SAN LEANDRO UNIFIED SCHOOL DISTRICT

MASTER CONTRACT
TITLE I – SUPPLEMENTAL EDUCATIONAL SERVICES PROVIDERS

THIS MASTER CONTRACT ("Contract") is made and entered into on November 16, 2011, between the **San Leandro Unified School District** (hereinafter referred to as "LEA" [local educational agency] or "District"), a public school district duly operating under the laws of the State of California, **and XCEL Global Services DBA XCEL Educational Services** the supplementary service provider (hereinafter referred to as "PROVIDER") for the purpose of providing supplementary services to eligible LEA students. "Eligible students" are those identified by the District who meet specific requirements under Title I.

WHEREAS, the LEA is authorized by Education Code section 35160 and California Government Code section 53060 to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if such persons are specially trained and experienced and competent to perform the special services required;

WHEREAS, the LEA is in need of such special services and advice;

WHEREAS, PROVIDER is specially trained and experienced and competent to perform the special services required by the LEA, and such services are needed on a limited basis;

WHEREAS, the No Child Left Behind Act, 20 U.S.C. Section 6316 (e)(3)(A) outlines the requirements for supplemental educational services;

WHEREAS, Section 6316(e)(3) contains the following requirements:

a. Requires the LEA to develop, in consultation with a school representative, parents (and the provider chosen by parents), a statement of specific measurable achievement goals which are based upon the student's area of need as identified from the California standards assessments;

b. Requires a description of how and when the PROVIDER will regularly inform, in accordance with the ISSA (Individual Supplemental Services Agreement), the student's parent, liaison and LEA of the student's progress toward achievement of the agreed upon measurable goals;

c. Requires a provision for the termination of the Agreement if the PROVIDER is unable to meet the goals and timetables required;

d. Requires provisions with respect to the making payment to the PROVIDER by the LEA;

e. Prohibits the PROVIDER from disclosing to the public the identity of any student eligible for, or receiving supplemental services without the written permission of the parent of such student;

WHEREAS, PROVIDER has been approved by the California State Department of Education and has met the qualifications to be certified as a supplementary service provider; and

WHEREAS, PROVIDER is willing to provide such services to LEA's eligible students if selected by the parents/guardians of eligible students.

THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, it is agreed between the parties as follows:

1. Individual Supplementary Services Agreements

An Individual Supplementary Services Agreement (ISSA) shall be developed by LEA in consultation with parents/guardians and PROVIDER for each LEA eligible student whose parents/guardians elects to receive supplementary services from PROVIDER. Changes in any student's ISSA may only be made with the written consent of LEA in consultation with parents/guardians. PROVIDER, LEA or the parents/guardians may request a review of a student's ISSA. In conjunction with the liaison, the PROVIDER shall insure that all student ISSAs are completed within forty-five (45) days of receipt of student information or by exception based on a mutual written agreement between the LEA and PROVIDER.

PROVIDER shall not unilaterally terminate any ISSA. PROVIDER shall obtain written authorization from LEA before terminating any ISSA.

Parents/guardians shall not be charged for any services rendered under the ISSA unless parents/guardians decide to contract for services beyond those paid for by the LEA. In such event, such services and charges shall be clearly identified in writing and agreed upon in advance in a writing signed by the parents/guardians. In no event shall the agreed upon charges between the parents/guardians and PROVIDER obligate the LEA financially, nor shall the LEA incur any obligation or expense in excess of the State/Federal reimbursement amount., which has been determined to be **$847.62 per student for the 2011-12 school year**. Adjustments to this amount may be made pending final notification from the State. PROVIDERS shall receive fees only for sessions in which the student attends.

Under no circumstances shall parents/guardians and/or students be given an incentive for enrolling in a specific Supplemental Educational Services Program.

2. Parents/Guardianship

For the purpose of the Contract, a parent is the natural or adoptive parent, legal guardian, or a surrogate parent appointed by LEA.

3. Student Records

A student record is defined by State and Federal Law, and includes documents prepared or retained by PROVIDER with an individual student's name referenced therein. All student records shall be kept in a secure location preventing access by unauthorized individuals. PROVIDER will

maintain an access log delineating date, time, agency, and identity of any individual accessing student records who is not in the direct employ of the PROVIDER. PROVIDER shall not provide access or forward to any other person other than parents/legal guardians or LEA to any student record including student email address without the written consent of the parent/guardian or LEA. PROVIDER agrees to provide access to and copies of student records including assessments, progress reports, samples of student work and end of year student report reflecting percentage of objectives met by the student to LEA and/or the parents/guardians of LEA's student. PROVIDER will also provide LEA with an end of year summary indicating the total number of students that met 95% of their objectives during the period of the contract. No later than thirty (30) days after termination of services PROVIDER shall turn over to LEA all required documents for all LEA students in their program.

