff will be used to provide enrichment activities during this time for students who are meeting the standards' proficiency levels each week.

Each quarter, passage rates at Foothill School are monitored and shared with staff. It is imperative that our 8th grade students maintain a 2.0 G.P.A. or higher to ensure promotion to the comprehensive high school. In the last six years, our promotion rate has improved from 75% to the most recent passage rate of 86%. This improvement is a testament to our teachers' outreach to our at-risk students.

School-to-Home & Home-to-School Communications:

Staff understand that communication between school and home is critical to the success of every child. We also understand the importance of communication from home to school. The more we know about every student's life, the more we can do to help them succeed.

To this end, we continue to review and improve efforts to keep families informed, respond to their questions and elicit their input. Current strategies include:

- 24 hour turn-around goal for all calls /emails
- School Messenger
- Back to School Night
- Annual Title I Meeting
- Parent satisfaction survey
- Student Planners
- Parent/Teacher Conf., SST's, IEP's
- Weekly, monthly, quarterly academic progress reports
- Aeries Gradebook
- Monthly Newsletters
- School and Classroom Websites
- Remind 101(parent/teacher text app)
- Dojo (parent/teacher connection app)
- Email List Serves to families

Services:

Having an array of support services for students at small schools can sometimes be a challenge. Foothill and Loma Rica schools work to maximize every possible resource available. It is not uncommon to see an attendance clerk with a spare moment, a teacher during their lunch break, or a librarian during recess, seek out a student from the 'watch list' and provide extra help. Other formalized services include:

- Indian Education tutoring
- Teacher office hours during lunch (voluntary)
- LRT/Library support – before school, break, lunch
- Counseling – individual and group (at FH)
- Small group ELA intervention (using LRT)
- Structured Study Hall support
- Para educator tutoring
- Grief Counseling

Enrichment:

Our schools understand that academic achievement is enhanced when students are afforded a well-rounded approach to their education. Teachers at Foothill and Loma Rica have made the following enrichment opportunities available for our students:

- Digital Photography
- Drama
- Glee Club
- Computer Coding
- After School Sports
- Band
- Leadership
- Girls On The Run
- Keyboarding
- Art
- Shady Creek Outdoor School

Community Partnerships:

- Loma Rica Lions Club
 - Pizza Round-Up
 - Loma Rica Grange Hall
 - Marysville Kiwanis Club
 - Parent Volunteers
- Site Council, PTA, Drama, 8th Grade Promotion, After School Sports

Positive Behavior and Support (PBIS):

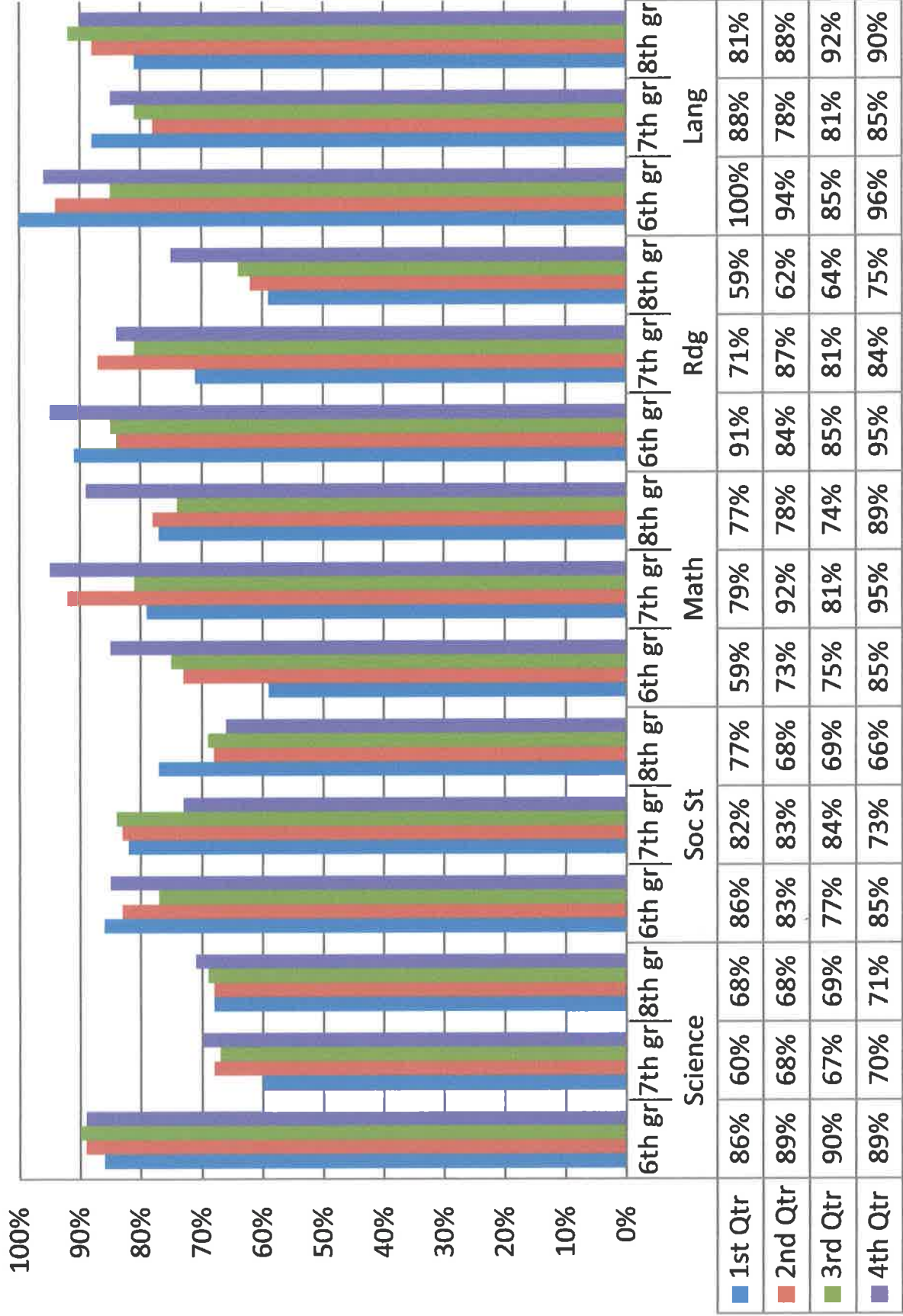
Teachers at both sites have received training in PBIS. Our 'Raider Recognition' program and our 'Mighty Mustang' program help our school recognize and celebrate the positive behaviors that our students bring to school. Recognition of positive behavior occurs every single day. Once a week we draw names for a 'lucky winner' from each grade level to receive prizes and additional recognition.

At Foothill, quarterly assemblies are held to honor excellence in both academic achievement and citizenship. School 'fun night', movie night, rallies and dances give students an opportunity to socialize with peers and celebrate the positive citizenship they bring to the school. Periodic assemblies are held to review expectations for student safety and behavior.

Professional Learning Communities (PLC):

Funding restraints at the smaller schools have prevented formalized PLC professional development. It is our goal that each of our teachers get to have this opportunity during the upcoming year. In the meantime, we have shared readings, developed a common vision and mission and defined our collective commitments to ensure learning for all students.

2016-17 Passing Percentages



RENAISSANCE®

Marysville School District/ Renaissance® Star 360 Pilot

Marysville School District and Renaissance® agree to participate in a *Star 360* pilot beginning September 12, 2017 and ending June 30th, 2017. The agreed-upon pilot will equip site-wide Star 360 licenses for all schools in the Marysville Joint Unified School District. The student license total for the pilot is 8,000. Though teacher participation will remain voluntary, the agreed-upon pilot will allow all educators district wide access to Renaissance® Place.

Renaissance® helps districts ensure all students reach their full potential. Marysville School District students receive the unique attention and quick feedback they need to meet their goals. Monitoring student progress is easier than ever imagined thanks to the combination of precise growth data with California-specific, scientifically proven learning progressions, all included within Star 360.

Star 360

Renaissance® Star 360 assessments provide achievement and growth data you need for screening, progress monitoring, and guiding instruction in the least amount of testing time. Teachers in over one-third of schools nationwide rely on Star 360 for reliable data.

Complete tests in a fraction of time: Star 360 interim assessments take 20 minutes to complete—about a third of the time of comparable computer adaptive tests. A formative assessment tool, Star Custom, helps you create daily assessments for deeper insight into student performance.

Norm-and criterion-referenced: Star 360 tests are both norm-referenced and criterion-referenced so you can quickly interpret data in multiple ways. Compare students' progress in reference to normal expected growth and toward criteria for mastery of your state's standards.

Intuitive dashboards: Key insight in your capable hands has the biggest impact on growth. Quick, clear data reporting simplifies your process for setting goals, monitoring progress, and identifying students in need of intervention.

Progress monitoring and goal-setting: Track how students are responding to intervention and instruction using a research-based growth model to help you set attainable goals. Star 360 charts the projected outcomes and graphs the students' actual progress toward their goals in the same report.

PROFESSIONAL LEARNING AND IMPLEMENTATION SUPPORT

Renaissance® offers professional development services to help teachers and administrators close the gaps between knowing, doing and achieving. We have created the following professional development plan based on input from the district leadership team. The plan will ensure that leaders and educators within the pilot are able to implement Star 360 with fidelity, have a deep understanding of the data generated via the included tools, and use the data and resources these solutions provide to inform instruction. The Marysville School District's Star 360 pilot will include the following professional development opportunities:

1. **Initial Star & Star 360 Training** – A blended delivery of onsite and virtual session (Total of 18 hours)
2. **Technical support** – Ongoing, ensuring the implementation runs flawlessly
3. **Data Analytics** – Renaissance's team of experts will partner with Pleasant Valley USD to review screening and progress monitoring data, along with various reporting capabilities throughout the duration of the pilot

RENAISSANCE®

Marysville School District/ Renaissance® Star 360 Pilot

Renaissance® agrees to provide the software licenses and professional development required to support a Star 360 pilot in Marysville School District. Starting on September 12, 2017, this pilot will provide 8,000 Star 360 licenses to all participating

Business Services Department

Approval: MA

Date: 9.1.17

school sites and give all district teachers access to Renaissance Place until June 30, 2018. At the completion of the Marysville School District Star 360 pilot, MSD and Renaissance® will meet to review the overall success of the implementation.

MARYSVILLE SCHOOL DISTRICT COMMITMENTS

- Committed to scheduling and attending initial *Star 360* implementation training
- Committed to administering the initial Star Math, Reading, Early Literacy and/or Spanish Assessment
- Committed to scheduling a progress meeting 4-6 weeks from start date with site and district leadership
- Committed to providing and maintaining technology and hardware required for program fidelity in classroom
- Committed to tracking progress and data via the program dashboards and reports
- Committed to attending an End of Pilot Data Analysis meeting
- Committed to completing the *Star 360* Pilot Rubric provided by Renaissance®

RENAISSANCE® COMMITMENTS

- Committed to supplying 8,000 *Star 360* student licenses and teacher, district wide, licenses for pilot duration
- Committed to conducting successful initial and ongoing professional development opportunities during the project
- Committed to installing and maintaining hosted software required for successful use of Star 360
- Committed to facilitating an End-of-Pilot Data Analysis Review meeting

STAR 360 MATERIALS AND SERVICES INCLUDED WITHIN THIS SOLUTION

- 8,000 *Star 360* Student Software Licenses including:
 - Star Reading
 - Star Math
 - Star Early Literacy
- Star Spanish
- Star Custom
 - District wide Renaissance Place teacher licenses
 - Renaissance® Hosting Service: Hosting to start September 12, 2017 and end June 30, 2018
 - *Star 360* Professional Development Teacher and Leader Initial Training Day (two three-hour onsite sessions)
 - 12 hours of *Star 360* implementation support to be delivered in increments that meet or exceed three hours

Pilot Investment Detail		
Product & Services Total		\$105,750
Applied Pilot Discounts		\$96,750
Grand Total		\$9,000.00

Date

Deepak Karandikar, Renaissance® Regional Vice President

Date

Michael Hodson, Marysville School District, Assistant
Superintendent – Business Services

MEMORANDUM OF UNDERSTANDING

Agreement# 0828

This Memorandum of Understanding (MOU) is between the **Sacramento County Office of Education**, hereinafter referred to as "**SCOE**," and **Marysville Joint Unified School District**, hereinafter referred to as "**District**."

The purpose of this MOU is to detail the roles and responsibilities of **SCOE** and the **District** in regards to delivering instructional support services to staff. Once signed by both parties, this MOU is in effect, and may be terminated by either entity in writing, but not less than seven business days prior to the first day of service.

No audio or visual recording of the services provided under this agreement may be made by any means without the advance written authorization of **SCOE**.

SCOE agrees to:

1. Provide a primary contact person and service provider(s) for all work under this MOU.

MOU Contact:

Name: Frank Pisi

Phone: 916-228-2239/ 916-212-8528

email: fpisi@scoe.net

Services provided by:

Name: Frank Pisi

Phone: 916-228-2239/ 916-212-8528

email: fpisi@scoe.net

2. Provide Seven 3 -hour professional development sessions on the following History-Social Science topics:
 - College, Career, and Civic Life (C3) Framework
 - The Action Civic Process
 - Student Engagement

Dates:

September 18, 2017

October 17, 2017

November 28, 2017

January 23, 2018

February 13, 2018

March 27, 2018

May 1, 2018

Time: 3:30pm – 6:30pm

Location of the service:

Marysville High School, Room C

12 E 18th Street

Marysville, CA 95901

3. **SCOE** will make every effort to accommodate changes in dates as needed, however rescheduling is not guaranteed as dates are dependent on availability.
4. Provide an evaluation of services, unless **District** has one they prefer to use.
5. Provide training materials. All instructional materials provided by **SCOE** are copyrighted.
6. Invoice **District** within 30 days of execution of this MOU:

Kricia Ames

1919 B Street

Marysville, CA 9590

Business Services Department

Approval : 

Date: 8.30.17

MEMORANDUM OF UNDERSTANDING, Agreement #0828

District agrees to:

1. Provide a primary contact person for all work under this MOU.
Contact Name: Lennie Tate
Contact Phone: 530 749 6902
Contact Email: ltate@mjustd.com
2. Ensure the site principal/district representative is present during services.
3. Participate in an evaluation of services.
4. Provide facility, insurance, and indemnification.
5. Provide SCOE with a copy of attendance sign-in sheet upon request.
6. Provide the audio-visual equipment and table supplies.
7. Provide requested materials for participants (e.g., Teacher's Edition).
8. Remit payment to SCOE within 60 days of invoicing.

Fee: \$10,312

7 three-hour sessions

3 days of prep and production

Mileage

Indemnity. Each party agrees to defend, indemnify, and hold harmless each of the other parties (including a party's directors, agents, officers and employees), from any claim, action, or proceeding arising from any actual or alleged act or omissions of the indemnifying party, its director, agents, officers, or employees arising from the indemnifying party's duties and obligations described in this agreement or imposed by law.

It is the intention of the parties that this section imposes on each party responsibility to the others for the acts and omissions of their respective elected and appointed officials, employees, representatives, agents, subcontractors and volunteers, that the provisions of comparative fault shall apply. This provision shall survive the termination of this agreement for any claim related to this agreement.

The undersigned represent that they are authorized representatives of the parties and hereby execute this MOU:

Sacramento County Office of Education

Dr. Al Rogers

Deputy Superintendent

Marysville Joint Unified School District

Michael R. Hodson

Assistant Superintendent of Business Services

Signature

Date

Signature

Date

Tamara Sanchez
Asst. Supt.

8/25/17



CONTRACT SERVICES AGREEMENT

Educational Services-Elementary English Language Arts Consultant, Terri Lieberman

THIS CONTRACT SERVICES AGREEMENT ("Agreement") is made and entered into on 9/12/2017 (hereinafter, the "Effective Date"), by and between the MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT ("DISTRICT") and Maria Nielsen with Learning by Design, LCC (hereinafter, "CONTRACTOR"). For the purposes of this Agreement DISTRICT and CONTRACTOR may be referred to collectively by the capitalized term "Parties." The capitalized term "Party" may refer to DISTRICT or CONTRACTOR interchangeably.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, DISTRICT and CONTRACTOR agree as follows:

I. ENGAGEMENT TERMS

1.1 **SCOPE OF WORK:** Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONTRACTOR agrees to perform the services and tasks set forth in **Exhibit "A"** (hereinafter referred to as the "**Scope of Work**"). CONTRACTOR further agrees to furnish to DISTRICT all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Work. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Work shall hereinafter be referred to generally by the capitalized term "**Work**." CONTRACTOR shall not commence with the performance of the Work until such time as DISTRICT issues a written Notice to Proceed.

1.2 **TERM:** This Agreement shall have a term of **2017-2018** commencing from **September 25, 2017- September 25, 2017**

1.3 **COMPENSATION:**

A. CONTRACTOR shall perform the various services and tasks set forth in the Scope of Services in accordance with the compensation schedule which is see **Exhibit A.** (hereinafter, the "Approved Rate Schedule").

B. Section 1.3(A) notwithstanding, CONTRACTOR's total compensation during the Term of this Agreement or any extension term shall not exceed the budgeted aggregate sum **TWO THOUSAND DOLLARS AND NO CENTS (\$2,000.00)** (hereinafter, the "Not-to-Exceed Sum"), unless such added expenditure is first approved by the DISTRICT acting in consultation with the Superintendent and the Director of Fiscal Services. In the event CONTRACTOR's charges are projected to exceed the Not-to-Exceed Sum prior to the expiration of the Term or any single extension term, DISTRICT may suspend CONTRACTOR's performance pending DISTRICT approval of any anticipated expenditures in excess of the Not-to-Exceed Sum or any other DISTRICT-approved amendment to the compensation terms of this Agreement.

