

2016-2017
PROFESSIONAL SERVICES AGREEMENT
(Engagement: AUGUST 9, 2016)
(Parties: **Monrose Catering** and Lennox School District)

THIS **2016-2017** PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into this **August 10, 2016** (hereinafter, the "Effective Date"), by and between Lennox School District, located at 10319 Firmona Avenue, Lennox, California 90304 (hereinafter, "District") and **Monrose Catering** with its principal place of business at **31117 Via Colinas, Suite 403, Westlake Village, CA 91362** (hereinafter, "Consultant"). For the purposes of this Agreement District and Consultant may be referred to collectively by the capitalized term "Parties." The capitalized term "Party" may refer to District or Consultant interchangeably.

RECITALS

This AGREEMENT is made and entered into with respect to the following facts:

WHEREAS, District has determined that it requires the following professional services: **Catering**; and

WHEREAS, Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees;

WHEREAS, Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement;

WHEREAS, the execution of this Agreement was approved by the Lennox School District Board of Directors at its Regular Meeting of **August 9, 2016**, under Agenda Item No. ____.

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

I.

ENGAGEMENT REQUIREMENTS

- 1.1 ENGAGEMENT: The Parties agree that this Agreement relates to **Catering**. The aforementioned services are all conducted in connection with and in the furtherance of the following activities **Catering for the Moffett Elementary Welcome Back Ceremony on August 22, 2016** (hereinafter referred to as the "Project").
- 1.2 SCOPE OF WORK: Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, Consultant agrees to perform the services

and tasks set forth in the Scope of Services, which is attached hereto as Exhibit "A" (hereinafter referred to as the "Scope of Work"). Consultant 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." Neither Consultant nor anyone acting on Consultant's behalf shall commence with the performance of the Work or any other related tasks until District issues a written notice to proceed (hereinafter, the "Notice to Proceed").

- 1.3 TERM: The Agreement shall have a term of **1 day, August 22, 2016**; commencing from the Effective Date, unless terminated as provided elsewhere in this Agreement. District in its sole and absolute discretion may extend the term of the Agreement administratively for an additional Nothing in this Section shall operate to prohibit or otherwise restrict the District's ability to terminate this Agreement at any time for convenience or for cause as provided under Article V of this Agreement, below.
- 1.4 COMPENSATION: Consultant shall perform all of the various services and tasks that comprise the Work in accordance with the hourly compensation schedule attached to this Agreement and identified as **Exhibit "A."** The foregoing notwithstanding Consultants total compensation for performing the Work shall not exceed the aggregate sum of **\$5220.00** (hereinafter, the "Contract Price"). The Parties agree that the Contract Price includes compensation for all labor, materials, tools, supplies, equipment, business licenses and such other incidental and customary work necessary to competently perform and fully complete the Work as well as compensation for all specifically delineated expenses set forth in the Scope of Work. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the Contract Price unless the availability of funds for the added expenditure is first reviewed by the Finance Division of Lennox School District and unless such added expenditure is specifically approved in advance and in writing by the District.
- 1.5 PAYMENT OF COMPENSATION: District shall pay the Contract Price in increments as Consultant completes the various services and tasks that make up the Work. At the end of each month during the term of this Agreement, Consultant shall submit to District a monthly itemized statement indicating the work performed, costs incurred and hours of service rendered by Consultant and its various employees. The statement shall describe the specific tasks performed. Within fifteen (15) business days of receipt of each invoice, District shall notify Consultant in writing of any disputed amounts included in the invoice. Within forty-five (45) calendar days of receipt of each invoice, District shall pay all undisputed amounts included on the invoice. District shall not withhold applicable taxes or other authorized deductions from payments made to Consultant.