4. Access by LEA

PROVIDER shall notify LEA of the location and/or any change in location at which it is providing services to LEA's eligible students. It shall allow access to its facilities for periodic monitoring of each student's instructional program by LEA and shall be invited to participate in the review of each student's progress by LEA. LEA representatives shall have ongoing access to observe each student at work, observe the instructional setting, interview PROVIDER, and review each student's progress including the behavior intervention plan, if any.

5. Fingerprints/TB Clearance

In accordance with California Education Code § 45125.1, PROVIDER shall conduct a criminal background check of its employees and/or subcontractors and, upon receipt of those checks, certify to the LEA that no employee and/or subcontractors of PROVIDER working with students of the school district has been convicted of a violent or serious felony as defined by statutes. PROVIDER shall supply LEA with a list of names of those employees and/or subcontractors who are cleared to work with students of the LEA. A fingerprint certification will be required. Additionally all providers will be required to submit a TB clearance for those employed and/or subcontractors who will be working with students.

6. Independent Contractor Status

This Agreement is by and between two independent agents and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association. PROVIDER understands and agrees that it shall be responsible for providing its own salaries, payroll taxes, withholding, insurance, workers compensation coverage and all other benefits of any kind, as required by law for its own employees, and assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the services to be provided under this Agreement.

It is the responsibility of the PROVIDER to insure that all of its employees are informed of all provisions as outlined in this contract prior to working with families/students.

7. Conflict of Interest:

This Agreement is subject to LEA Board Policy governing conflicts of interest. PROVIDER agrees to furnish to LEA (upon request) a valid copy of the most recently adopted partnership

agreements or bylaws of the corporation and also a complete and accurate list of its Governing Board of Directors (or Trustees or Partners) and to timely update said information as changes in such governance occur. PROVIDER shall avoid any actual or potential conflict of interest on behalf of itself or its employees providing services hereunder, including, but not limited, to employment with LEA, including its charter schools.

8. Accident/Incident Report

PROVIDER agrees to submit a written accident report to LEA within five (5) calendar days of an accident or incident when a pupil has suffered an injury, injured another individual, or has been involved in an activity requiring notification of law enforcement or emergency personnel.

9. Discrimination

PROVIDER shall not discriminate on the basis of race, color, religion, sex, national origin, age, ancestry, ethnicity, gender, sexual orientation, sexual preference or physical or mental disability in employment or operation of its programs.

10. Child Abuse Reporting

PROVIDER assures LEA that all staff members, including volunteers, are familiar with and agree to adhere to child abuse and/or missing children reporting obligations and procedures under California law, including, but not limited to, California Education Code section 49370 and California Penal Code section 11166 *et seq*. PROVIDER agrees to provide annual training to all its employees regarding mandated reporting of child abuse and missing children. PROVIDER agrees that all staff members will abide by such laws in a timely manner. PROVIDER shall submit immediately by facsimile and mail, within twenty-four (24) hours, an accident or incident report to LEA when it becomes aware of circumstances including, but not limited to: allegations of molestation, child abuse, missing children involving LEA students under PROVIDER's supervision.

11. Supplies, Equipment and Facilities

PROVIDER shall be solely responsible for the provision of all appropriate supplies, equipment, and facilities for a pupil as required in his/her ISSA. A PROVIDER who desires to use District facilities must make a separate application for use of facilities through the District's Use of Facilities procedures. The location of the tutoring sessions shall be mutually agreed upon between the LEA, PROVIDER, and the PARENT/LEGAL GUARDIAN.

12. Inspection and Audit

PROVIDER shall provide access to records or reports, or other matter relating to the Contract, upon request by LEA. Fiscal records shall be maintained by PROVIDER for five (5) years and shall be available for audit. Records that no longer need to be retained must be shredded/destroyed in a manner that maintains confidentiality.

13. Indemnification

PROVIDER shall defend, hold harmless, and indemnify LEA and its Governing Board, officers,

agents, and employees from and against all liabilities and claims for damage for death, sickness, or injury to any person(s) or damage to any property, including, without limitation, all consequential damages and expenses (including attorney fees), from any cause whatsoever arising from or connected with its service hereunder, resulting from the negligent or intentional acts of PROVIDER, its agents or employees. It is understood and agreed that such indemnity shall survive the termination of this agreement.