1.4 **PAYMENT OF COMPENSATION:** The Not-to-Exceed Sum shall be paid to CONTRACTOR as the Work is completed. Following the conclusion of each calendar month, CONTRACTOR shall submit to DISTRICT an itemized invoice indicating the services performed and tasks completed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONTRACTOR's monthly compensation is a function of hours worked by CONTRACTOR's personnel, the invoice shall indicate the number of hours worked in the recently concluded calendar month, the persons responsible for performing the Work, the rate of compensation at which such services and tasks were performed, the subtotal for each tasks and service performed and a grand total for all services performed. Within **THIRTY (30)** calendar days of receipt of each invoice, DISTRICT shall notify CONTRACTOR in writing of any disputed amounts included in the invoice.

included on the invoice. DISTRICT shall not withhold applicable taxes or other authorized deductions from payments made to CONTRACTOR.

- 1.5 ACCOUNTING RECORDS: CONTRACTOR shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. DISTRICT shall have the right to access and examine such records, without charge, during normal business hours. DISTRICT shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.
- 1.6 ABANDONMENT BY CONTRACTOR: In the event CONTRACTOR ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Work, CONTRACTOR shall deliver to DISTRICT immediately and without delay, all materials, records and other work product prepared or obtained by CONTRACTOR in the performance of this Agreement. Furthermore, CONTRACTOR shall only be compensated for the reasonable value of the services, tasks and other work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which DISTRICT may incur as a result of CONTRACTOR's cessation or abandonment.

II. PERFORMANCE OF AGREEMENT

- 2.1 DISTRICT'S REPRESENTATIVES: The DISTRICT hereby designates Representative, Lennie Tate (hereinafter, the "DISTRICT Representatives") to act as its representatives for the performance of this Agreement. The Superintendent shall be the chief DISTRICT Representative. The DISTRICT Representatives or their designee shall act on behalf of the DISTRICT for all purposes under this Agreement. CONTRACTOR shall not accept directions or orders from any person other than the DISTRICT Representatives or their designee.
- 2.2 CONTRACTOR REPRESENTATIVE: CONTRACTOR hereby, Maria Nielsen with Learning by Design to act as its representative for the performance of this Agreement (hereinafter, "CONTRACTOR Representative"). CONTRACTOR Representative shall have full authority to represent and act on behalf of the CONTRACTOR for all purposes under this Agreement. CONTRACTOR Representative or his designee shall supervise and direct the performance of the Work, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONTRACTOR Representative shall constitute notice to CONTRACTOR.
- 2.3 COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: CONTRACTOR agrees to work closely with DISTRICT staff in the performance of the Work and this Agreement and shall be available to DISTRICT staff and the DISTRICT Representatives at all reasonable times. All work prepared by CONTRACTOR shall be subject to inspection and approval by DISTRICT Representatives or their designees.
- 2.4 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONTRACTOR represents, acknowledges and agrees to the following:
- A. CONTRACTOR shall perform all Work skillfully, competently and to the highest standards of CONTRACTOR's profession;
 - B. CONTRACTOR shall perform all Work in a manner reasonably satisfactory to the DISTRICT;
 - C. CONTRACTOR shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*);
 - D. CONTRACTOR understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;

- E. All of CONTRACTOR's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONTRACTOR; and
- F. All of CONTRACTOR's employees and agents (including but not limited to subcontractors and subconsultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement and made available to DISTRICT for copying and inspection.
- 2.5 ASSIGNMENT: The skills, training, knowledge and experience of CONTRACTOR are material to DISTRICT's willingness to enter into this Agreement. Accordingly, DISTRICT has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONTRACTOR or on behalf of CONTRACTOR in the performance of this Agreement. In recognition of this interest, CONTRACTOR agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONTRACTOR's duties or obligations under this Agreement without the prior written consent of the DISTRICT. In the absence of DISTRICT's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.
- 2.6 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONTRACTOR or under CONTRACTOR's strict supervision. CONTRACTOR will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. DISTRICT retains CONTRACTOR on an independent contractor basis and not as an employee. CONTRACTOR reserves the right to perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONTRACTOR's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of DISTRICT's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONTRACTOR are not employees of DISTRICT and shall at all times be under CONTRACTOR's exclusive direction and control. CONTRACTOR shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, social security and Medicare payments and the like. CONTRACTOR shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.
- 2.7 REMOVAL OF EMPLOYEES OR AGENTS: If any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the DISTRICT Representatives to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONTRACTOR, a threat to persons or property, or if any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to the DISTRICT, such officer, employee, agent, contractor, subcontractor or subconsultant shall be promptly removed by CONTRACTOR and shall not be re-assigned to perform any of the Work.
- 2.8 COMPLIANCE WITH LAWS: CONTRACTOR shall keep itself informed of and in compliance with all applicable federal, State or local laws to the extent such laws control or otherwise govern the performance of the Work. CONTRACTOR's compliance with applicable laws shall include without limitation compliance with all applicable Cal/OSHA requirements.
- 2.9 NON-DISCRIMINATION: In the performance of this Agreement, CONTRACTOR shall not discriminate against any employee, subcontractor, subconsultant, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.
- 2.10. INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONTRACTOR and all persons retained or employed by CONTRACTOR are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of DISTRICT. CONTRACTOR shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. CONTRACTOR and all persons retained or employed by CONTRACTOR shall have no authority, express or implied, to bind DISTRICT in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, DISTRICT, whether by contract or otherwise,

unless such authority is expressly conferred to CONTRACTOR under this Agreement or is otherwise expressly conferred by DISTRICT in writing.

III. INSURANCE

- 3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the Work, CONTRACTOR will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONTRACTOR shall procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONTRACTOR shall procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.
 - B. Automobile Liability Insurance: CONTRACTOR shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
 - C. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONTRACTOR and DISTRICT against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONTRACTOR in the course of carrying out the Work contemplated in this Agreement. Policy shall contain a waiver of subrogation against the all parties named as additional insureds under this subsection arising from work performed by the CONTRACTOR.
- 3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 3.3 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers, who according to the latest edition of the Best's Insurance Guide have an A.M. Best's rating of no less than A:VII. DISTRICT may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the DISTRICT Representatives are authorized to authorize lower ratings than those set forth in this Section.
- 3.4 PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONTRACTOR shall be primary to any coverage available to DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- 3.5 WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement shall not prohibit CONTRACTOR or CONTRACTOR's officers, employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss. CONTRACTOR hereby waives all rights of subrogation against DISTRICT.
- 3.6 VERIFICATION OF COVERAGE: CONTRACTOR acknowledges, understands and agrees, that DISTRICT's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding DISTRICT's financial well-being and, indirectly, the collective well-being of the residents of the DISTRICT. Accordingly, CONTRACTOR warrants,

represents and agrees that it shall furnish DISTRICT with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to DISTRICT in its sole and absolute discretion. The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the DISTRICT if requested. All certificates of insurance and endorsements shall be received and approved by DISTRICT as a condition precedent to CONTRACTOR's commencement of any work or any of the Work. Upon DISTRICT's written request, CONTRACTOR shall also provide DISTRICT with certified copies of all required insurance policies and endorsements.

IV. INDEMNIFICATION

- 4.1 The Parties agree that DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers (hereinafter, the "DISTRICT Indemnitees") should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the DISTRICT Indemnitees with the fullest protection possible under the law. CONTRACTOR acknowledges that DISTRICT would not enter into this Agreement in the absence of CONTRACTOR's commitment to indemnify, defend and protect DISTRICT as set forth herein.
- 4.2 To the fullest extent permitted by law, CONTRACTOR shall indemnify, hold harmless and defend the DISTRICT Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorney's fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONTRACTOR's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole negligence or willful misconduct of the CITY.
- 4.3 DISTRICT shall have the right to offset against the amount of any compensation due CONTRACTOR under this Agreement any amount due DISTRICT from CONTRACTOR as a result of CONTRACTOR's failure to pay DISTRICT promptly any indemnification arising under this Article and related to CONTRACTOR's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 4.4 The obligations of CONTRACTOR under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONTRACTOR expressly waives its statutory immunity under such statutes or laws as to DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers.
- 4.5 CONTRACTOR agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. In the event CONTRACTOR fails to obtain such indemnity obligations from others as required herein, CONTRACTOR agrees to be fully responsible and indemnify, hold harmless and defend DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONTRACTOR's subcontractors or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of DISTRICT's choice.
- 4.6 DISTRICT does not, and shall not, waive any rights that it may possess against CONTRACTOR because of the acceptance by DISTRICT, or the deposit with DISTRICT, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

- 4.7 This Article and all provisions contained herein (including but not limited to the duty to indemnify, defend and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the DISTRICT may have at law or in equity.

V. TERMINATION

- 5.1 TERMINATION WITHOUT CAUSE: DISTRICT may terminate this Agreement at any time for convenience and without cause by giving CONTRACTOR a minimum of five (5) calendar days prior written notice of DISTRICT's intent to terminate this Agreement. Upon such termination for convenience, CONTRACTOR shall be compensated only for those services and tasks which have been performed by CONTRACTOR up to the effective date of the termination. CONTRACTOR may not terminate this Agreement except for cause as provided under Section 5.2, below. If this Agreement is terminated as provided herein, DISTRICT may require CONTRACTOR to provide all finished or unfinished Documents and Data, as defined in Section 7.1 below, and other information of any kind prepared by CONTRACTOR in connection with the performance of the Work. CONTRACTOR shall be required to provide such Documents and Data within fifteen (15) calendar days of DISTRICT's written request. No actual or asserted breach of this Agreement on the part of DISTRICT pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict DISTRICT's ability to terminate this Agreement for convenience as provided under this Section.

5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 5.2.B and 5.2.C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute the such cure to completion. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.
- B. CONTRACTOR shall cure the following Events of Defaults within the following time periods:
- i. Within three (3) business days of DISTRICT's issuance of a Default Notice for any failure of CONTRACTOR to timely provide DISTRICT or DISTRICT's employees or agents with any information and/or written reports, documentation or work product which CONTRACTOR is obligated to provide to DISTRICT or DISTRICT's employees or agents under this Agreement. Prior to the expiration of the 3-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 3-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2 B.i. that exceeds seven (7) calendar days from the end of the initial 3-day cure period; or
 - ii. Within fourteen (14) calendar days of DISTRICT's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 14-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period. .

In addition to any other failure on the part of CONTRACTOR to perform any duty, obligation, service or task set forth under this Agreement (or the failure to timely perform or properly perform any such duty, obligation, service or task), an Event of Default on the part of CONTRACTOR shall include, but shall not be limited to the following: (i) CONTRACTOR's refusal or failure to perform any of the services or tasks called for under the Scope of Work; (ii) CONTRACTOR's failure to fulfill or perform its obligations under this Agreement within the specified time or if no time is specified, within a reasonable time; (iii) CONTRACTOR's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or

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regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONTRACTOR, whether voluntary or involuntary; (v) CONTRACTOR's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (vii) DISTRICT's discovery that a statement representation or warranty by CONTRACTOR relating to this Agreement is false, misleading or erroneous in any material respect.

- C. DISTRICT shall cure any Event of Default asserted by CONTRACTOR within FORTY-FIVE (45) calendar days of CONTRACTOR's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, DISTRICT may submit a written request for additional time to cure the Event of Default upon a showing that DISTRICT has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with DISTRICT's failure to timely pay any undisputed sums to CONTRACTOR as provided under Section 1.4, above, shall be cured by DISTRICT within five (5) calendar days from the date of CONTRACTOR's Default Notice to DISTRICT.
- D. DISTRICT, in its sole and absolute discretion, may also immediately suspend CONTRACTOR's performance under this Agreement pending CONTRACTOR's cure of any Event of Default by giving CONTRACTOR written notice of DISTRICT's intent to suspend CONTRACTOR's performance (hereinafter, a "Suspension Notice"). DISTRICT may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONTRACTOR shall be compensated only for those services and tasks which have been rendered by CONTRACTOR to the reasonable satisfaction of DISTRICT up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of DISTRICT shall operate to prohibit or otherwise restrict DISTRICT's ability to suspend this Agreement as provided herein.
- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to DISTRICT at law or under this Agreement in the event of any breach of this Agreement, DISTRICT, in its sole and absolute discretion, may also pursue any one or more of the following remedies:
- i. Upon written notice to CONTRACTOR, the DISTRICT may immediately terminate this Agreement in whole or in part;
 - ii. Upon written notice to CONTRACTOR, the DISTRICT may extend the time of performance;
 - iii. The DISTRICT may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONTRACTOR's breach of the Agreement or to terminate the Agreement; or
 - iv. The DISTRICT may exercise any other available and lawful right or remedy.

CONTRACTOR shall be liable for all legal fees plus other costs and expenses that DISTRICT incurs upon a breach of this Agreement or in the DISTRICT's exercise of its remedies under this Agreement.

- G. In the event DISTRICT is in breach of this Agreement, CONTRACTOR's sole remedy shall be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONTRACTOR under this Agreement for completed services and tasks.
- 5.3 SCOPE OF WAIVER: No waiver of any default or breach under this Agreement shall constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this

Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

- 5.4 SURVIVING ARTICLES, SECTIONS AND PROVISIONS: The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto shall not operate to terminate any Article, Section or provision contained herein which provides that it shall survive the termination or normal expiration of this Agreement.

VI. MISCELLANEOUS PROVISIONS

- 6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data shall be and remain the property of DISTRICT without restriction or limitation upon their use or dissemination by DISTRICT. For purposes of this Agreement, the term "Documents and Data" means and includes all reports, analyses, correspondence, plans, drawings, designs, renderings, specifications, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or assembled by or on behalf of CONTRACTOR in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored digitally, magnetically and/or electronically. This Agreement creates, at no cost to DISTRICT, a perpetual license for DISTRICT to copy, use, reuse, disseminate and/or retain any and all copyrights, designs, and other intellectual property embodied in all Documents and Data. CONTRACTOR shall require all subcontractors and subconsultants working on behalf of CONTRACTOR in the performance of this Agreement to agree in writing that DISTRICT shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subconsultant as applies to Documents and Data prepared by CONTRACTOR in the performance of this Agreement.
- 6.2 CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONTRACTOR or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONTRACTOR without prior written consent by DISTRICT. DISTRICT shall grant such consent if disclosure is legally required. Upon request, all DISTRICT data shall be returned to DISTRICT upon the termination or expiration of this Agreement. CONTRACTOR shall not use DISTRICT's name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of DISTRICT.
- 6.3 FINGERPRINTING. CONTRACTOR shall comply with all applicable provisions of Education Code Section 45125.1. CONTRACTOR will conduct criminal background checks of all employees, agents and/or representatives assigned performing any services and tasks on DISTRICT property on CONTRACTOR's behalf. CONTRACTOR will certify in writing that no such employees, agents and representatives who have been convicted of a violent or serious felony as described in the Notice Re: Criminal Records will have contact with DISTRICT's pupils. CONTRACTOR will provide DISTRICT with a list of all employees providing services pursuant to this Agreement. To the extent permitted under Education Code Section 45125.1, the DISTRICT Representatives may waive any fingerprinting requirements where it is determined that the CONTRACTOR, its employees and agents will have limited or no contact with pupils in the performance of any services and tasks called for under this Agreement. The waiver of the requirements of Education Code Section 45125.1 must be made in writing signed by one or both of the DISTRICT Representatives.
- 6.4 DRUG FREE WORKPLACE CERTIFICATION. CONTRACTOR shall apprise its officials and employees of the Drug-Free Workplace Act of 1990 (Govt. Code Section 8350 et seq.) (hereinafter, the "Act") which requires that every person or organization awarded a contract or grant for the procurement of property or services from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. CONTRACTOR shall comply with the requirements publication and notification requirements of Government Code Section 8355 as to all employees performing services and tasks under this Agreement on DISTRICT property or from DISTRICT facilities.
- 6.5 FALSE CLAIMS ACT. CONTRACTOR warrants and represents that neither CONTRACTOR nor any person who is an officer of, in a managing position with, or has an ownership interest in CONTRACTOR has been determined by a court or tribunal of

competent jurisdiction to have violated the False Claims Act, 31 U.S.C., Section 3789 *et seq.* and the California False Claims Act, Government Code Section 12650 *et seq.*

- 6.6 **NOTICES:** All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

CONTRACTOR:

Terri Lieberman
2164 Fresno Street
Los Osos, CA 93402

Phone: 559-786-5731

Fax:

Email: Lieberman.terri@gmail.com

DISTRICT:

Marysville Joint Unified School District
1919 B Street
Marysville, CA 95901

Phone: 749-6114

Fax: 742-0573

Such notices shall be deemed effective when personally delivered or successfully transmitted by facsimile as evidenced by a fax confirmation slip or when mailed, forty-eight (48) hours after deposit with the United States Postal Service, first class postage prepared and addressed to the Party at its applicable address.