1.6 EXTRA WORK; COMPENSATION FOR EXTRA WORK:

- A. At any time during the term of this Agreement, District may request that Consultant perform Extra Work. For the purposes of this Agreement, the term "Extra Work" means any additional work, services or tasks not set forth in the Scope of Work but later determined by District to be necessary. Consultant shall not undertake nor shall Consultant be entitled to compensation for Extra Work without the prior written authorization of the District. Extra Work does not include any labor, materials, tools, supplies, equipment, services, tasks or incidental and customary work undertaken to competently perform and timely complete the Work and related tasks set forth in the Scope of Work.
- B. Payments for any Extra Work shall be made to Consultant on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies District in writing of an increase in the fee schedule. Fees for Extra Work shall be paid within sixty (60) calendar days of the date Consultant issues an invoice to District for such Extra Work.

1.7 ACCOUNTING RECORDS: Consultant 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.

1.8 ABANDONMENT BY CONSULTANT: In the event Consultant 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, Consultant shall deliver to District immediately and without delay, all materials, records and other work product prepared or obtained by Consultant in the performance of this Agreement. Furthermore, Consultant 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 Consultant's cessation or abandonment.

II.
PERFORMANCE OF AGREEMENT

2.1 DISTRICT'S REPRESENTATIVES: The District hereby designates the Superintendent and/or their designee (hereinafter, the "District Representatives") to act as its representatives for the performance of this Agreement. The District Representatives or their designee shall act on behalf of District for all purposes under this Agreement.

Consultant shall not accept directions or orders from any person other than the District Representatives or their designee.

- 2.2 CONSULTANT'S REPRESENTATIVE: Consultant hereby designates None to act as its representative for the performance of this Agreement (hereinafter, "Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. Consultant's 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 Consultant's Representative shall constitute notice to Consultant.
- 2.3 COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: Consultant 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 Consultant shall be subject to inspection and approval by District Representatives or their designees.
- 2.4 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: Consultant represents, acknowledges and agrees to the following:
- A. Consultant shall perform all work skillfully, competently and to the highest professional standards of Consultant's profession;
 - B. Consultant shall perform all work in a manner reasonably satisfactory to District;
 - C. Consultant 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. Consultant understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
 - E. Consultant shall perform all Work under this Agreement in a skillful and competent manner equivalent to, if not greater than, the standard generally recognized as being employed by professionals performing the same services in the State of California;
 - F. All of Consultant's employees and agents (including but not limited to Consultant's subcontractors and subconsultants) possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by Consultant; and

- G. All of Consultant's employees and agents (including but not limited to Consultant's 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.

The Parties acknowledge and agree that Consultant shall perform, at Consultant's own cost and expense and without any reimbursement from District, any services necessary to correct any errors or omissions caused by Consultant's failure to comply with the standard of care set forth under this Section or by any like failure on the part of Consultant's employees, agents, contractors, subcontractors and subconsultants. Such effort by Consultant to correct any errors or omissions shall be commenced immediately upon their discovery by either Party and shall be completed within seven (7) calendars days from the date of discovery or such other extended period of time authorized by the District Representatives in writing and absolute discretion. The Parties acknowledge and agree that District's acceptance of any work performed by Consultant or on Consultant's behalf shall not constitute a release of any deficiency or delay in performance. The Parties further acknowledge, understand and agree that District has relied upon the foregoing representations of Consultant, including but not limited to the representation that Consultant possesses the skills, training, knowledge and experience necessary to perform the Work in a skillful and competent manner equivalent to, if not greater than, the standard of performance generally recognized as being employed by professionals performing the same type of work and services in the State of California.