- 6.7 **COOPERATION; FURTHER ACTS:** The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.
- 6.8 **SUBCONTRACTING:** CONTRACTOR shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval of DISTRICT. Subcontracts (including without limitation subcontracts with subconsultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.
- 6.9 **DISTRICT'S RIGHT TO EMPLOY OTHER CONTRACTORS:** DISTRICT reserves the right to employ other contractors in connection with the various projects worked upon by CONTRACTOR.
- 6.10 **PROHIBITED INTERESTS:** CONTRACTOR warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONTRACTOR, to solicit or secure this Agreement. Further, CONTRACTOR warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, DISTRICT shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of DISTRICT, during the term of his or her service with DISTRICT, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 6.11 **TIME IS OF THE ESSENCE:** Time is of the essence for each and every provision of this Agreement.
- 6.12 **GOVERNING LAW AND VENUE:** This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Yuba County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Northern District of California located in the City of San Francisco, California.
- 6.13 **ATTORNEY'S FEES:** If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.
- 6.14 **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding on the successors and assigns of the Parties.

- 6.15 NO THIRD PARTY BENEFIT: There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.
- 6.16 CONSTRUCTION OF AGREEMENT: This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.
- 6.17 SEVERABILITY: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 6.18 AMENDMENT; MODIFICATION: No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to DISTRICT approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.
- 6.19 CAPTIONS: The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limits, augment, or describe the scope, content, or intent of this Agreement.
- 6.20 INCONSISTENCIES OR CONFLICTS: In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.
- 6.21 ENTIRE AGREEMENT: This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between DISTRICT and CONTRACTOR prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid or binding. No amendment, modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.15, above.
- 6.22 COUNTERPARTS: This Agreement shall be executed in TWO (2) original counterparts each of which shall be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterparts shall be valid or binding unless made to all three counterparts in conformity with Section 6.15, above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

MARYSVILLE JOINT UNIFIED SCHOOL
DISTRICT:

By: _____
Mike Hodson
Assistant Superintendent of Business Services

Contractor

By: Terri Lieberman

Name: Terri Lieberman

Title: Elementary English Language Arts Consultant

Exhibit A**Scope of Work**

Terri Lieberman will provide one full day of professional development to the certificated staff at Ella Elementary School, Terri will continue her work from 2016/2017 in supporting student instruction for the Board approved K-6 English Language Arts program, Wonders. The contractor will focus on curriculum needs as well as key components. Compensation includes travel and all expenses.



CONTRACT SERVICES AGREEMENT

Marysville Charter Academy For The Arts – Learning By Design, LLC

THIS CONTRACT SERVICES AGREEMENT (“Agreement”) is made and entered into on 9/12/2017 (hereinafter, the “Effective Date”), by and between the MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT (“DISTRICT”) and Maria Nielsen with Learning by Design, LCC (hereinafter, “CONTRACTOR”). For the purposes of this Agreement DISTRICT and CONTRACTOR may be referred to collectively by the capitalized term “Parties.” The capitalized term “Party” may refer to DISTRICT or CONTRACTOR interchangeably.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, DISTRICT and CONTRACTOR agree as follows:

I. ENGAGEMENT TERMS

1.1 SCOPE OF WORK: Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONTRACTOR agrees to perform the services and tasks set forth in **Exhibit “A”** (hereinafter referred to as the “**Scope of Work**”). CONTRACTOR further agrees to furnish to DISTRICT all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Work. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Work shall hereinafter be referred to generally by the capitalized term “Work.” CONTRACTOR shall not commence with the performance of the Work until such time as DISTRICT issues a written Notice to Proceed.

1.2 TERM: This Agreement shall have a term of **2017-2018** commencing from **October 17, 2017 – March 20, 2018**

1.3 COMPENSATION:

- A. CONTRACTOR shall perform the various services and tasks set forth in the Scope of Services in accordance with the compensation schedule which is **see Exhibit A.** (hereinafter, the “Approved Rate Schedule”).
- B. Section 1.3(A) notwithstanding, CONTRACTOR’s total compensation during the Term of this Agreement or any extension term shall not exceed the budgeted aggregate sum **TWENTY THOUSAND DOLLARS AND NO CENTS (\$20,000.00)** (hereinafter, the “Not-to-Exceed Sum”), unless such added expenditure is first approved by the DISTRICT acting in consultation with the Superintendent and the Director of Fiscal Services. In the event CONTRACTOR’s charges are projected to exceed the Not-to-Exceed Sum prior to the expiration of the Term or any single extension term, DISTRICT may suspend CONTRACTOR’s performance pending DISTRICT approval of any anticipated expenditures in excess of the Not-to-Exceed Sum or any other DISTRICT-approved amendment to the compensation terms of this Agreement.

1.4 PAYMENT OF COMPENSATION: The Not-to-Exceed Sum shall be paid to CONTRACTOR as the Work is completed. Following the conclusion of each calendar month, CONTRACTOR shall submit to DISTRICT an itemized invoice indicating the services performed and tasks completed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONTRACTOR’s monthly compensation is a function of hours worked by CONTRACTOR’s personnel, the invoice shall indicate the number of hours worked in the recently concluded calendar month, the persons responsible for performing the Work, the rate of compensation at which such services and tasks were performed, the subtotal for each tasks and service performed and a grand total for all services performed. Within THIRTY (30) calendar days of receipt of each invoice, DISTRICT shall notify CONTRACTOR in writing of any disputed amounts included in the invoice.

included on the invoice. DISTRICT shall not withhold applicable taxes or other authorized deductions from payments made to CONTRACTOR.

- 1.5 **ACCOUNTING RECORDS:** CONTRACTOR shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. DISTRICT shall have the right to access and examine such records, without charge, during normal business hours. DISTRICT shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.
- 1.6 **ABANDONMENT BY CONTRACTOR:** In the event CONTRACTOR ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Work, CONTRACTOR shall deliver to DISTRICT immediately and without delay, all materials, records and other work product prepared or obtained by CONTRACTOR in the performance of this Agreement. Furthermore, CONTRACTOR shall only be compensated for the reasonable value of the services, tasks and other work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which DISTRICT may incur as a result of CONTRACTOR's cessation or abandonment.

II. PERFORMANCE OF AGREEMENT

- 2.1 **DISTRICT'S REPRESENTATIVES:** The DISTRICT hereby designates Representative, Lennie Tate (hereinafter, the "DISTRICT Representatives") to act as its representatives for the performance of this Agreement. The Superintendent shall be the chief DISTRICT Representative. The DISTRICT Representatives or their designee shall act on behalf of the DISTRICT for all purposes under this Agreement. CONTRACTOR shall not accept directions or orders from any person other than the DISTRICT Representatives or their designee.
- 2.2 **CONTRACTOR REPRESENTATIVE:** CONTRACTOR hereby, Maria Nielsen with Learning by Design to act as its representative for the performance of this Agreement (hereinafter, "CONTRACTOR Representative"). CONTRACTOR Representative shall have full authority to represent and act on behalf of the CONTRACTOR for all purposes under this Agreement. CONTRACTOR Representative or his designee shall supervise and direct the performance of the Work, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONTRACTOR Representative shall constitute notice to CONTRACTOR.
- 2.3 **COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS:** CONTRACTOR agrees to work closely with DISTRICT staff in the performance of the Work and this Agreement and shall be available to DISTRICT staff and the DISTRICT Representatives at all reasonable times. All work prepared by CONTRACTOR shall be subject to inspection and approval by DISTRICT Representatives or their designees.
- 2.4 **STANDARD OF CARE; PERFORMANCE OF EMPLOYEES:** CONTRACTOR represents, acknowledges and agrees to the following:
- A. CONTRACTOR shall perform all Work skillfully, competently and to the highest standards of CONTRACTOR's profession;
 - B. CONTRACTOR shall perform all Work in a manner reasonably satisfactory to the DISTRICT;
 - C. CONTRACTOR shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*);
 - D. CONTRACTOR understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;

- E. All of CONTRACTOR's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONTRACTOR; and
- F. All of CONTRACTOR's employees and agents (including but not limited to subcontractors and subconsultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement and made available to DISTRICT for copying and inspection.
- 2.5 ASSIGNMENT: The skills, training, knowledge and experience of CONTRACTOR are material to DISTRICT's willingness to enter into this Agreement. Accordingly, DISTRICT has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONTRACTOR or on behalf of CONTRACTOR in the performance of this Agreement. In recognition of this interest, CONTRACTOR agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONTRACTOR's duties or obligations under this Agreement without the prior written consent of the DISTRICT. In the absence of DISTRICT's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.
- 2.6 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONTRACTOR or under CONTRACTOR's strict supervision. CONTRACTOR will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. DISTRICT retains CONTRACTOR on an independent contractor basis and not as an employee. CONTRACTOR reserves the right to perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONTRACTOR's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of DISTRICT's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONTRACTOR are not employees of DISTRICT and shall at all times be under CONTRACTOR's exclusive direction and control. CONTRACTOR shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, social security and Medicare payments and the like. CONTRACTOR shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.
- 2.7 REMOVAL OF EMPLOYEES OR AGENTS: If any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the DISTRICT Representatives to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONTRACTOR, a threat to persons or property, or if any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to the DISTRICT, such officer, employee, agent, contractor, subcontractor or subconsultant shall be promptly removed by CONTRACTOR and shall not be re-assigned to perform any of the Work.
- 2.8 COMPLIANCE WITH LAWS: CONTRACTOR shall keep itself informed of and in compliance with all applicable federal, State or local laws to the extent such laws control or otherwise govern the performance of the Work. CONTRACTOR's compliance with applicable laws shall include without limitation compliance with all applicable Cal/OSHA requirements.
- 2.9 NON-DISCRIMINATION: In the performance of this Agreement, CONTRACTOR shall not discriminate against any employee, subcontractor, subconsultant, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.
- 2.10 INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONTRACTOR and all persons retained or employed by CONTRACTOR are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of DISTRICT. CONTRACTOR shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. CONTRACTOR and all persons retained or employed by CONTRACTOR shall have no authority, express or implied, to bind DISTRICT in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, DISTRICT, whether by contract or otherwise,

unless such authority is expressly conferred to CONTRACTOR under this Agreement or is otherwise expressly conferred by DISTRICT in writing.

III. INSURANCE

- 3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the Work, CONTRACTOR will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONTRACTOR shall procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONTRACTOR shall procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.
 - B. Automobile Liability Insurance: CONTRACTOR shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
 - C. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONTRACTOR and DISTRICT against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONTRACTOR in the course of carrying out the Work contemplated in this Agreement. Policy shall contain a waiver of subrogation against the all parties named as additional insureds under this subsection arising from work performed by the CONTRACTOR.
- 3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 3.3 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers, who according to the latest edition of the Best's Insurance Guide have an A.M. Best's rating of no less than A:VII. DISTRICT may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the DISTRICT Representatives are authorized to authorize lower ratings than those set forth in this Section.
- 3.4 PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONTRACTOR shall be primary to any coverage available to DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- 3.5 WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement shall not prohibit CONTRACTOR or CONTRACTOR's officers, employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss. CONTRACTOR hereby waives all rights of subrogation against DISTRICT.
- 3.6 VERIFICATION OF COVERAGE: CONTRACTOR acknowledges, understands and agrees, that DISTRICT's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding DISTRICT's financial well-being and, indirectly, the collective well-being of the residents of the DISTRICT. Accordingly, CONTRACTOR warrants,

represents and agrees that it shall furnish DISTRICT with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to DISTRICT in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the DISTRICT if requested.** All certificates of insurance and endorsements shall be received and approved by DISTRICT as a condition precedent to CONTRACTOR's commencement of any work or any of the Work. Upon DISTRICT's written request, CONTRACTOR shall also provide DISTRICT with certified copies of all required insurance policies and endorsements.

IV. INDEMNIFICATION

- 4.1 The Parties agree that DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers (hereinafter, the "DISTRICT Indemnitees") should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the DISTRICT Indemnitees with the fullest protection possible under the law. CONTRACTOR acknowledges that DISTRICT would not enter into this Agreement in the absence of CONTRACTOR's commitment to indemnify, defend and protect DISTRICT as set forth herein.
- 4.2 To the fullest extent permitted by law, CONTRACTOR shall indemnify, hold harmless and defend the DISTRICT Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorney's fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONTRACTOR's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole negligence or willful misconduct of the CITY.
- 4.3 DISTRICT shall have the right to offset against the amount of any compensation due CONTRACTOR under this Agreement any amount due DISTRICT from CONTRACTOR as a result of CONTRACTOR's failure to pay DISTRICT promptly any indemnification arising under this Article and related to CONTRACTOR's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 4.4 The obligations of CONTRACTOR under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONTRACTOR expressly waives its statutory immunity under such statutes or laws as to DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers.
- 4.5 CONTRACTOR agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. In the event CONTRACTOR fails to obtain such indemnity obligations from others as required herein, CONTRACTOR agrees to be fully responsible and indemnify, hold harmless and defend DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONTRACTOR's subcontractors or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of DISTRICT's choice.
- 4.6 DISTRICT does not, and shall not, waive any rights that it may possess against CONTRACTOR because of the acceptance by DISTRICT, or the deposit with DISTRICT, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

- 4.7 This Article and all provisions contained herein (including but not limited to the duty to indemnify, defend and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the DISTRICT may have at law or in equity.

V. TERMINATION

- 5.1 TERMINATION WITHOUT CAUSE: DISTRICT may terminate this Agreement at any time for convenience and without cause by giving CONTRACTOR a minimum of five (5) calendar days prior written notice of DISTRICT's intent to terminate this Agreement. Upon such termination for convenience, CONTRACTOR shall be compensated only for those services and tasks which have been performed by CONTRACTOR up to the effective date of the termination. CONTRACTOR may not terminate this Agreement except for cause as provided under Section 5.2, below. If this Agreement is terminated as provided herein, DISTRICT may require CONTRACTOR to provide all finished or unfinished Documents and Data, as defined in Section 7.1 below, and other information of any kind prepared by CONTRACTOR in connection with the performance of the Work. CONTRACTOR shall be required to provide such Documents and Data within fifteen (15) calendar days of DISTRICT's written request. No actual or asserted breach of this Agreement on the part of DISTRICT pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict DISTRICT's ability to terminate this Agreement for convenience as provided under this Section.

5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 5.2.B and 5.2.C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute the such cure to completion. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.
- B. CONTRACTOR shall cure the following Events of Defaults within the following time periods:
- i. Within three (3) business days of DISTRICT's issuance of a Default Notice for any failure of CONTRACTOR to timely provide DISTRICT or DISTRICT's employees or agents with any information and/or written reports, documentation or work product which CONTRACTOR is obligated to provide to DISTRICT or DISTRICT's employees or agents under this Agreement. Prior to the expiration of the 3-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 3-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2 B.i. that exceeds seven (7) calendar days from the end of the initial 3-day cure period; or
 - ii. Within fourteen (14) calendar days of DISTRICT's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 14-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period. .

In addition to any other failure on the part of CONTRACTOR to perform any duty, obligation, service or task set forth under this Agreement (or the failure to timely perform or properly perform any such duty, obligation, service or task), an Event of Default on the part of CONTRACTOR shall include, but shall not be limited to the following: (i) CONTRACTOR's refusal or failure to perform any of the services or tasks called for under the Scope of Work; (ii) CONTRACTOR's failure to fulfill or perform its obligations under this Agreement within the specified time or if no time is specified, within a reasonable time; (iii) CONTRACTOR's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or

regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONTRACTOR, whether voluntary or involuntary; (v) CONTRACTOR's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (vii) DISTRICT's discovery that a statement representation or warranty by CONTRACTOR relating to this Agreement is false, misleading or erroneous in any material respect.

- C. DISTRICT shall cure any Event of Default asserted by CONTRACTOR within FORTY-FIVE (45) calendar days of CONTRACTOR's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, DISTRICT may submit a written request for additional time to cure the Event of Default upon a showing that DISTRICT has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with DISTRICT's failure to timely pay any undisputed sums to CONTRACTOR as provided under Section 1.4, above, shall be cured by DISTRICT within five (5) calendar days from the date of CONTRACTOR's Default Notice to DISTRICT.
- D. DISTRICT, in its sole and absolute discretion, may also immediately suspend CONTRACTOR's performance under this Agreement pending CONTRACTOR's cure of any Event of Default by giving CONTRACTOR written notice of DISTRICT's intent to suspend CONTRACTOR's performance (hereinafter, a "Suspension Notice"). DISTRICT may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONTRACTOR shall be compensated only for those services and tasks which have been rendered by CONTRACTOR to the reasonable satisfaction of DISTRICT up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of DISTRICT shall operate to prohibit or otherwise restrict DISTRICT's ability to suspend this Agreement as provided herein.
- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to DISTRICT at law or under this Agreement in the event of any breach of this Agreement, DISTRICT, in its sole and absolute discretion, may also pursue any one or more of the following remedies:
- i. Upon written notice to CONTRACTOR, the DISTRICT may immediately terminate this Agreement in whole or in part;
 - ii. Upon written notice to CONTRACTOR, the DISTRICT may extend the time of performance;
 - iii. The DISTRICT may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONTRACTOR's breach of the Agreement or to terminate the Agreement; or
 - iv. The DISTRICT may exercise any other available and lawful right or remedy.

CONTRACTOR shall be liable for all legal fees plus other costs and expenses that DISTRICT incurs upon a breach of this Agreement or in the DISTRICT's exercise of its remedies under this Agreement.

- G. In the event DISTRICT is in breach of this Agreement, CONTRACTOR's sole remedy shall be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONTRACTOR under this Agreement for completed services and tasks.

5.3 **SCOPE OF WAIVER:** No waiver of any default or breach under this Agreement shall constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this

Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

- 5.4 SURVIVING ARTICLES, SECTIONS AND PROVISIONS: The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto shall not operate to terminate any Article, Section or provision contained herein which provides that it shall survive the termination or normal expiration of this Agreement.

VI. MISCELLANEOUS PROVISIONS

- 6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data shall be and remain the property of DISTRICT without restriction or limitation upon their use or dissemination by DISTRICT. For purposes of this Agreement, the term "Documents and Data" means and includes all reports, analyses, correspondence, plans, drawings, designs, renderings, specifications, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or assembled by or on behalf of CONTRACTOR in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored digitally, magnetically and/or electronically. This Agreement creates, at no cost to DISTRICT, a perpetual license for DISTRICT to copy, use, reuse, disseminate and/or retain any and all copyrights, designs, and other intellectual property embodied in all Documents and Data. CONTRACTOR shall require all subcontractors and subconsultants working on behalf of CONTRACTOR in the performance of this Agreement to agree in writing that DISTRICT shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subconsultant as applies to Documents and Data prepared by CONTRACTOR in the performance of this Agreement.
- 6.2 CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONTRACTOR or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONTRACTOR without prior written consent by DISTRICT. DISTRICT shall grant such consent if disclosure is legally required. Upon request, all DISTRICT data shall be returned to DISTRICT upon the termination or expiration of this Agreement. CONTRACTOR shall not use DISTRICT's name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of DISTRICT.
- 6.3 FINGERPRINTING. CONTRACTOR shall comply with all applicable provisions of Education Code Section 45125.1. CONTRACTOR will conduct criminal background checks of all employees, agents and/or representatives assigned performing any services and tasks on DISTRICT property on CONTRACTOR's behalf. CONTRACTOR will certify in writing that no such employees, agents and representatives who have been convicted of a violent or serious felony as described in the Notice Re: Criminal Records will have contact with DISTRICT's pupils. CONTRACTOR will provide DISTRICT with a list of all employees providing services pursuant to this Agreement. To the extent permitted under Education Code Section 45125.1, the DISTRICT Representatives may waive any fingerprinting requirements where it is determined that the CONTRACTOR, its employees and agents will have limited or no contact with pupils in the performance of any services and tasks called for under this Agreement. The waiver of the requirements of Education Code Section 45125.1 must be made in writing signed by one or both of the DISTRICT Representatives.
- 6.4 DRUG FREE WORKPLACE CERTIFICATION. CONTRACTOR shall apprise its officials and employees of the Drug-Free Workplace Act of 1990 (Govt. Code Section 8350 et seq.) (hereinafter, the "Act") which requires that every person or organization awarded a contract or grant for the procurement of property or services from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. CONTRACTOR shall comply with the requirements publication and notification requirements of Government Code Section 8355 as to all employees performing services and tasks under this Agreement on DISTRICT property or from DISTRICT facilities.
- 6.5 FALSE CLAIMS ACT. CONTRACTOR warrants and represents that neither CONTRACTOR nor any person who is an officer of, in a managing position with, or has an ownership interest in CONTRACTOR has been determined by a court or tribunal of

competent jurisdiction to have violated the False Claims Act, 31 U.S.C., Section 3789 *et seq.* and the California False Claims Act, Government Code Section 12650 *et seq.*

- 6.6 **NOTICES:** All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

CONTRACTOR:

Learning By Design, LLC
213 South 400 East
Hyrum, UT. 84319

Phone: 435-994-0887

Fax:

Email: marianielsenplc@gmail.com

DISTRICT:

Marysville Joint Unified School District
1919 B Street
Marysville, CA 95901

Phone: 749-6114

Fax: 742-0573

Such notices shall be deemed effective when personally delivered or successfully transmitted by facsimile as evidenced by a fax confirmation slip or when mailed, forty-eight (48) hours after deposit with the United States Postal Service, first class postage prepared and addressed to the Party at its applicable address.

- 6.7 **COOPERATION; FURTHER ACTS:** The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.

- 6.8 **SUBCONTRACTING:** CONTRACTOR shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval of DISTRICT. Subcontracts (including without limitation subcontracts with subconsultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.

- 6.9 **DISTRICT'S RIGHT TO EMPLOY OTHER CONTRACTORS:** DISTRICT reserves the right to employ other contractors in connection with the various projects worked upon by CONTRACTOR.

- 6.10 **PROHIBITED INTERESTS:** CONTRACTOR warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONTRACTOR, to solicit or secure this Agreement. Further, CONTRACTOR warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, DISTRICT shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of DISTRICT, during the term of his or her service with DISTRICT, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

- 6.11 **TIME IS OF THE ESSENCE:** Time is of the essence for each and every provision of this Agreement.

- 6.12 **GOVERNING LAW AND VENUE:** This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Yuba County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Northern District of California located in the City of San Francisco, California.

- 6.13 **ATTORNEY'S FEES:** If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

- 6.14 **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding on the successors and assigns of the Parties.

- 6.15 **NO THIRD PARTY BENEFIT:** There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.
- 6.16 **CONSTRUCTION OF AGREEMENT:** This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.
- 6.17 **SEVERABILITY:** If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 6.18 **AMENDMENT; MODIFICATION:** No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to DISTRICT approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.
- 6.19 **CAPTIONS:** The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limits, augment, or describe the scope, content, or intent of this Agreement.
- 6.20 **INCONSISTENCIES OR CONFLICTS:** In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.
- 6.21 **ENTIRE AGREEMENT:** This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between DISTRICT and CONTRACTOR prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid or binding. No amendment, modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.15, above.
- 6.22 **COUNTERPARTS:** This Agreement shall be executed in TWO (2) original counterparts each of which shall be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterparts shall be valid or binding unless made to all three counterparts in conformity with Section 6.15, above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

**MARYSVILLE JOINT UNIFIED SCHOOL
DISTRICT:**

By: _____
Mike Hodson
Assistant Superintendent of Business Services

Contractor

By: Maria Nielsen

Name: Maria Nielsen

Title: Owner

Exhibit A
Scope of Work

During the instructional day, Maria Nielsen of Learning By Design, LLC will provide our full days of professional development on October 17, 2017, November 30, 2017, February 16, 2018 and March 20, 2017 for the Marysville Charter Academy For The Arts certificated staff to support and build their Professional Learning Community. Certificated staff members will work to prioritize essential standards, create pacing guides for essential standards, and begin designing units of study based on the essential standards.



CONTRACT SERVICES AGREEMENT
South Lindhurst High School – Learning By Design, LLC

THIS CONTRACT SERVICES AGREEMENT (“Agreement”) is made and entered into on 9/12/2017 (hereinafter, the “Effective Date”), by and between the MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT (“DISTRICT”) and Maria Nielsen with Learning by Design, LCC (hereinafter, “CONTRACTOR”). For the purposes of this Agreement DISTRICT and CONTRACTOR may be referred to collectively by the capitalized term “Parties.” The capitalized term “Party” may refer to DISTRICT or CONTRACTOR interchangeably.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, DISTRICT and CONTRACTOR agree as follows:

I. ENGAGEMENT TERMS

1.1 **SCOPE OF WORK:** Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONTRACTOR agrees to perform the services and tasks set forth in **Exhibit “A”** (hereinafter referred to as the “**Scope of Work**”). CONTRACTOR further agrees to furnish to DISTRICT all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Work. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Work shall hereinafter be referred to generally by the capitalized term “Work.” CONTRACTOR shall not commence with the performance of the Work until such time as DISTRICT issues a written Notice to Proceed.

1.2 **TERM:** This Agreement shall have a term of **2017-2018** commencing from **December 4, 2017-March 23, 2018**

1.3 **COMPENSATION:**

A. CONTRACTOR shall perform the various services and tasks set forth in the Scope of Services in accordance with the compensation schedule which is **see Exhibit A.** (hereinafter, the “Approved Rate Schedule”).

B. Section 1.3(A) notwithstanding, CONTRACTOR’s total compensation during the Term of this Agreement or any extension term shall not exceed the budgeted aggregate sum **TEN THOUSAND DOLLARS AND NO CENTS (\$10,000.00)** (hereinafter, the “Not-to-Exceed Sum”), unless such added expenditure is first approved by the DISTRICT acting in consultation with the Superintendent and the Director of Fiscal Services. In the event CONTRACTOR’s charges are projected to exceed the Not-to-Exceed Sum prior to the expiration of the Term or any single extension term, DISTRICT may suspend CONTRACTOR’s performance pending DISTRICT approval of any anticipated expenditures in excess of the Not-to-Exceed Sum or any other DISTRICT-approved amendment to the compensation terms of this Agreement.

1.4 **PAYMENT OF COMPENSATION:** The Not-to-Exceed Sum shall be paid to CONTRACTOR as the Work is completed. Following the conclusion of each calendar month, CONTRACTOR shall submit to DISTRICT an itemized invoice indicating the services performed and tasks completed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONTRACTOR’s monthly compensation is a function of hours worked by CONTRACTOR’s personnel, the invoice shall indicate the number of hours worked in the recently concluded calendar month, the persons responsible for performing the Work, the rate of compensation at which such services and tasks were performed, the subtotal for each tasks and service performed and a grand total for all services performed. Within **THIRTY (30)** calendar days of receipt of each invoice, DISTRICT shall notify CONTRACTOR in writing of any disputed amounts included in the invoice.

included on the invoice. DISTRICT shall not withhold applicable taxes or other authorized deductions from payments made to CONTRACTOR.

- 1.5 **ACCOUNTING RECORDS:** CONTRACTOR shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. DISTRICT shall have the right to access and examine such records, without charge, during normal business hours. DISTRICT shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.
- 1.6 **ABANDONMENT BY CONTRACTOR:** In the event CONTRACTOR ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Work, CONTRACTOR shall deliver to DISTRICT immediately and without delay, all materials, records and other work product prepared or obtained by CONTRACTOR in the performance of this Agreement. Furthermore, CONTRACTOR shall only be compensated for the reasonable value of the services, tasks and other work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which DISTRICT may incur as a result of CONTRACTOR's cessation or abandonment.

II. PERFORMANCE OF AGREEMENT

- 2.1 **DISTRICT'S REPRESENTATIVES:** The DISTRICT hereby designates Representative, Lennie Tate (hereinafter, the "DISTRICT Representatives") to act as its representatives for the performance of this Agreement. The Superintendent shall be the chief DISTRICT Representative. The DISTRICT Representatives or their designee shall act on behalf of the DISTRICT for all purposes under this Agreement. CONTRACTOR shall not accept directions or orders from any person other than the DISTRICT Representatives or their designee.
- 2.2 **CONTRACTOR REPRESENTATIVE:** CONTRACTOR hereby, Maria Nielsen with Learning by Design to act as its representative for the performance of this Agreement (hereinafter, "CONTRACTOR Representative"). CONTRACTOR Representative shall have full authority to represent and act on behalf of the CONTRACTOR for all purposes under this Agreement. CONTRACTOR Representative or his designee shall supervise and direct the performance of the Work, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONTRACTOR Representative shall constitute notice to CONTRACTOR.
- 2.3 **COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS:** CONTRACTOR agrees to work closely with DISTRICT staff in the performance of the Work and this Agreement and shall be available to DISTRICT staff and the DISTRICT Representatives at all reasonable times. All work prepared by CONTRACTOR shall be subject to inspection and approval by DISTRICT Representatives or their designees.
- 2.4 **STANDARD OF CARE; PERFORMANCE OF EMPLOYEES:** CONTRACTOR represents, acknowledges and agrees to the following:
- A. CONTRACTOR shall perform all Work skillfully, competently and to the highest standards of CONTRACTOR's profession;
 - B. CONTRACTOR shall perform all Work in a manner reasonably satisfactory to the DISTRICT;
 - C. CONTRACTOR shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*);
 - D. CONTRACTOR understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;

- E. All of CONTRACTOR's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONTRACTOR; and
- F. All of CONTRACTOR's employees and agents (including but not limited to subcontractors and subconsultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement and made available to DISTRICT for copying and inspection.
- 2.5 ASSIGNMENT: The skills, training, knowledge and experience of CONTRACTOR are material to DISTRICT's willingness to enter into this Agreement. Accordingly, DISTRICT has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONTRACTOR or on behalf of CONTRACTOR in the performance of this Agreement. In recognition of this interest, CONTRACTOR agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONTRACTOR's duties or obligations under this Agreement without the prior written consent of the DISTRICT. In the absence of DISTRICT's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.
- 2.6 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONTRACTOR or under CONTRACTOR's strict supervision. CONTRACTOR will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. DISTRICT retains CONTRACTOR on an independent contractor basis and not as an employee. CONTRACTOR reserves the right to perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONTRACTOR's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of DISTRICT's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONTRACTOR are not employees of DISTRICT and shall at all times be under CONTRACTOR's exclusive direction and control. CONTRACTOR shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, social security and Medicare payments and the like. CONTRACTOR shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.
- 2.7 REMOVAL OF EMPLOYEES OR AGENTS: If any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the DISTRICT Representatives to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONTRACTOR, a threat to persons or property, or if any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to the DISTRICT, such officer, employee, agent, contractor, subcontractor or subconsultant shall be promptly removed by CONTRACTOR and shall not be re-assigned to perform any of the Work.
- 2.8 COMPLIANCE WITH LAWS: CONTRACTOR shall keep itself informed of and in compliance with all applicable federal, State or local laws to the extent such laws control or otherwise govern the performance of the Work. CONTRACTOR's compliance with applicable laws shall include without limitation compliance with all applicable Cal/OSHA requirements.
- 2.9 NON-DISCRIMINATION: In the performance of this Agreement, CONTRACTOR shall not discriminate against any employee, subcontractor, subconsultant, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.
- 2.10 INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONTRACTOR and all persons retained or employed by CONTRACTOR are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of DISTRICT. CONTRACTOR shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. CONTRACTOR and all persons retained or employed by CONTRACTOR shall have no authority, express or implied, to bind DISTRICT in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, DISTRICT, whether by contract or otherwise,

unless such authority is expressly conferred to CONTRACTOR under this Agreement or is otherwise expressly conferred by DISTRICT in writing.

III. INSURANCE

- 3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the Work, CONTRACTOR will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONTRACTOR shall procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONTRACTOR shall procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.
 - B. Automobile Liability Insurance: CONTRACTOR shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
 - C. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONTRACTOR and DISTRICT against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONTRACTOR in the course of carrying out the Work contemplated in this Agreement. Policy shall contain a waiver of subrogation against the all parties named as additional insureds under this subsection arising from work performed by the CONTRACTOR.
- 3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 3.3 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers, who according to the latest edition of the Best's Insurance Guide have an A.M. Best's rating of no less than A:VII. DISTRICT may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the DISTRICT Representatives are authorized to authorize lower ratings than those set forth in this Section.
- 3.4 PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONTRACTOR shall be primary to any coverage available to DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- 3.5 WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement shall not prohibit CONTRACTOR or CONTRACTOR's officers, employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss. CONTRACTOR hereby waives all rights of subrogation against DISTRICT.
- 3.6 VERIFICATION OF COVERAGE: CONTRACTOR acknowledges, understands and agrees, that DISTRICT's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding DISTRICT's financial well-being and, indirectly, the collective well-being of the residents of the DISTRICT. Accordingly, CONTRACTOR warrants,

represents and agrees that it shall furnish DISTRICT with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to DISTRICT in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the DISTRICT if requested.** All certificates of insurance and endorsements shall be received and approved by DISTRICT as a condition precedent to CONTRACTOR's commencement of any work or any of the Work. Upon DISTRICT's written request, CONTRACTOR shall also provide DISTRICT with certified copies of all required insurance policies and endorsements.

IV. INDEMNIFICATION

- 4.1 The Parties agree that DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers (hereinafter, the "DISTRICT Indemnitees") should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the DISTRICT Indemnitees with the fullest protection possible under the law. CONTRACTOR acknowledges that DISTRICT would not enter into this Agreement in the absence of CONTRACTOR's commitment to indemnify, defend and protect DISTRICT as set forth herein.
- 4.2 To the fullest extent permitted by law, CONTRACTOR shall indemnify, hold harmless and defend the DISTRICT Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorney's fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONTRACTOR's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole negligence or willful misconduct of the CITY.
- 4.3 DISTRICT shall have the right to offset against the amount of any compensation due CONTRACTOR under this Agreement any amount due DISTRICT from CONTRACTOR as a result of CONTRACTOR's failure to pay DISTRICT promptly any indemnification arising under this Article and related to CONTRACTOR's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 4.4 The obligations of CONTRACTOR under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONTRACTOR expressly waives its statutory immunity under such statutes or laws as to DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers.
- 4.5 CONTRACTOR agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. In the event CONTRACTOR fails to obtain such indemnity obligations from others as required herein, CONTRACTOR agrees to be fully responsible and indemnify, hold harmless and defend DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONTRACTOR's subcontractors or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of DISTRICT's choice.
- 4.6 DISTRICT does not, and shall not, waive any rights that it may possess against CONTRACTOR because of the acceptance by DISTRICT, or the deposit with DISTRICT, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

- 4.7 This Article and all provisions contained herein (including but not limited to the duty to indemnify, defend and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the DISTRICT may have at law or in equity.