- 2.5 ASSIGNMENT: The skills, training, knowledge and experience of Consultant 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 Consultant or on behalf of Consultant in the performance of this Agreement. In recognition of this interest, Consultant 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 Consultant's duties or obligations under this Agreement without the prior written consent of 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 Consultant or under Consultant's strict supervision. Consultant will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. District retains Consultant on an independent contractor basis and not as an employee. Consultant reserves the right to perform similar or different services for others during the term of this Agreement, provided such work does not unduly interfere with Consultant's competent performance under this Agreement or result in the unauthorized disclosure of District's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of Consultant are not employees of District and shall at

all times be under Consultant's exclusive direction and control. Consultant 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. Consultant 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 Consultant'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 Consultant, a threat to persons or property, or if any of Consultant's officers, employees, agents, contractors, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to District, such officer, employee, agent, contractor, subcontractor or subconsultant shall be promptly removed by Consultant and shall not be re-assigned to perform any of the Work. In keeping with the indemnification provisions of Article IV, below, Consultant shall indemnify, defend and hold free and harmless District, its elected or appointed officials, officers, employees, agents and volunteers from any claims or liability arising out of the removal of any of Consultant's officers, employees, agents, contractors, subcontractors or subconsultants pursuant to this Section.
- 2.8 COMPLIANCE WITH LAWS: Consultant shall keep itself fully informed of and in compliance with all applicable laws, statutes, codes, rules, regulations and ordinances of the federal government of the United States of America, the State of California, the County of Los Angeles, Lennox School District and any other local governmental entity to the extent such laws, statutes, codes, rules, regulations or ordinances governing or affecting the performance of the Work. Consultant's compliance with applicable laws shall include without limitation compliance with all Cal/OSHA requirements, and the issuance of all notices required by law. Consultant shall be liable for all violations of such laws, statutes, codes, rules, regulations and ordinances in connection with Work. If Consultant performs any work knowing it to be contrary to such laws, statutes, codes, rules, regulations or ordinances, Consultant shall be solely responsible for all costs arising therefrom. In keeping with the indemnification requirements of Article IV, below, Consultant shall indemnify, defend and hold free and harmless District and District's elected or appointed officials, officers, employees, agents and volunteers from any claim or liability arising out of any failure or alleged failure to comply with such laws, statutes, codes, rules, regulations or ordinances.
- 2.9 SAFETY: Consultant shall perform its work so as to avoid injury or damage to any person or property. In performing the Work, Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Work and the conditions under which any work is to be performed.

- 2.10. NON-DISCRIMINATION: In the performance of this Agreement, Consultant 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.
- 2.11. INDEPENDENT CONTRACTOR: The Parties acknowledge, understand and agree that Consultant and all persons retained or employed by Consultant are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of District. Consultant shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. Consultant and all persons retained or employed by Consultant 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 Consultant under this Agreement or is otherwise expressly conferred by District in writing.

III. INSURANCE

- 3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: As more specifically set forth below under this Article, Consultant agrees that it shall procure and maintain for the term of this Agreement (and for such extended period of time as may be required under this Article) insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Consultant shall also procure and maintain such other types of insurance as may be required under this Article, below. District shall not, and shall be under no obligation to, issue a Notice to Proceed until Consultant has provided evidence satisfactory to District that it has procured all insurance required under this Article III (Insurance).
- 3.2 REQUIRED COVERAGES: Consultant agrees that it shall procure and maintain the following insurance coverage, at its own expense, for the duration for this Agreement or any extended period set forth herein:
- A. Commercial General Liability Insurance: Consultant shall procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001). Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability. The general aggregate limit of the CGL Coverage shall either apply separately to the work and services to be performed under this Agreement; or the general aggregate limit shall be twice the required occurrence limit;
 - B. Automobile Liability Insurance: Consultant 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: Consultant shall procure and maintain Workers' Compensation Insurance affording coverage at least as broad as that required by the State of California with Employer's Liability Insurance with minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. The Workers' Compensation insurer shall also agree to waive all rights of subrogation against District and District's elected and appointed officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy. Workers' Compensation insurance shall also provide or be endorsed to provide: There will be no cancellation, suspension, reduction or voiding of coverage without **thirty (30)** calendar days' prior written notice by certified mail, return receipt requested, to District. If any reduction of coverage occurs, Consultant shall furnish District with information regarding such reduction at Consultant's earliest possible opportunity and in no case later than five (5) calendar days after Consultant is notified of the change in coverage. Any failure to comply with reporting or other provisions of the policy, including breaches of warrants, shall not affect the coverage provided to District and District's elected or appointed officials, officers, employees, agents or volunteers.