V. TERMINATION

- 5.1 TERMINATION WITHOUT CAUSE: DISTRICT may terminate this Agreement at any time for convenience and without cause by giving CONTRACTOR a minimum of five (5) calendar days prior written notice of DISTRICT's intent to terminate this Agreement. Upon such termination for convenience, CONTRACTOR shall be compensated only for those services and tasks which have been performed by CONTRACTOR up to the effective date of the termination. CONTRACTOR may not terminate this Agreement except for cause as provided under Section 5.2, below. If this Agreement is terminated as provided herein, DISTRICT may require CONTRACTOR to provide all finished or unfinished Documents and Data, as defined in Section 7.1 below, and other information of any kind prepared by CONTRACTOR in connection with the performance of the Work. CONTRACTOR shall be required to provide such Documents and Data within fifteen (15) calendar days of DISTRICT's written request. No actual or asserted breach of this Agreement on the part of DISTRICT pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict DISTRICT's ability to terminate this Agreement for convenience as provided under this Section.

5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 5.2.B and 5.2.C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute the such cure to completion. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.
- B. CONTRACTOR shall cure the following Events of Defaults within the following time periods:
- i. Within three (3) business days of DISTRICT's issuance of a Default Notice for any failure of CONTRACTOR to timely provide DISTRICT or DISTRICT's employees or agents with any information and/or written reports, documentation or work product which CONTRACTOR is obligated to provide to DISTRICT or DISTRICT's employees or agents under this Agreement. Prior to the expiration of the 3-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 3-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2 B.i. that exceeds seven (7) calendar days from the end of the initial 3-day cure period; or
 - ii. Within fourteen (14) calendar days of DISTRICT's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 14-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period. .

In addition to any other failure on the part of CONTRACTOR to perform any duty, obligation, service or task set forth under this Agreement (or the failure to timely perform or properly perform any such duty, obligation, service or task), an Event of Default on the part of CONTRACTOR shall include, but shall not be limited to the following: (i) CONTRACTOR's refusal or failure to perform any of the services or tasks called for under the Scope of Work; (ii) CONTRACTOR's failure to fulfill or perform its obligations under this Agreement within the specified time or if no time is specified, within a reasonable time; (iii) CONTRACTOR's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or

regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONTRACTOR, whether voluntary or involuntary; (v) CONTRACTOR's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (vii) DISTRICT's discovery that a statement representation or warranty by CONTRACTOR relating to this Agreement is false, misleading or erroneous in any material respect.

- C. DISTRICT shall cure any Event of Default asserted by CONTRACTOR within FORTY-FIVE (45) calendar days of CONTRACTOR's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, DISTRICT may submit a written request for additional time to cure the Event of Default upon a showing that DISTRICT has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with DISTRICT's failure to timely pay any undisputed sums to CONTRACTOR as provided under Section 1.4, above, shall be cured by DISTRICT within five (5) calendar days from the date of CONTRACTOR's Default Notice to DISTRICT.
- D. DISTRICT, in its sole and absolute discretion, may also immediately suspend CONTRACTOR's performance under this Agreement pending CONTRACTOR's cure of any Event of Default by giving CONTRACTOR written notice of DISTRICT's intent to suspend CONTRACTOR's performance (hereinafter, a "Suspension Notice"). DISTRICT may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONTRACTOR shall be compensated only for those services and tasks which have been rendered by CONTRACTOR to the reasonable satisfaction of DISTRICT up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of DISTRICT shall operate to prohibit or otherwise restrict DISTRICT's ability to suspend this Agreement as provided herein.
- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to DISTRICT at law or under this Agreement in the event of any breach of this Agreement, DISTRICT, in its sole and absolute discretion, may also pursue any one or more of the following remedies:
- i. Upon written notice to CONTRACTOR, the DISTRICT may immediately terminate this Agreement in whole or in part;
 - ii. Upon written notice to CONTRACTOR, the DISTRICT may extend the time of performance;
 - iii. The DISTRICT may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONTRACTOR's breach of the Agreement or to terminate the Agreement; or
 - iv. The DISTRICT may exercise any other available and lawful right or remedy.

CONTRACTOR shall be liable for all legal fees plus other costs and expenses that DISTRICT incurs upon a breach of this Agreement or in the DISTRICT's exercise of its remedies under this Agreement.

- G. In the event DISTRICT is in breach of this Agreement, CONTRACTOR's sole remedy shall be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONTRACTOR under this Agreement for completed services and tasks.

5.3 SCOPE OF WAIVER: No waiver of any default or breach under this Agreement shall constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this

Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

- 5.4 SURVIVING ARTICLES, SECTIONS AND PROVISIONS: The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto shall not operate to terminate any Article, Section or provision contained herein which provides that it shall survive the termination or normal expiration of this Agreement.

VI. MISCELLANEOUS PROVISIONS

- 6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data shall be and remain the property of DISTRICT without restriction or limitation upon their use or dissemination by DISTRICT. For purposes of this Agreement, the term "Documents and Data" means and includes all reports, analyses, correspondence, plans, drawings, designs, renderings, specifications, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or assembled by or on behalf of CONTRACTOR in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored digitally, magnetically and/or electronically. This Agreement creates, at no cost to DISTRICT, a perpetual license for DISTRICT to copy, use, reuse, disseminate and/or retain any and all copyrights, designs, and other intellectual property embodied in all Documents and Data. CONTRACTOR shall require all subcontractors and subconsultants working on behalf of CONTRACTOR in the performance of this Agreement to agree in writing that DISTRICT shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subconsultant as applies to Documents and Data prepared by CONTRACTOR in the performance of this Agreement.
- 6.2 CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONTRACTOR or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONTRACTOR without prior written consent by DISTRICT. DISTRICT shall grant such consent if disclosure is legally required. Upon request, all DISTRICT data shall be returned to DISTRICT upon the termination or expiration of this Agreement. CONTRACTOR shall not use DISTRICT's name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of DISTRICT.
- 6.3 FINGERPRINTING. CONTRACTOR shall comply with all applicable provisions of Education Code Section 45125.1. CONTRACTOR will conduct criminal background checks of all employees, agents and/or representatives assigned performing any services and tasks on DISTRICT property on CONTRACTOR's behalf. CONTRACTOR will certify in writing that no such employees, agents and representatives who have been convicted of a violent or serious felony as described in the Notice Re: Criminal Records will have contact with DISTRICT's pupils. CONTRACTOR will provide DISTRICT with a list of all employees providing services pursuant to this Agreement. To the extent permitted under Education Code Section 45125.1, the DISTRICT Representatives may waive any fingerprinting requirements where it is determined that the CONTRACTOR, its employees and agents will have limited or no contact with pupils in the performance of any services and tasks called for under this Agreement. The waiver of the requirements of Education Code Section 45125.1 must be made in writing signed by one or both of the DISTRICT Representatives.
- 6.4 DRUG FREE WORKPLACE CERTIFICATION. CONTRACTOR shall apprise its officials and employees of the Drug-Free Workplace Act of 1990 (Govt. Code Section 8350 et seq.) (hereinafter, the "Act") which requires that every person or organization awarded a contract or grant for the procurement of property or services from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. CONTRACTOR shall comply with the requirements publication and notification requirements of Government Code Section 8355 as to all employees performing services and tasks under this Agreement on DISTRICT property or from DISTRICT facilities.
- 6.5 FALSE CLAIMS ACT. CONTRACTOR warrants and represents that neither CONTRACTOR nor any person who is an officer of, in a managing position with, or has an ownership interest in CONTRACTOR has been determined by a court or tribunal of

competent jurisdiction to have violated the False Claims Act, 31 U.S.C., Section 3789 *et seq.* and the California False Claims Act, Government Code Section 12650 *et seq.*

- 6.6 **NOTICES:** All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

CONTRACTOR:

Learning By Design, LLC
213 South 400 East
Hyrum, UT. 84319

Phone: 435-994-0887

Fax:

Email: marianielsenplc@gmail.com

DISTRICT:

Marysville Joint Unified School District
1919 B Street
Marysville, CA 95901

Phone: 749-6114

Fax: 742-0573

Such notices shall be deemed effective when personally delivered or successfully transmitted by facsimile as evidenced by a fax confirmation slip or when mailed, forty-eight (48) hours after deposit with the United States Postal Service, first class postage prepared and addressed to the Party at its applicable address.

- 6.7 **COOPERATION; FURTHER ACTS:** The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.
- 6.8 **SUBCONTRACTING:** CONTRACTOR shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval of DISTRICT. Subcontracts (including without limitation subcontracts with subconsultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.
- 6.9 **DISTRICT'S RIGHT TO EMPLOY OTHER CONTRACTORS:** DISTRICT reserves the right to employ other contractors in connection with the various projects worked upon by CONTRACTOR.
- 6.10 **PROHIBITED INTERESTS:** CONTRACTOR warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONTRACTOR, to solicit or secure this Agreement. Further, CONTRACTOR warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, DISTRICT shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of DISTRICT, during the term of his or her service with DISTRICT, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 6.11 **TIME IS OF THE ESSENCE:** Time is of the essence for each and every provision of this Agreement.
- 6.12 **GOVERNING LAW AND VENUE:** This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Yuba County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Northern District of California located in the City of San Francisco, California.
- 6.13 **ATTORNEY'S FEES:** If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.
- 6.14 **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding on the successors and assigns of the Parties.

- 6.15 NO THIRD PARTY BENEFIT: There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.
- 6.16 CONSTRUCTION OF AGREEMENT: This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.
- 6.17 SEVERABILITY: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 6.18 AMENDMENT; MODIFICATION: No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to DISTRICT approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.
- 6.19 CAPTIONS: The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limits, augment, or describe the scope, content, or intent of this Agreement.
- 6.20 INCONSISTENCIES OR CONFLICTS: In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.
- 6.21 ENTIRE AGREEMENT: This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between DISTRICT and CONTRACTOR prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid or binding. No amendment, modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.15, above.
- 6.22 COUNTERPARTS: This Agreement shall be executed in TWO (2) original counterparts each of which shall be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterparts shall be valid or binding unless made to all three counterparts in conformity with Section 6.15, above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

MARYSVILLE JOINT UNIFIED SCHOOL
DISTRICT:

By: _____
Mike Hodson
Assistant Superintendent of Business Services

Contractor

By: Maria Nielsen

Name: Maria Nielsen

Title: Owner

Exhibit A
Scope of Work

During the instructional day, Maria Nielsen of Learning By Design, LLC will provide two full days of professional development on December 4, 2017 and March 23, 2018 for the South Lindhurst High School certificated staff to support and build their Professional Learning Community. Certificated staff members will work to prioritize essential standards, create pacing guides for essential standards, and begin designing units of study based on the essential standards.



CONTRACT SERVICES AGREEMENT
Kynoch Elementary School – Learning By Design, LLC

THIS CONTRACT SERVICES AGREEMENT (“Agreement”) is made and entered into on 9/12/2017 (hereinafter, the “Effective Date”), by and between the MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT (“DISTRICT”) and Maria Nielsen with Learning by Design, LCC (hereinafter, “CONTRACTOR”). For the purposes of this Agreement DISTRICT and CONTRACTOR may be referred to collectively by the capitalized term “Parties.” The capitalized term “Party” may refer to DISTRICT or CONTRACTOR interchangeably.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, DISTRICT and CONTRACTOR agree as follows:

I. ENGAGEMENT TERMS

1.1 **SCOPE OF WORK:** Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONTRACTOR agrees to perform the services and tasks set forth in **Exhibit “A”** (hereinafter referred to as the “**Scope of Work**”). CONTRACTOR further agrees to furnish to DISTRICT all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Work. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Work shall hereinafter be referred to generally by the capitalized term “**Work**.” CONTRACTOR shall not commence with the performance of the Work until such time as DISTRICT issues a written Notice to Proceed.

1.2 **TERM:** This Agreement shall have a term of **2017-2018** commencing from **December 1, 2017 – December 1, 2017**

1.3 **COMPENSATION:**

A. CONTRACTOR shall perform the various services and tasks set forth in the Scope of Services in accordance with the compensation schedule which is see **Exhibit A.** (hereinafter, the “**Approved Rate Schedule**”).

B. Section 1.3(A) notwithstanding, CONTRACTOR’s total compensation during the Term of this Agreement or any extension term shall not exceed the budgeted aggregate sum **FIVE THOUSAND DOLLARS AND NO CENTS (\$5,000.00)** (hereinafter, the “**Not-to-Exceed Sum**”), unless such added expenditure is first approved by the DISTRICT acting in consultation with the Superintendent and the Director of Fiscal Services. In the event CONTRACTOR’s charges are projected to exceed the Not-to-Exceed Sum prior to the expiration of the Term or any single extension term, DISTRICT may suspend CONTRACTOR’s performance pending DISTRICT approval of any anticipated expenditures in excess of the Not-to-Exceed Sum or any other DISTRICT-approved amendment to the compensation terms of this Agreement.

1.4 **PAYMENT OF COMPENSATION:** The Not-to-Exceed Sum shall be paid to CONTRACTOR as the Work is completed. Following the conclusion of each calendar month, CONTRACTOR shall submit to DISTRICT an itemized invoice indicating the services performed and tasks completed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONTRACTOR’s monthly compensation is a function of hours worked by CONTRACTOR’s personnel, the invoice shall indicate the number of hours worked in the recently concluded calendar month, the persons responsible for performing the Work, the rate of compensation at which such services and tasks were performed, the subtotal for each tasks and service performed and a grand total for all services performed. Within **THIRTY (30)** calendar days of receipt of each invoice, DISTRICT shall notify CONTRACTOR in writing of any disputed amounts included in the invoice.

included on the invoice. DISTRICT shall not withhold applicable taxes or other authorized deductions from payments made to CONTRACTOR.

- 1.5 ACCOUNTING RECORDS: CONTRACTOR shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. DISTRICT shall have the right to access and examine such records, without charge, during normal business hours. DISTRICT shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.
- 1.6 ABANDONMENT BY CONTRACTOR: In the event CONTRACTOR ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Work, CONTRACTOR shall deliver to DISTRICT immediately and without delay, all materials, records and other work product prepared or obtained by CONTRACTOR in the performance of this Agreement. Furthermore, CONTRACTOR shall only be compensated for the reasonable value of the services, tasks and other work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which DISTRICT may incur as a result of CONTRACTOR's cessation or abandonment.

II. PERFORMANCE OF AGREEMENT

- 2.1 DISTRICT'S REPRESENTATIVES: The DISTRICT hereby designates Representative, Lennie Tate (hereinafter, the "DISTRICT Representatives") to act as its representatives for the performance of this Agreement. The Superintendent shall be the chief DISTRICT Representative. The DISTRICT Representatives or their designee shall act on behalf of the DISTRICT for all purposes under this Agreement. CONTRACTOR shall not accept directions or orders from any person other than the DISTRICT Representatives or their designee.
- 2.2 CONTRACTOR REPRESENTATIVE: CONTRACTOR hereby, Maria Nielsen with Learning by Design to act as its representative for the performance of this Agreement (hereinafter, "CONTRACTOR Representative"). CONTRACTOR Representative shall have full authority to represent and act on behalf of the CONTRACTOR for all purposes under this Agreement. CONTRACTOR Representative or his designee shall supervise and direct the performance of the Work, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONTRACTOR Representative shall constitute notice to CONTRACTOR.
- 2.3 COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: CONTRACTOR agrees to work closely with DISTRICT staff in the performance of the Work and this Agreement and shall be available to DISTRICT staff and the DISTRICT Representatives at all reasonable times. All work prepared by CONTRACTOR shall be subject to inspection and approval by DISTRICT Representatives or their designees.
- 2.4 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONTRACTOR represents, acknowledges and agrees to the following:
- A. CONTRACTOR shall perform all Work skillfully, competently and to the highest standards of CONTRACTOR's profession;
 - B. CONTRACTOR shall perform all Work in a manner reasonably satisfactory to the DISTRICT;
 - C. CONTRACTOR shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*);
 - D. CONTRACTOR understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;

- E. All of CONTRACTOR's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONTRACTOR; and
- F. All of CONTRACTOR's employees and agents (including but not limited to subcontractors and subconsultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement and made available to DISTRICT for copying and inspection.
- 2.5 ASSIGNMENT: The skills, training, knowledge and experience of CONTRACTOR are material to DISTRICT's willingness to enter into this Agreement. Accordingly, DISTRICT has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONTRACTOR or on behalf of CONTRACTOR in the performance of this Agreement. In recognition of this interest, CONTRACTOR agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONTRACTOR's duties or obligations under this Agreement without the prior written consent of the DISTRICT. In the absence of DISTRICT's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.
- 2.6 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONTRACTOR or under CONTRACTOR's strict supervision. CONTRACTOR will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. DISTRICT retains CONTRACTOR on an independent contractor basis and not as an employee. CONTRACTOR reserves the right to perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONTRACTOR's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of DISTRICT's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONTRACTOR are not employees of DISTRICT and shall at all times be under CONTRACTOR's exclusive direction and control. CONTRACTOR shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, social security and Medicare payments and the like. CONTRACTOR shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.
- 2.7 REMOVAL OF EMPLOYEES OR AGENTS: If any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the DISTRICT Representatives to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONTRACTOR, a threat to persons or property, or if any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to the DISTRICT, such officer, employee, agent, contractor, subcontractor or subconsultant shall be promptly removed by CONTRACTOR and shall not be re-assigned to perform any of the Work.
- 2.8 COMPLIANCE WITH LAWS: CONTRACTOR shall keep itself informed of and in compliance with all applicable federal, State or local laws to the extent such laws control or otherwise govern the performance of the Work. CONTRACTOR's compliance with applicable laws shall include without limitation compliance with all applicable Cal/OSHA requirements.
- 2.9 NON-DISCRIMINATION: In the performance of this Agreement, CONTRACTOR shall not discriminate against any employee, subcontractor, subconsultant, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.
- 2.10 INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONTRACTOR and all persons retained or employed by CONTRACTOR are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of DISTRICT. CONTRACTOR shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. CONTRACTOR and all persons retained or employed by CONTRACTOR shall have no authority, express or implied, to bind DISTRICT in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, DISTRICT, whether by contract or otherwise,

unless such authority is expressly conferred to CONTRACTOR under this Agreement or is otherwise expressly conferred by DISTRICT in writing.

III. INSURANCE

- 3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the Work, CONTRACTOR will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONTRACTOR shall procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONTRACTOR shall procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.
 - B. Automobile Liability Insurance: CONTRACTOR shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
 - C. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONTRACTOR and DISTRICT against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONTRACTOR in the course of carrying out the Work contemplated in this Agreement. Policy shall contain a waiver of subrogation against the all parties named as additional insureds under this subsection arising from work performed by the CONTRACTOR.
- 3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 3.3 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers, who according to the latest edition of the Best's Insurance Guide have an A.M. Best's rating of no less than A:VII. DISTRICT may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the DISTRICT Representatives are authorized to authorize lower ratings than those set forth in this Section.
- 3.4 PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONTRACTOR shall be primary to any coverage available to DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- 3.5 WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement shall not prohibit CONTRACTOR or CONTRACTOR's officers, employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss. CONTRACTOR hereby waives all rights of subrogation against DISTRICT.
- 3.6 VERIFICATION OF COVERAGE: CONTRACTOR acknowledges, understands and agrees, that DISTRICT's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding DISTRICT's financial well-being and, indirectly, the collective well-being of the residents of the DISTRICT. Accordingly, CONTRACTOR warrants,

represents and agrees that it shall furnish DISTRICT with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to DISTRICT in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the DISTRICT if requested.** All certificates of insurance and endorsements shall be received and approved by DISTRICT as a condition precedent to CONTRACTOR's commencement of any work or any of the Work. Upon DISTRICT's written request, CONTRACTOR shall also provide DISTRICT with certified copies of all required insurance policies and endorsements.

IV. INDEMNIFICATION

- 4.1 The Parties agree that DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers (hereinafter, the "DISTRICT Indemnitees") should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the DISTRICT Indemnitees with the fullest protection possible under the law. CONTRACTOR acknowledges that DISTRICT would not enter into this Agreement in the absence of CONTRACTOR's commitment to indemnify, defend and protect DISTRICT as set forth herein.
- 4.2 To the fullest extent permitted by law, CONTRACTOR shall indemnify, hold harmless and defend the DISTRICT Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorney's fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONTRACTOR's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole negligence or willful misconduct of the CITY.
- 4.3 DISTRICT shall have the right to offset against the amount of any compensation due CONTRACTOR under this Agreement any amount due DISTRICT from CONTRACTOR as a result of CONTRACTOR's failure to pay DISTRICT promptly any indemnification arising under this Article and related to CONTRACTOR's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 4.4 The obligations of CONTRACTOR under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONTRACTOR expressly waives its statutory immunity under such statutes or laws as to DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers.
- 4.5 CONTRACTOR agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. In the event CONTRACTOR fails to obtain such indemnity obligations from others as required herein, CONTRACTOR agrees to be fully responsible and indemnify, hold harmless and defend DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONTRACTOR's subcontractors or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of DISTRICT's choice.
- 4.6 DISTRICT does not, and shall not, waive any rights that it may possess against CONTRACTOR because of the acceptance by DISTRICT, or the deposit with DISTRICT, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

- 4.7 This Article and all provisions contained herein (including but not limited to the duty to indemnify, defend and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the DISTRICT may have at law or in equity.

V. TERMINATION

- 5.1 TERMINATION WITHOUT CAUSE: DISTRICT may terminate this Agreement at any time for convenience and without cause by giving CONTRACTOR a minimum of five (5) calendar days prior written notice of DISTRICT's intent to terminate this Agreement. Upon such termination for convenience, CONTRACTOR shall be compensated only for those services and tasks which have been performed by CONTRACTOR up to the effective date of the termination. CONTRACTOR may not terminate this Agreement except for cause as provided under Section 5.2, below. If this Agreement is terminated as provided herein, DISTRICT may require CONTRACTOR to provide all finished or unfinished Documents and Data, as defined in Section 7.1 below, and other information of any kind prepared by CONTRACTOR in connection with the performance of the Work. CONTRACTOR shall be required to provide such Documents and Data within fifteen (15) calendar days of DISTRICT's written request. No actual or asserted breach of this Agreement on the part of DISTRICT pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict DISTRICT's ability to terminate this Agreement for convenience as provided under this Section.

5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 5.2.B and 5.2.C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute the such cure to completion. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.
- B. CONTRACTOR shall cure the following Events of Defaults within the following time periods:
- i. Within three (3) business days of DISTRICT's issuance of a Default Notice for any failure of CONTRACTOR to timely provide DISTRICT or DISTRICT's employees or agents with any information and/or written reports, documentation or work product which CONTRACTOR is obligated to provide to DISTRICT or DISTRICT's employees or agents under this Agreement. Prior to the expiration of the 3-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 3-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2 B.i. that exceeds seven (7) calendar days from the end of the initial 3-day cure period; or
 - ii. Within fourteen (14) calendar days of DISTRICT's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 14-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period. .

In addition to any other failure on the part of CONTRACTOR to perform any duty, obligation, service or task set forth under this Agreement (or the failure to timely perform or properly perform any such duty, obligation, service or task), an Event of Default on the part of CONTRACTOR shall include, but shall not be limited to the following: (i) CONTRACTOR's refusal or failure to perform any of the services or tasks called for under the Scope of Work; (ii) CONTRACTOR's failure to fulfill or perform its obligations under this Agreement within the specified time or if no time is specified, within a reasonable time; (iii) CONTRACTOR's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or

regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONTRACTOR, whether voluntary or involuntary; (v) CONTRACTOR's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (vii) DISTRICT's discovery that a statement representation or warranty by CONTRACTOR relating to this Agreement is false, misleading or erroneous in any material respect.

- C. DISTRICT shall cure any Event of Default asserted by CONTRACTOR within FORTY-FIVE (45) calendar days of CONTRACTOR's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, DISTRICT may submit a written request for additional time to cure the Event of Default upon a showing that DISTRICT has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with DISTRICT's failure to timely pay any undisputed sums to CONTRACTOR as provided under Section 1.4, above, shall be cured by DISTRICT within five (5) calendar days from the date of CONTRACTOR's Default Notice to DISTRICT.
- D. DISTRICT, in its sole and absolute discretion, may also immediately suspend CONTRACTOR's performance under this Agreement pending CONTRACTOR's cure of any Event of Default by giving CONTRACTOR written notice of DISTRICT's intent to suspend CONTRACTOR's performance (hereinafter, a "Suspension Notice"). DISTRICT may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONTRACTOR shall be compensated only for those services and tasks which have been rendered by CONTRACTOR to the reasonable satisfaction of DISTRICT up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of DISTRICT shall operate to prohibit or otherwise restrict DISTRICT's ability to suspend this Agreement as provided herein.
- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to DISTRICT at law or under this Agreement in the event of any breach of this Agreement, DISTRICT, in its sole and absolute discretion, may also pursue any one or more of the following remedies:
 - i. Upon written notice to CONTRACTOR, the DISTRICT may immediately terminate this Agreement in whole or in part;
 - ii. Upon written notice to CONTRACTOR, the DISTRICT may extend the time of performance;
 - iii. The DISTRICT may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONTRACTOR's breach of the Agreement or to terminate the Agreement; or
 - iv. The DISTRICT may exercise any other available and lawful right or remedy.

CONTRACTOR shall be liable for all legal fees plus other costs and expenses that DISTRICT incurs upon a breach of this Agreement or in the DISTRICT's exercise of its remedies under this Agreement.

- G. In the event DISTRICT is in breach of this Agreement, CONTRACTOR's sole remedy shall be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONTRACTOR under this Agreement for completed services and tasks.

5.3 **SCOPE OF WAIVER:** No waiver of any default or breach under this Agreement shall constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this

Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

- 5.4 SURVIVING ARTICLES, SECTIONS AND PROVISIONS: The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto shall not operate to terminate any Article, Section or provision contained herein which provides that it shall survive the termination or normal expiration of this Agreement.

VI. MISCELLANEOUS PROVISIONS

- 6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data shall be and remain the property of DISTRICT without restriction or limitation upon their use or dissemination by DISTRICT. For purposes of this Agreement, the term "Documents and Data" means and includes all reports, analyses, correspondence, plans, drawings, designs, renderings, specifications, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or assembled by or on behalf of CONTRACTOR in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored digitally, magnetically and/or electronically. This Agreement creates, at no cost to DISTRICT, a perpetual license for DISTRICT to copy, use, reuse, disseminate and/or retain any and all copyrights, designs, and other intellectual property embodied in all Documents and Data. CONTRACTOR shall require all subcontractors and subconsultants working on behalf of CONTRACTOR in the performance of this Agreement to agree in writing that DISTRICT shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subconsultant as applies to Documents and Data prepared by CONTRACTOR in the performance of this Agreement.
- 6.2 CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONTRACTOR or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONTRACTOR without prior written consent by DISTRICT. DISTRICT shall grant such consent if disclosure is legally required. Upon request, all DISTRICT data shall be returned to DISTRICT upon the termination or expiration of this Agreement. CONTRACTOR shall not use DISTRICT's name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of DISTRICT.
- 6.3 FINGERPRINTING. CONTRACTOR shall comply with all applicable provisions of Education Code Section 45125.1. CONTRACTOR will conduct criminal background checks of all employees, agents and/or representatives assigned performing any services and tasks on DISTRICT property on CONTRACTOR's behalf. CONTRACTOR will certify in writing that no such employees, agents and representatives who have been convicted of a violent or serious felony as described in the Notice Re: Criminal Records will have contact with DISTRICT's pupils. CONTRACTOR will provide DISTRICT with a list of all employees providing services pursuant to this Agreement. To the extent permitted under Education Code Section 45125.1, the DISTRICT Representatives may waive any fingerprinting requirements where it is determined that the CONTRACTOR, its employees and agents will have limited or no contact with pupils in the performance of any services and tasks called for under this Agreement. The waiver of the requirements of Education Code Section 45125.1 must be made in writing signed by one or both of the DISTRICT Representatives.
- 6.4 DRUG FREE WORKPLACE CERTIFICATION. CONTRACTOR shall apprise its officials and employees of the Drug-Free Workplace Act of 1990 (Govt. Code Section 8350 et seq.) (hereinafter, the "Act") which requires that every person or organization awarded a contract or grant for the procurement of property or services from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. CONTRACTOR shall comply with the requirements publication and notification requirements of Government Code Section 8355 as to all employees performing services and tasks under this Agreement on DISTRICT property or from DISTRICT facilities.
- 6.5 FALSE CLAIMS ACT. CONTRACTOR warrants and represents that neither CONTRACTOR nor any person who is an officer of, in a managing position with, or has an ownership interest in CONTRACTOR has been determined by a court or tribunal of

competent jurisdiction to have violated the False Claims Act, 31 U.S.C., Section 3789 *et seq.* and the California False Claims Act, Government Code Section 12650 *et seq.*

- 6.6 **NOTICES:** All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

CONTRACTOR:

Learning By Design, LLC
213 South 400 East
Hyrum, UT. 84319

Phone: 435-994-0887

Fax:

Email: marianielsenplc@gmail.com

DISTRICT:

Marysville Joint Unified School District
1919 B Street
Marysville, CA 95901

Phone: 749-6114

Fax: 742-0573

Such notices shall be deemed effective when personally delivered or successfully transmitted by facsimile as evidenced by a fax confirmation slip or when mailed, forty-eight (48) hours after deposit with the United States Postal Service, first class postage prepared and addressed to the Party at its applicable address.

- 6.7 **COOPERATION; FURTHER ACTS:** The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.
- 6.8 **SUBCONTRACTING:** CONTRACTOR shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval of DISTRICT. Subcontracts (including without limitation subcontracts with subconsultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.
- 6.9 **DISTRICT'S RIGHT TO EMPLOY OTHER CONTRACTORS:** DISTRICT reserves the right to employ other contractors in connection with the various projects worked upon by CONTRACTOR.
- 6.10 **PROHIBITED INTERESTS:** CONTRACTOR warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONTRACTOR, to solicit or secure this Agreement. Further, CONTRACTOR warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, DISTRICT shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of DISTRICT, during the term of his or her service with DISTRICT, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 6.11 **TIME IS OF THE ESSENCE:** Time is of the essence for each and every provision of this Agreement.
- 6.12 **GOVERNING LAW AND VENUE:** This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Yuba County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Northern District of California located in the City of San Francisco, California.
- 6.13 **ATTORNEY'S FEES:** If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.
- 6.14 **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding on the successors and assigns of the Parties.

6.15 NO THIRD PARTY BENEFIT: There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.

6.16 CONSTRUCTION OF AGREEMENT: This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.

6.17 SEVERABILITY: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

6.18 AMENDMENT; MODIFICATION: No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to DISTRICT approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.

6.19 CAPTIONS: The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limits, augment, or describe the scope, content, or intent of this Agreement.

6.20 INCONSISTENCIES OR CONFLICTS: In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.

6.21 ENTIRE AGREEMENT: This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between DISTRICT and CONTRACTOR prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid or binding. No amendment, modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.15, above.

6.22 COUNTERPARTS: This Agreement shall be executed in TWO (2) original counterparts each of which shall be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterparts shall be valid or binding unless made to all three counterparts in conformity with Section 6.15, above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

**MARYSVILLE JOINT UNIFIED SCHOOL
DISTRICT:**

By: _____
Mike Hodson
Assistant Superintendent of Business Services

Contractor

By: Maria Nielsen

Name: Maria Nielsen

Title: Owner

Exhibit A
Scope of Work

During the instructional day, Maria Nielsen of Learning By Design, LLC will provide one full day of professional development on December 1, 2017 for the Kynoch Elementary School certificated staff to support and build their Professional Learning Community. Certificated staff members will work to prioritize essential standards, create pacing guides for essential standards, and begin designing units of study based on the essential standards.



CONTRACT SERVICES AGREEMENT
Learning By Design, LLC

THIS CONTRACT SERVICES AGREEMENT ("Agreement") is made and entered into on 9/12/2017 (hereinafter, the "Effective Date"), by and between the MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT ("DISTRICT") and Maria Nielsen with Learning by Design, LCC (hereinafter, "CONTRACTOR"). For the purposes of this Agreement DISTRICT and CONTRACTOR may be referred to collectively by the capitalized term "Parties." The capitalized term "Party" may refer to DISTRICT or CONTRACTOR interchangeably.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, DISTRICT and CONTRACTOR agree as follows:

I. ENGAGEMENT TERMS

1.1 SCOPE OF WORK: Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONTRACTOR agrees to perform the services and tasks set forth in **Exhibit "A"** (hereinafter referred to as the "**Scope of Work**"). CONTRACTOR further agrees to furnish to DISTRICT all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Work. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Work shall hereinafter be referred to generally by the capitalized term "Work." CONTRACTOR shall not commence with the performance of the Work until such time as DISTRICT issues a written Notice to Proceed.

1.2 TERM: This Agreement shall have a term of **2017-2018** commencing from **December 5, 2017-December 5, 2017**

1.3 COMPENSATION:

- A. CONTRACTOR shall perform the various services and tasks set forth in the Scope of Services in accordance with the compensation schedule which is see **Exhibit A**. (hereinafter, the "Approved Rate Schedule").
- B. Section 1.3(A) notwithstanding, CONTRACTOR's total compensation during the Term of this Agreement or any extension term shall not exceed the budgeted aggregate sum **FIVE THOUSAND DOLLARS AND NO CENTS (\$5,000.00)** (hereinafter, the "Not-to-Exceed Sum"), unless such added expenditure is first approved by the DISTRICT acting in consultation with the Superintendent and the Director of Fiscal Services. In the event CONTRACTOR's charges are projected to exceed the Not-to-Exceed Sum prior to the expiration of the Term or any single extension term, DISTRICT may suspend CONTRACTOR's performance pending DISTRICT approval of any anticipated expenditures in excess of the Not-to-Exceed Sum or any other DISTRICT-approved amendment to the compensation terms of this Agreement.

1.4 PAYMENT OF COMPENSATION: The Not-to-Exceed Sum shall be paid to CONTRACTOR as the Work is completed. Following the conclusion of each calendar month, CONTRACTOR shall submit to DISTRICT an itemized invoice indicating the services performed and tasks completed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONTRACTOR's monthly compensation is a function of hours worked by CONTRACTOR's personnel, the invoice shall indicate the number of hours worked in the recently concluded calendar month, the persons responsible for performing the Work, the rate of compensation at which such services and tasks were performed, the subtotal for each tasks and service performed and a grand total for all services performed. Within **THIRTY (30)** calendar days of receipt of each invoice, DISTRICT shall notify CONTRACTOR in writing of any disputed amounts included in the invoice.

included on the invoice. DISTRICT shall not withhold applicable taxes or other authorized deductions from payments made to CONTRACTOR.