D. Professional Liability Insurance: For the full term of this Agreement and for a period of three (3) years thereafter, Consultant shall procure and maintain Errors and Omissions Liability Insurance appropriate to Consultant's profession. Such coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall be endorsed to include contractual liability.

3.3 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. As to the CGL Coverage, the additional insured endorsement shall be made using Insurance Service Office form CG20 10 1185, CG 20 10 10 01 or CG 37 10 01.

3.4 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.

- 3.5 DISCLOSURE OF DEDUCTIBLES AND SELF-INSURED RETENTIONS: With respect to all varieties of insurance required under this Article, all deductibles and self-insured retentions shall be declared to and approved by District. District, at its option and in its sole and absolute discretion may require that: (i) the insurer reduce or eliminate such deductibles or self-insured retentions as respects District and District's elected or appointed officials, officers, employees, agents and volunteers; or (ii) Consultant shall provide a financial guarantee satisfactory to District guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 3.6 NOTICE OF FACTORS DIMINISHING COVERAGE: If any of the required insurance coverages contain aggregate limits, or apply to other operations of Consultant not related to this Agreement, Consultant shall give District prompt, written notice of any incident, occurrence, claim settlement or judgment against such insurance which may diminish the protection such insurance affords Consultant, District and District's elected and appointed officials, officers, employees, agents and volunteers. Consultant shall also immediately restore such aggregate limits or shall provide other insurance protection for such aggregate limits. District may, at its option, specify a minimum acceptable aggregate for each line of coverage required. Consultant shall not make any substantial reductions in scope of coverage which may affect District's protection without District's prior written consent.
- 3.7 DELINEATION OF EXCLUSIONS ADDED BY ENDORSEMENT: All policies of insurance required under this Article shall delineate exclusions added by endorsement. The Parties acknowledge and agree that the purpose of this provision is to enable the Parties to easily identify material limitations in the scope of coverage afforded under each policy of insurance.
- 3.8 SEPARATION OF INSURED; NO SPECIAL LIMITATIONS: All varieties of insurance required under this Article shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to District and District's elected or appointed officials, officers, employees, agents or volunteers.
- 3.9 PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by Consultant 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 Consultant's insurance and shall not contribute with it.
- 3.10 WAIVER OF SUBROGATION: No policy of insurance or endorsement thereto that is procured by Consultant pursuant to this Article shall allow (either expressly or by the omission of any express prohibition) any insurance carrier to seek subrogation from District or District's elected or appointed officials, officers, employees, agents or volunteers for any sums paid by the insurance carrier on behalf of Consultant or

Consultant's subcontractors or subconsultants or on behalf of District or District's elected or appointed officials, officers, employees, agents or volunteers. All policies of insurance required under this Article shall contain provisions waiving or shall be endorsed to waive any subrogation rights or other like rights of recovery by the insurance carrier against District or District's elected or appointed officials, officers, employees, agents and volunteers for any sums paid on behalf Consultant or Consultant's contractors, subcontractors or subconsultants or on behalf of District or District's elected or appointed officials, officers, employees, agents or volunteers by the insurance carrier. The District Representatives may waive this requirement as to CGL Coverage but only upon Consultant's delivery to District of endorsements demonstrating that District and District's elected or appointed officials, officers, employees, agents and volunteers have been named as additional insureds under the CGL Coverage.