- 1.5 ACCOUNTING RECORDS: CONTRACTOR shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. DISTRICT shall have the right to access and examine such records, without charge, during normal business hours. DISTRICT shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.
- 1.6 ABANDONMENT BY CONTRACTOR: In the event CONTRACTOR ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Work, CONTRACTOR shall deliver to DISTRICT immediately and without delay, all materials, records and other work product prepared or obtained by CONTRACTOR in the performance of this Agreement. Furthermore, CONTRACTOR shall only be compensated for the reasonable value of the services, tasks and other work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which DISTRICT may incur as a result of CONTRACTOR's cessation or abandonment.

II. PERFORMANCE OF AGREEMENT

- 2.1 DISTRICT'S REPRESENTATIVES: The DISTRICT hereby designates Representative, Lennie Tate (hereinafter, the "DISTRICT Representatives") to act as its representatives for the performance of this Agreement. The Superintendent shall be the chief DISTRICT Representative. The DISTRICT Representatives or their designee shall act on behalf of the DISTRICT for all purposes under this Agreement. CONTRACTOR shall not accept directions or orders from any person other than the DISTRICT Representatives or their designee.
- 2.2 CONTRACTOR REPRESENTATIVE: CONTRACTOR hereby, Maria Nielsen with Learning by Design to act as its representative for the performance of this Agreement (hereinafter, "CONTRACTOR Representative"). CONTRACTOR Representative shall have full authority to represent and act on behalf of the CONTRACTOR for all purposes under this Agreement. CONTRACTOR Representative or his designee shall supervise and direct the performance of the Work, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONTRACTOR Representative shall constitute notice to CONTRACTOR.
- 2.3 COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: CONTRACTOR agrees to work closely with DISTRICT staff in the performance of the Work and this Agreement and shall be available to DISTRICT staff and the DISTRICT Representatives at all reasonable times. All work prepared by CONTRACTOR shall be subject to inspection and approval by DISTRICT Representatives or their designees.
- 2.4 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONTRACTOR represents, acknowledges and agrees to the following:
- A. CONTRACTOR shall perform all Work skillfully, competently and to the highest standards of CONTRACTOR's profession;
 - B. CONTRACTOR shall perform all Work in a manner reasonably satisfactory to the DISTRICT;
 - C. CONTRACTOR shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*);
 - D. CONTRACTOR understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;

- E. All of CONTRACTOR's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONTRACTOR; and
- F. All of CONTRACTOR's employees and agents (including but not limited to subcontractors and subconsultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement and made available to DISTRICT for copying and inspection.
- 2.5 ASSIGNMENT: The skills, training, knowledge and experience of CONTRACTOR are material to DISTRICT's willingness to enter into this Agreement. Accordingly, DISTRICT has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONTRACTOR or on behalf of CONTRACTOR in the performance of this Agreement. In recognition of this interest, CONTRACTOR agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONTRACTOR's duties or obligations under this Agreement without the prior written consent of the DISTRICT. In the absence of DISTRICT's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.
- 2.6 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONTRACTOR or under CONTRACTOR's strict supervision. CONTRACTOR will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. DISTRICT retains CONTRACTOR on an independent contractor basis and not as an employee. CONTRACTOR reserves the right to perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONTRACTOR's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of DISTRICT's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONTRACTOR are not employees of DISTRICT and shall at all times be under CONTRACTOR's exclusive direction and control. CONTRACTOR shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, social security and Medicare payments and the like. CONTRACTOR shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.
- 2.7 REMOVAL OF EMPLOYEES OR AGENTS: If any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the DISTRICT Representatives to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONTRACTOR, a threat to persons or property, or if any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to the DISTRICT, such officer, employee, agent, contractor, subcontractor or subconsultant shall be promptly removed by CONTRACTOR and shall not be re-assigned to perform any of the Work.
- 2.8 COMPLIANCE WITH LAWS: CONTRACTOR shall keep itself informed of and in compliance with all applicable federal, State or local laws to the extent such laws control or otherwise govern the performance of the Work. CONTRACTOR's compliance with applicable laws shall include without limitation compliance with all applicable Cal/OSHA requirements.
- 2.9 NON-DISCRIMINATION: In the performance of this Agreement, CONTRACTOR shall not discriminate against any employee, subcontractor, subconsultant, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.
- 2.10 INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONTRACTOR and all persons retained or employed by CONTRACTOR are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of DISTRICT. CONTRACTOR shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. CONTRACTOR and all persons retained or employed by CONTRACTOR shall have no authority, express or implied, to bind DISTRICT in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, DISTRICT, whether by contract or otherwise,

unless such authority is expressly conferred to CONTRACTOR under this Agreement or is otherwise expressly conferred by DISTRICT in writing.

III. INSURANCE

- 3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the Work, CONTRACTOR will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONTRACTOR shall procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONTRACTOR shall procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.
 - B. Automobile Liability Insurance: CONTRACTOR shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
 - C. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONTRACTOR and DISTRICT against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONTRACTOR in the course of carrying out the Work contemplated in this Agreement. Policy shall contain a waiver of subrogation against the all parties named as additional insureds under this subsection arising from work performed by the CONTRACTOR.
- 3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 3.3 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers, who according to the latest edition of the Best's Insurance Guide have an A.M. Best's rating of no less than A:VII. DISTRICT may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the DISTRICT Representatives are authorized to authorize lower ratings than those set forth in this Section.
- 3.4 PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONTRACTOR shall be primary to any coverage available to DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- 3.5 WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement shall not prohibit CONTRACTOR or CONTRACTOR's officers, employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss. CONTRACTOR hereby waives all rights of subrogation against DISTRICT.
- 3.6 VERIFICATION OF COVERAGE: CONTRACTOR acknowledges, understands and agrees, that DISTRICT's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding DISTRICT's financial well-being and, indirectly, the collective well-being of the residents of the DISTRICT. Accordingly, CONTRACTOR warrants,

represents and agrees that it shall furnish DISTRICT with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to DISTRICT in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the DISTRICT if requested.** All certificates of insurance and endorsements shall be received and approved by DISTRICT as a condition precedent to CONTRACTOR's commencement of any work or any of the Work. Upon DISTRICT's written request, CONTRACTOR shall also provide DISTRICT with certified copies of all required insurance policies and endorsements.

IV. INDEMNIFICATION

- 4.1 The Parties agree that DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers (hereinafter, the "DISTRICT Indemnitees") should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the DISTRICT Indemnitees with the fullest protection possible under the law. CONTRACTOR acknowledges that DISTRICT would not enter into this Agreement in the absence of CONTRACTOR's commitment to indemnify, defend and protect DISTRICT as set forth herein.
- 4.2 To the fullest extent permitted by law, CONTRACTOR shall indemnify, hold harmless and defend the DISTRICT Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorney's fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONTRACTOR's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole negligence or willful misconduct of the CITY.
- 4.3 DISTRICT shall have the right to offset against the amount of any compensation due CONTRACTOR under this Agreement any amount due DISTRICT from CONTRACTOR as a result of CONTRACTOR's failure to pay DISTRICT promptly any indemnification arising under this Article and related to CONTRACTOR's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 4.4 The obligations of CONTRACTOR under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONTRACTOR expressly waives its statutory immunity under such statutes or laws as to DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers.
- 4.5 CONTRACTOR agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. In the event CONTRACTOR fails to obtain such indemnity obligations from others as required herein, CONTRACTOR agrees to be fully responsible and indemnify, hold harmless and defend DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONTRACTOR's subcontractors or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of DISTRICT's choice.
- 4.6 DISTRICT does not, and shall not, waive any rights that it may possess against CONTRACTOR because of the acceptance by DISTRICT, or the deposit with DISTRICT, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

- 4.7 This Article and all provisions contained herein (including but not limited to the duty to indemnify, defend and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the DISTRICT may have at law or in equity.

V. TERMINATION

- 5.1 TERMINATION WITHOUT CAUSE: DISTRICT may terminate this Agreement at any time for convenience and without cause by giving CONTRACTOR a minimum of five (5) calendar days prior written notice of DISTRICT's intent to terminate this Agreement. Upon such termination for convenience, CONTRACTOR shall be compensated only for those services and tasks which have been performed by CONTRACTOR up to the effective date of the termination. CONTRACTOR may not terminate this Agreement except for cause as provided under Section 5.2, below. If this Agreement is terminated as provided herein, DISTRICT may require CONTRACTOR to provide all finished or unfinished Documents and Data, as defined in Section 7.1 below, and other information of any kind prepared by CONTRACTOR in connection with the performance of the Work. CONTRACTOR shall be required to provide such Documents and Data within fifteen (15) calendar days of DISTRICT's written request. No actual or asserted breach of this Agreement on the part of DISTRICT pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict DISTRICT's ability to terminate this Agreement for convenience as provided under this Section.

5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 5.2.B and 5.2.C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute the such cure to completion. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.
- B. CONTRACTOR shall cure the following Events of Defaults within the following time periods:
- i. Within three (3) business days of DISTRICT's issuance of a Default Notice for any failure of CONTRACTOR to timely provide DISTRICT or DISTRICT's employees or agents with any information and/or written reports, documentation or work product which CONTRACTOR is obligated to provide to DISTRICT or DISTRICT's employees or agents under this Agreement. Prior to the expiration of the 3-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 3-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2 B.i. that exceeds seven (7) calendar days from the end of the initial 3-day cure period; or
 - ii. Within fourteen (14) calendar days of DISTRICT's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 14-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period. .

In addition to any other failure on the part of CONTRACTOR to perform any duty, obligation, service or task set forth under this Agreement (or the failure to timely perform or properly perform any such duty, obligation, service or task), an Event of Default on the part of CONTRACTOR shall include, but shall not be limited to the following: (i) CONTRACTOR's refusal or failure to perform any of the services or tasks called for under the Scope of Work; (ii) CONTRACTOR's failure to fulfill or perform its obligations under this Agreement within the specified time or if no time is specified, within a reasonable time; (iii) CONTRACTOR's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or

regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONTRACTOR, whether voluntary or involuntary; (v) CONTRACTOR's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (vii) DISTRICT's discovery that a statement representation or warranty by CONTRACTOR relating to this Agreement is false, misleading or erroneous in any material respect.

- C. DISTRICT shall cure any Event of Default asserted by CONTRACTOR within FORTY-FIVE (45) calendar days of CONTRACTOR's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, DISTRICT may submit a written request for additional time to cure the Event of Default upon a showing that DISTRICT has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with DISTRICT's failure to timely pay any undisputed sums to CONTRACTOR as provided under Section 1.4, above, shall be cured by DISTRICT within five (5) calendar days from the date of CONTRACTOR's Default Notice to DISTRICT.
- D. DISTRICT, in its sole and absolute discretion, may also immediately suspend CONTRACTOR's performance under this Agreement pending CONTRACTOR's cure of any Event of Default by giving CONTRACTOR written notice of DISTRICT's intent to suspend CONTRACTOR's performance (hereinafter, a "Suspension Notice"). DISTRICT may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONTRACTOR shall be compensated only for those services and tasks which have been rendered by CONTRACTOR to the reasonable satisfaction of DISTRICT up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of DISTRICT shall operate to prohibit or otherwise restrict DISTRICT's ability to suspend this Agreement as provided herein.
- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to DISTRICT at law or under this Agreement in the event of any breach of this Agreement, DISTRICT, in its sole and absolute discretion, may also pursue any one or more of the following remedies:
 - i. Upon written notice to CONTRACTOR, the DISTRICT may immediately terminate this Agreement in whole or in part;
 - ii. Upon written notice to CONTRACTOR, the DISTRICT may extend the time of performance;
 - iii. The DISTRICT may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONTRACTOR's breach of the Agreement or to terminate the Agreement; or
 - iv. The DISTRICT may exercise any other available and lawful right or remedy.

CONTRACTOR shall be liable for all legal fees plus other costs and expenses that DISTRICT incurs upon a breach of this Agreement or in the DISTRICT's exercise of its remedies under this Agreement.

- G. In the event DISTRICT is in breach of this Agreement, CONTRACTOR's sole remedy shall be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONTRACTOR under this Agreement for completed services and tasks.

5.3 SCOPE OF WAIVER: No waiver of any default or breach under this Agreement shall constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this

Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

- 5.4 SURVIVING ARTICLES, SECTIONS AND PROVISIONS: The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto shall not operate to terminate any Article, Section or provision contained herein which provides that it shall survive the termination or normal expiration of this Agreement.

VI. MISCELLANEOUS PROVISIONS

- 6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data shall be and remain the property of DISTRICT without restriction or limitation upon their use or dissemination by DISTRICT. For purposes of this Agreement, the term "Documents and Data" means and includes all reports, analyses, correspondence, plans, drawings, designs, renderings, specifications, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or assembled by or on behalf of CONTRACTOR in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored digitally, magnetically and/or electronically. This Agreement creates, at no cost to DISTRICT, a perpetual license for DISTRICT to copy, use, reuse, disseminate and/or retain any and all copyrights, designs, and other intellectual property embodied in all Documents and Data. CONTRACTOR shall require all subcontractors and subconsultants working on behalf of CONTRACTOR in the performance of this Agreement to agree in writing that DISTRICT shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subconsultant as applies to Documents and Data prepared by CONTRACTOR in the performance of this Agreement.
- 6.2 CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONTRACTOR or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONTRACTOR without prior written consent by DISTRICT. DISTRICT shall grant such consent if disclosure is legally required. Upon request, all DISTRICT data shall be returned to DISTRICT upon the termination or expiration of this Agreement. CONTRACTOR shall not use DISTRICT's name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of DISTRICT.
- 6.3 FINGERPRINTING. CONTRACTOR shall comply with all applicable provisions of Education Code Section 45125.1. CONTRACTOR will conduct criminal background checks of all employees, agents and/or representatives assigned performing any services and tasks on DISTRICT property on CONTRACTOR's behalf. CONTRACTOR will certify in writing that no such employees, agents and representatives who have been convicted of a violent or serious felony as described in the Notice Re: Criminal Records will have contact with DISTRICT's pupils. CONTRACTOR will provide DISTRICT with a list of all employees providing services pursuant to this Agreement. To the extent permitted under Education Code Section 45125.1, the DISTRICT Representatives may waive any fingerprinting requirements where it is determined that the CONTRACTOR, its employees and agents will have limited or no contact with pupils in the performance of any services and tasks called for under this Agreement. The waiver of the requirements of Education Code Section 45125.1 must be made in writing signed by one or both of the DISTRICT Representatives.
- 6.4 DRUG FREE WORKPLACE CERTIFICATION. CONTRACTOR shall apprise its officials and employees of the Drug-Free Workplace Act of 1990 (Govt. Code Section 8350 et seq.) (hereinafter, the "Act") which requires that every person or organization awarded a contract or grant for the procurement of property or services from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. CONTRACTOR shall comply with the requirements publication and notification requirements of Government Code Section 8355 as to all employees performing services and tasks under this Agreement on DISTRICT property or from DISTRICT facilities.
- 6.5 FALSE CLAIMS ACT. CONTRACTOR warrants and represents that neither CONTRACTOR nor any person who is an officer of, in a managing position with, or has an ownership interest in CONTRACTOR has been determined by a court or tribunal of

competent jurisdiction to have violated the False Claims Act, 31 U.S.C., Section 3789 *et seq.* and the California False Claims Act, Government Code Section 12650 *et seq.*

- 6.6 NOTICES: All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

CONTRACTOR:

Learning By Design, LLC
213 South 400 East
Hyrum, UT. 84319

Phone: 435-994-0887

Fax:

Email: marianielsenplc@gmail.com

DISTRICT:

Marysville Joint Unified School District
1919 B Street
Marysville, CA 95901

Phone: 749-6114

Fax: 742-0573

Such notices shall be deemed effective when personally delivered or successfully transmitted by facsimile as evidenced by a fax confirmation slip or when mailed, forty-eight (48) hours after deposit with the United States Postal Service, first class postage prepared and addressed to the Party at its applicable address.

- 6.7 COOPERATION; FURTHER ACTS: The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.

- 6.8 SUBCONTRACTING: CONTRACTOR shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval of DISTRICT. Subcontracts (including without limitation subcontracts with subconsultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.

- 6.9 DISTRICT'S RIGHT TO EMPLOY OTHER CONTRACTORS: DISTRICT reserves the right to employ other contractors in connection with the various projects worked upon by CONTRACTOR.

- 6.10 PROHIBITED INTERESTS: CONTRACTOR warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONTRACTOR, to solicit or secure this Agreement. Further, CONTRACTOR warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, DISTRICT shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of DISTRICT, during the term of his or her service with DISTRICT, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

- 6.11 TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.

- 6.12 GOVERNING LAW AND VENUE: This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Yuba County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Northern District of California located in the City of San Francisco, California.

- 6.13 ATTORNEY'S FEES: If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

- 6.14 SUCCESSORS AND ASSIGNS: This Agreement shall be binding on the successors and assigns of the Parties.

- 6.15 **NO THIRD PARTY BENEFIT:** There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.
- 6.16 **CONSTRUCTION OF AGREEMENT:** This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.
- 6.17 **SEVERABILITY:** If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 6.18 **AMENDMENT; MODIFICATION:** No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to DISTRICT approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.
- 6.19 **CAPTIONS:** The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limits, augment, or describe the scope, content, or intent of this Agreement.
- 6.20 **INCONSISTENCIES OR CONFLICTS:** In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.
- 6.21 **ENTIRE AGREEMENT:** This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between DISTRICT and CONTRACTOR prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid or binding. No amendment, modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.15, above.
- 6.22 **COUNTERPARTS:** This Agreement shall be executed in TWO (2) original counterparts each of which shall be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterparts shall be valid or binding unless made to all three counterparts in conformity with Section 6.15, above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

**MARYSVILLE JOINT UNIFIED SCHOOL
DISTRICT:**

By: _____
Mike Hodson
Assistant Superintendent of Business Services

Contractor

By: Maria Nielsen

Name: Maria Nielsen

Title: Owner

Exhibit A
Scope of Work

During the instructional day, Maria Nielsen of Learning By Design, LLC will provide one full day of professional development on December 5, 2017 for the Olivehurst Elementary School certificated staff to support and build their Professional Learning Community. Certificated staff members will work to prioritize essential standards, create pacing guides for essential standards, and begin designing units of study based on the essential standards.

SCHOOL RESOURCE OFFICER AGREEMENT
BY AND BETWEEN
MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT
AND
YUBA COUNTY OFFICE OF EDUCATION
AND
CITY OF MARYSVILLE
FISCAL YEAR 2017-18

RECITALS

THIS SCHOOL RESOURCE OFFICER AGREEMENT is dated as of July 1, 2017 (the "Agreement") by and between the Marysville Joint Unified School District, a public school district of the State of California, hereafter referred to as "MJUSD", Yuba County Office of Education, a public school county office of education of the State of California, hereafter referred to as "YCOE", and the City of Marysville, a municipal corporation, hereafter referred to as the "City" (with all parties of this agreement hereafter referred to as "Parties"), and is entered into in light of the facts set forth in the following recitals who agrees as follows:

-- RECITALS --

- A. City has established a municipal police department as an instrumentality of the City (the "Department"), and the Department is recognized by the State of California as a municipal law enforcement agency.
- B. MJUSD is a public school district in the County of Yuba, State of California, and has administrative offices located at 1919 B Street, Marysville, CA 95901.
- C. YCOE is a public school county office of education in the County of Yuba, State of California, and has administrative offices located at 935 14th St., Marysville, CA 95901.
- D. MJUSD and YCOE desire to obtain special law enforcement services from the City, acting by and through the Department, to provide an additional level of law enforcement services for the benefit of the public school

students of MJUSD and YCOE as described in this Agreement on the public school campuses of located in the city of Marysville with the Police Officer working out of a central location on the campus of Marysville High School, and the City acting by and through the Department desires to provide such services on the terms and conditions set forth in this Agreement.

- E. MJUSD, YCOE, and the City may enter into arrangements for the City to provide an additional level of law enforcement services to public agencies such as MJUSD and YCOE as set forth in this Agreement.
- F. The Department possess the special experience, knowledge and expertise necessary for the performance of the "special service" law enforcement services required by this Agreement; and

WHEREAS, pursuant to Education Code Section 32261, it is the intent of the State legislature to encourage California public schools to develop comprehensive safety plans that are the result of a systematic planning process that includes strategies aimed at the prevention of incidents involving crime and violence on school campuses and that address the safety concerns of local law enforcement and other interests in the prevention of crime on public school campuses and/or which otherwise involve public school students; and

WHEREAS, pursuant to Education Code Section 32261, it is the intent of the State legislature to encourage school districts and law enforcement agencies to develop and implement interagency strategies, service training programs and activities that will improve school attendance and reduce the rates of school crime including vandalism, drug and alcohol abuse, gang membership and gang violence; and

WHEREAS, pursuant to Education Code Section 32262, the State legislature has established School/Law Enforcement Partnership comprising the Superintendent of Public Instruction and the Attorney General which has as its duties the development and administration of program policies, procedures and activities in the furtherance of campuses which are safe, secure and peaceful; and

WHEREAS, pursuant to Penal Code Section 832.3, it is the intent of the Legislature to ensure the safety of pupils, staff and members of the public on or near California public schools by providing peace officers with training that will enable them to deal with the increasing diverse and challenging law enforcement duties including public school campuses and students.

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and understandings herein, the Parties agree as follows:

1. **Scope of Service.** The scope of the public safety and law enforcement services (collectively, the "Program") to be provided by the City, acting by and through the Department to MJUSD and YCOE, shall be those duties described in the Scope of Services document attached hereto as Exhibit "A" and incorporated by this reference.

2. **Term.** This Agreement shall commence on July 1, 2017 and shall continue through June 30, 2018, unless the Program and this Agreement is sooner terminated, as set forth in paragraph 6 of this Agreement.

3. **Payment.** MJUSD and YCOE shall pay the City, for the police services as set forth in the Scope of Services provided by School Resource Officers during the term of this Agreement, the sum of One Hundred Thousand Dollars and 00 Cents (\$100,000) with MJUSD being responsible for 70% of this amount, or \$70,000, and YCOE being responsible for 30% of this amount, or \$30,000. Such sum shall be payable by both MJUSD and YCOE to the City in four (4) equal installments with the first such installment due as of July 1, 2017 and the following equal installment payable due as of October 1, 2017, January 1, 2018 and April 1, 2018, respectively. Such police services as shall be provided by the City acting by and through the Department to MJUSD and YCOE under the Program shall include one (1) sworn peace officer of the Department assigned by the Department, in consultation with MJUSD and YCOE, for all MJUSD and YCOE campuses located within the city of Marysville and is to work out of a central location on the campus of Marysville High School for the term this Agreement as more particularly set forth in the Scope of Services. The Department shall submit quarterly invoices for the payment of such cost for the police services to MJUSD to the attention of the Superintendent, Marysville Joint Unified School District, 1919 B Street, Marysville, CA 95901. The Department shall submit quarterly invoices for the payment of such cost for the police services to YCOE to the attention of the Superintendent, Yuba County Office of Education, 935 14th St., Marysville, CA 95901. Payment shall be made to the Department by MJUSD and YCOE no later than 30 days from receipt of the invoice.

4. **Independent Contractor.** The relationship between the Parties under this Agreement shall be one of independent contractor. No School Resource Officer rendering services under this Agreement shall be an employee of MJUSD or YCOE for federal or state tax purposes, or any other purpose. The Department shall be responsible for tax withholding as required by applicable law for the School Resource Officer. MJUSD and/or YCOE shall have no responsibility for payment of any tax liability arising out of the compensation for services performed by any School Resource Officer under this Agreement.

The School Resource Officer who is assigned by the Department to provide services under this Agreement shall not be deemed to be an employee or agent of MJUSD or YCOE and shall not be deemed qualified or eligible to participate in any MJUSD or YCOE pension plan, retirement, health and welfare program, or any similar program or, benefit, as a result of this Agreement. The School Resource Officer shall report directly to the Marysville Chief of Police or designee through the Marysville Police

Department established "chain of command". The Department shall maintain direct supervisory control over the School Resource Officer; provided however, that MJUSD and YCOE shall have the right to approve the individual School Resource Officer assigned to it by the Department, and MJUSD and YCOE shall have the right to require that any assigned School Resource Officer be replaced upon the request of MJUSD and YCOE in the collective and reasonable discretion of both MJUSD and YCOE.

MJUSD and YCOE assume no liability for worker's compensation for the assigned School Resource Officer. The Department shall be responsible for carrying its own workers' compensation insurance and health and welfare insurance for the School Resource Officer assigned under this Agreement. It shall be the sole responsibility of the Department to account for all of the above, and the Department agrees to hold MJUSD and YCOE harmless from any liability for these taxes or employment costs.

At all times during the term of this Agreement, the School Resource Officer shall be a sworn police officer employee of the City subject to the supervision, control and direction of the City and subject to the personnel rules and procedures of the City.

5. **Indemnification.**

- a. The City shall defend, indemnify and hold harmless MJUSD and YCOE, its officers, agents and employees from any and all loss, including attorney's fees, sustained by MJUSD or YCOE by virtue of any damage(s) to any person(s), firm or corporation that may be injured by or to any property that may be damaged by the sole fault or sole active negligence of the City or any School Resource Officer, officer, agent or employee.
- b. MJUSD and YCOE shall defend, indemnify and hold harmless the City, its officers, agents and employees from any and all loss, including attorney's fees sustained by the City by virtue of any damage(s) to any person(s), firm, or corporation who may be injured by or to any property that may be damaged by the sole fault or sole active negligence of MJUSD and/or YCOE, its officers, agents or employees of MJUSD or YCOE under the Program.
- c. The indemnification provisions contained in this Agreement include any violation of applicable law, ordinance regulation or rule, including where the claim, loss, damage charge or expense was caused by deliberate, willful, or criminal acts of any party to this Agreement, or any of their agents, officers or employees or their performance under the terms of this Agreement.
- d. It is the intent of the Parties that where negligence is determined to have been shared, principles of comparative negligence will be

followed and each party shall bear the proportionate cost of any loss, damage, expense and liability attributable to that party's negligence.

- e. Each party shall establish and implement procedures to notify the other party of any claims or legal actions with respect to any of the matters described in this indemnification section.

6. **Termination.** This Agreement may be terminated by any Party at any time prior to the end of the Term, with or without cause for the sole convenience of the Party who may elect to terminate this Agreement, upon delivery of a written Notice of Intent to Terminate to the other Party. Such notice shall be served by personal delivery or by first-class mail, registered or certified; postage prepared, and shall be deemed received upon personal delivery or five (5) days after the mailing date whichever is sooner. The date of termination shall be the date that is ninety (90) calendar days after the date on which the Notice of Intent to Terminate is received or deemed received by the other two Parties, as the case may be. In the event of termination, MJUSD and YCOE will compensate the City for all services rendered to the effective date of such termination. The Marysville Chief of Police is designated as authorized to accept such notice for the Department and the City, the MJUSD Superintendent is designated to accept such notice for MJUSD, and the YCOE Superintendent is designated to accept such notice for YCOE.

7. **Assignment.** This Agreement is for personnel services to be performed by the City acting by and through the Department. Neither this Agreement nor any duties or obligations to be performed by the Department under this Agreement shall be assigned without the prior written consent of both MJUSD and YCOE. In the event of an assignment by the City to which both MJUSD and YCOE have consented, the assignee or its legal representative shall agree in writing with MJUSD and YCOE to assume, perform and be bound by all covenants, obligations and agreements contained in this Agreement.

8. **Notices.** Any notice, requests, demands or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given or on the fifth day of mailing to the party to whom the notice is to be given, by first-class mail registered or certified, postage prepaid, or on the day after dispatching by Federal Express or another overnight delivery service, and properly addressed as follows:

MJUSD:	Marysville Joint Unified School District 1919 B Street Marysville, CA 95901 Attn: Superintendent
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YCOE: Yuba County Office of Education
935 14th Street
Marysville, CA 95901
Attn: Superintendent

Department: Marysville Police Department
316 6th Street
Marysville, CA 95901
Attn: Chief of Police

9. **Entire Agreement.** This Agreement contains the entire agreement between the Parties and supersedes all prior understandings between them with respect to the Program which is the subject matter of this Agreement. There are no other promises, terms, conditions or obligations, oral or written, between the Parties relating to the subject matter of this Agreement that are not fully expressed in this Agreement. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligation under this Agreement be waived, except by written instrument signed by the Parties.

10. **Binding on Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Parties and their successors.

11. **Severability.** Should any term or provision of the Agreement be determined to be illegal or in conflict with any law of the State of California, the validity of the remaining portions or provisions shall not be affected thereby. Each term or provision of this Agreement shall be valid and enforced as written to the fullest extent permitted by law.

12. **California Law.** This Agreement shall be construed in accordance with and governed by the laws and decisions of the State of California.

13. **Ratification of Boards of Education.** This Agreement is not enforceable and is invalid unless and until it is approved and/or ratified by the governing boards of the Marysville Joint Unified School District and Yuba County Office of Education, as evidenced by motions of said boards duly passed, and adopted in compliance with the provisions of Education Code Section 39656.

IN WITNESS WHEREOF, City, MJUSD, and YCOE have executed this Agreement as of the day and year first above written.

CITY:
City of Marysville

By: 
Walter Munchheimer
City Manager

MJUSD:
Marysville Joint Unified School District

By: 
Michael R. Hodson
Asst. Supt. of Business Services

YCOE:
Yuba County Office of Education

By: _____
Francisco Reveles, Superintendent

Exhibit A
Scope of Services
FISCAL YEAR 2017-18

This Scope of Services is part of an agreement entitled "School Resources Officer Agreement (the "Agreement")" by and between MJUSD, YCOE, and the City for the Fiscal Year of 2017-18. Unless the context of the usage of a particular term may otherwise require, all defined term used in this Exhibit "A", denoted by an initial capital letter in each such word, shall have the same meaning as set forth in the Agreement.

PURPOSE

A prosperous future for the citizens of Marysville depends, in large measure, upon the MJUSD and YCOE's ability to properly educate its children. Effective schooling requires a safe and orderly environment in which learning can occur. Consequently, the City acting by and through the Department, in collaboration with MJUSD and YCOE, conducts the Program in order to provide school administrators and staff with law enforcement resources and expertise they need to maintain safety, order and discipline in the school environment. The Program is intended to insure to the greatest extent reasonably feasible, that no student's right to receive an education is abridged by violence or disruption in the school or class room setting.

The Program by the City acting by and through the Department involves the assignment of a School Resource Officer to all campuses within the city of Marysville and is to work out of a central location on the campus of Marysville High School. In accordance with staffing ability and the demonstrated needs of the schools, the Department will assign a full-time School Resource Officer for the services designated in this Agreement.

With daily interaction among the administration of each school, MJUSD, YCOE, the School Resource Officer and the Department, the Parties acknowledge and agree to mutually consult with each other and establish, maintain, and update specific guidelines and procedures to be followed by the School Resource Officers and individual school administrators in the implementation of the Program. The Exhibit clarifies the role of the School Resource Officers and the school administrators, the scope of their authority, and the responsibilities of MJUSD, YCOE, and the Department in this collaboration. The success of the School Resource Officer program relies on effective communication between the School Resource Officer, the principals and other key staff members in each organization.

POLICE SERVICES

The City acting by and through the Department hereby agrees to provide MJUSD and YCOE with the special police services as follows: a fully uniformed police officer employee of the City shall be assigned by the Department to work as School Resource

Officer for all campuses within the city of Marysville and is to work out of a central location on the campus of Marysville High School. Such sworn police officer/School Resource Officer ("SRO") assigned by the Department to the school sites of MJUSD and YCOE shall be physically present at those sites at least 50% of each 40 hour work week, except when subpoenaed for court, attending official police training or business assigned by the Department or when such SRO is taking routine vacation and special time off as an employee of the City, or on days when public school students are not scheduled for regular attendance at such school site, school holidays and other periods of time when MJUSD and YCOE may designate. The School Resource Officer (SRO) may perform police officer services as directed by the Department at time outside the time periods set forth for duty as an SRO under this Agreement when deemed necessary by the Department.

Memorandum of Understanding

Student Services
2017-2018

Between Marysville Joint Unified School District (MJUSD) and Sutter County Office of Education (Sutter COE) Special Education Department

This agreement is entered into by and between Sutter COE Special Education Department and the Marysville Joint Unified School District (MJUSD) for the provision of services by Sutter County Itinerant Deaf/HH Staff. Sutter COE is not entitled to any rights and/or benefits other than compensation called for in this agreement.

The District assumes no liability for Worker's Compensation or liability for loss, damage, or injury to person or property during or related to the performance of service under this agreement.

Name: Sutter County Office of Education

Address: 970 Klamath Lane, Yuba City, CA 95991

Phone and Contact: 822-2912, Barbara Hickman, Special Education Coordinator

Budget Code: Special Ed. Contacts

Services to be performed during the 2017-2018 School Year:

Scope of Services to be provided:

Direct and consultative services provided to the District general and Special Education staff for the support of District-placed and served students with identified hearing loss. All services will be referral-based from Individualized Education Plan (IEP) teams and will be made to the MJUSD Directors of Special Education for approval.

Hold Harmless and Indemnification:

Each party agrees to indemnify and hold the other party harmless from all liability for damage, actual or alleged, to persons or property arising out of or resulting from negligent acts or omissions of the indemnifying party.

Number of hours to be determined based on student need and not to exceed 700 hours of services during the 2017-2018 school year.


Business Services Department

Approval: WA

Date: 8.24.17

Compensation rate is \$ **90.74** per hour. Mileage will be billed at the IRS rate of **.535** cents per mile. Total hours compensated not to exceed \$ 63,518.00 during the 17-18 school year. The estimated mileage cost not to exceed \$ 2,500.00 during the 17-18 school year. For a total MOU not-to-exceed amount of \$ **66,018.00**.

Sutter County will invoice MJUSD for services performed.


Assistant Superintendent, Special Education
Sutter County Superintendent of Schools

Barbara Hickman
Print Name

Assistant Superintendent of Business Services
Marysville Joint Unified School District

Print Name

Date of Board Approval: _____