- 3.11 VERIFICATION OF COVERAGE: Consultant 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 areas surrounding Lennox School District. Accordingly, Consultant 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 Consultant's commencement of any work or any of the Work. Consultant shall also provide District with certified copies of all required insurance policies as a condition precedent to the commencement of any work or any of the Work. District shall not, and shall be under no obligation to, issue a Notice to Proceed until Consultant fully complies with this Section. The requirements of this Section cannot be waived and any attempted waiver shall be void, invalid and non-binding upon District.
- 3.12 NOTICE OF TERMINATION: All policies of insurance required by this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except upon thirty (30) calendar days' prior written notice to District. Consultant agrees to require all its insurers to modify the certificates of insurance to delete any exculpatory wording stating that the failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 3.13 FAILURE TO ADHERE TO INSURANCE PROVISIONS: In addition to any other remedies District may have under this Agreement or at law or in equity, if Consultant fails to comply with any of the requirements set forth in this Article, District may, but shall not be obligated to: (a) Order Consultant to stop any and all work under this Agreement or withhold any payment, which becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; or (b) terminate this Agreement. District's exercise of any

of the foregoing remedies, shall be in addition to any other remedies District may have and is not the exclusive remedy for Consultant's to failure to comply with the insurance requirements set forth under this Article.

- 3.14 SUBCONTRACTORS' INSURANCE COVERAGE: Consultant shall include all persons and entities performing work on its behalf as insureds (including all contractors, subcontractors and subconsultants) or, in the alternative, shall furnish separate certificates of insurance and endorsements for each such persons or entities evidencing their independent procurement of insurance. All coverages for such persons or entities shall be identical to the requirements imposed upon Consultant under this Article.
- 3.15 NO LIMITATION ON LIABILITY: Consultant's procurement of insurance shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's indemnification duties set forth under Article V of this Agreement.

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. CONSULTANT acknowledges that District would not enter into this Agreement in the absence of CONSULTANT's commitment to indemnify, defend and protect District as set forth herein.
- 4.2 To the fullest extent permitted by law, CONSULTANT shall indemnify, hold harmless and defend the District Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys' fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONSULTANT'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 District.
- 4.3 District shall have the right to offset against the amount of any compensation due CONSULTANT under this Agreement any amount due District from CONSULTANT as a result of CONSULTANT's failure to pay District promptly any indemnification arising under this Article and related to CONSULTANT'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 CONSULTANT under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONSULTANT 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 CONSULTANT 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 CONSULTANT in the performance of this Agreement. In the event CONSULTANT fails to obtain such indemnity obligations from others as required herein, CONSULTANT 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 CONSULTANT's subcontractors or any other person or entity involved by, for, with or on behalf of CONSULTANT 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 CONSULTANT 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 CONSULTANT agrees that this Agreement shall in no way act to abrogate or waive any immunities available to District under the Tort Claims Act of the State of California.
- 4.8 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, by written notice to Consultant, terminate this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least **FIVE (5)** calendar days before the effective date of such termination. Upon termination, Consultant shall be compensated only for the Work which has been adequately rendered to District, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for breach of this Agreement. If this Agreement is terminated as provided herein, District may require Consultant to provide all finished or unfinished Documents and Data, as defined in Section 6.1 below, and other information of any kind prepared by Consultant in connection with the performance of the Work. Consultant shall be required to provide such documents and other information within **fifteen (15) calendar days** of the request. In the event this Agreement is terminated in

whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, Work similar to those terminated.

- 5.2 DEFAULT, BREACH AND TERMINATION IN THE EVENT OF BREACH: In the event either Party fails to perform, or adhere to, any applicable duty, obligation or standard of conduct set forth under this Agreement (or fails to perform or adhere to any such duty, obligation or standard of conduct at the time, place or manner set forth in this Agreement), an event of default (hereinafter, "Event of Default") shall have occurred. Except as otherwise provided in this Agreement, if an Event of Default remains uncured by the defaulting Party for a period in excess of fourteen (14) calendar days from the date upon which the non-defaulting Party issues notice of default (hereinafter, a "Default Notice") to the defaulting Party, then the default shall constitute a breach of this Agreement. If a Party is in breach of this Agreement, the non-breaching Party may pursue any and all remedies available to it at law or in equity. If Consultant is in breach (whether or not such breach is caused by Consultant or Consultant's officials, officers, employees, agents, contractors, subcontractors or subconsultants, District may, in its sole and absolute discretion (and without obligation), terminate this Agreement upon the issuance of five (5) calendar days' prior written notice of termination on the grounds of breach (a "Breach-Termination Notice"). District's ability to terminate this Agreement as provided in this Section shall be in addition to any other remedies District may have at law or in equity in the event of breach and shall not be in lieu of such other remedies.
- 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: This Agreement creates, at no cost or expense to District, a perpetual license for District to copy, use, reuse, retain, obtain, modify, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, reports, written strategies, written analyses, specifications, studies, drawings, estimates, and other like documents or works of authorship fixed in any tangible medium of expression, including but not limited to documents, drawings, or specifications recorded electronically or magnetically, whether prepared by or on behalf of Consultant in the performance of the Work or this Agreement; for purposes of this Agreement such material shall hereinafter be referred to

collectively as "Documents and Data." Consultant shall require all contractors, subcontractors and subconsultants to agree in writing that District is granted a non-exclusive and perpetual license for any Documents and Data Consultant, subcontractor or subconsultant prepares under this Agreement. Consultant warrants and represents that Consultant has the legal right to license any and all Documents and Data. Consultant makes no such representation and warranty in regard to Documents and Data which were prepared by professionals other than Consultant or provided to Consultant by the District. District shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at District's sole risk.

6.2 **CONFIDENTIALITY:** All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input recorded data, written information, and other like information either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidentially by Consultant. Such materials shall not, without the prior written consent of District, be used by Consultant for any purposes other than the performance of the Work. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Work. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant 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 **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:

CONSULTANT:
Monrose Catering
Attn: Donna Aversa
31117 Via Colinas Suite 403
Westlake Village, CA 91362
Phone: (818) 707-7307
Fax: (818) 707-7688

DISTRICT:
Lennox School District
Attn: Kent Taylor
10319 Firmona Ave
Lennox, CA 90304
Phone: (310) 695-4000
Fax: (310) 671-0617

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 prepaid and addressed to the Party at its applicable address.

- 6.4 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.
- 6.5 SUBCONTRACTING: Consultant 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.
- 6.6 DISTRICT'S RIGHT TO EMPLOY OTHER CONSULTANTS: District reserves the right to employ other consultants in connection with the various projects worked upon by Consultant.
- 6.7 PROHIBITED INTERESTS: Consultant warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant 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 Consultant, 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.
- 6.8 TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.
- 6.9 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 Los Angeles 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 Central District of California located in the City of Los Angeles, California.
- 6.10 ATTORNEYS' 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 attorneys' fees and all other costs of such action.
- 6.11 SUCCESSORS AND ASSIGNS: This Agreement shall be binding on the successors and assigns of the Parties.

- 6.12 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.
- 6.13 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.
- 6.14 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.
- 6.15 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.
- 6.16 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.
- 6.17 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.
- 6.18 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 Consultant 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.
- 6.19 COUNTERPARTS: This Agreement shall be executed in three (3) original counterparts each of which shall be of equal force and effect. One counterpart shall be delivered to Consultant, one counterpart shall be delivered to the Assistant to the Chief Business Official and one counterpart shall be delivered to the District. 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.

[SIGNATURES ON FOLLOWING PAGE]

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

DISTRICT:

LENNOX SCHOOL DISTRICT

CONSULTANT:

MONROSE CATERING

By: _____

**KENT TAYLOR
SUPERINTENDENT**

Date: _____

By: Donna Aversa _____

**DONNA AVERNA
MONROSE CATERING**

Date: July 1 2016 _____

APPROVED AS TO FORM:

By: _____

**Rick R. Olivarez
Counsel for Lennox School District**

By: _____

EXHIBIT "A"
SCOPE OF WORK

Consultant's duties under this Agreement shall include, but not be limited to the following:

Please see Monroe Catering Too contract document.