LEA shall defend, hold harmless and indemnify PROVIDER and its Governing Board, offices, agents, and employees from all liabilities and claims for damage for death, sickness, or injury to any person(s) or damage to any property, including all consequential damages and expenses (including attorney fees) from any cause resulting from the negligent or intentional acts of LEA, its agents or employees. It is understood and agreed that such indemnity shall survive the termination of this Agreement. The LEA shall not be liable for acts of the students or the student's parent/guardian, family member, etc.

14. Insurance

During the entire term of this Agreement and any extension or modification thereof, PROVIDER shall keep in effect a policy or policies of liability insurance, including coverage of owned and non-owned vehicles used in relation to the performance of service(s) by PROVIDER, of at least one million dollars ($1,000,000.00) for each person and one million dollars ($1,000,000.00) for all accidents or occurrences for all damages arising out of death, bodily injury, sickness or disease from any one accident or occurrence, and one million dollars ($1,000,000.00) for all damages and liability arising out of injury to or destruction of property for each accident or occurrence. Not later than the effective date of this Agreement, PROVIDER shall provide LEA with satisfactory evidence of insurance, naming LEA as additional certificate holder, including a provision for a twenty (20) calendar day written notice to LEA before cancellation or material change, evidencing the above-specific coverage. The PROVIDER shall at its own cost and expense procure and maintain insurance under the Workers' Compensation Law of California, if applicable. LEA reserves the right to revise the requirements of this provision at any time. If LEA determines that additional insurance coverage is necessary, LEA will reopen negotiations with PROVIDER to modify the terms of this Agreement.

15. Monthly Invoices

PROVIDER shall submit to LEA monthly invoices itemized by name/address of student, service provided and actual number of hours for which services were provided, including attendance verification logs signed by parent and/or guardian or computer log-in records. Such invoices with amount due shall be submitted within thirty (30) days of the rendering of services. LEA shall process payments to PROVIDER within forty-five (45) days of submission of such invoices, except in those situations identified in Paragraph 17, below.

PROVIDER'S rate shall not exceed $847.62 at a rate of $50.00 per hour/per student for individualized instruction (one-to-one/small group) as mutually agreed upon by all parties and at a location mutually agreed upon by all parties.

16. Records of Attendance

PROVIDER shall maintain daily records of student service provided, including the name/address

of student, the name of PROVIDER'S employee who rendered the service, and the amount of time of such service. PROVIDER shall permit access to and/or a copy of such records to LEA upon request. Parent shall receive a copy of the monthly attendance log.

17. Right to Withhold

LEA may withhold payment to PROVIDER, on ten (10) working days written notice of such withholding, when in the opinion of the LEA:

a. PROVIDER'S performance, in whole or in part, either has not been carried out or is insufficiently documented.

b. PROVIDER has neglected, failed, or refused to furnish information or to cooperate with the inspection, review, or audit of its program, work, or records.

c. PROVIDER has failed to submit the invoice in a timely manner.

If LEA gives notice of intent to withhold, PROVIDER shall have fourteen (14) days from the date of receipt of said notice to correct such deficiency and/or may invoke the dispute resolution provision herein.

18. Modifications and Amendments:

This Contract may be modified or amended only by a written document signed by authorized representatives of PROVIDER and LEA. No change in this Contract or in the ISSA shall result in a LEA financial obligation to PROVIDER in excess of the State/Federal reimbursement rate per student per year to the LEA.

19. Disputes

Disputes between LEA and PROVIDER concerning the meaning, requirements or performance of this contract shall be submitted to the Assistant Superintendent of Educational Services of the **San Leandro Unified School District**. The determination of the LEA Assistant Superintendent of Educational Services shall be made in writing and shall be binding on both parties.

20. Subcontract and Assignment

PROVIDER shall not subcontract or assign any of the work contemplated under this Contract without first obtaining written approval from the LEA. Such approval shall be attached and made part of this Contract. Subcontracts or assignments may be entered into only with providers certified by the California Department of Education.

Any sub-contractor or assignee shall be bound by all of the terms of this Contract, including the insurance and indemnification provisions, and it shall be PROVIDER'S responsibility to obtain the agreement of subcontractor/assignee to comply with all terms contained herein.

21. Termination

a. This Agreement may be terminated by LEA or PROVIDER at any time. PROVIDER'S exercise of its right to terminate this Contract shall not alleviate its responsibilities to complete any existing ISSA's.

b. To terminate this Contract, either party shall give twenty (20) calendar days written notice as provided herein prior to the date of the termination. Upon termination without default of PROVIDER, LEA shall pay, without duplication, for all services satisfactorily performed to date of termination.
c. In consideration of this payment, PROVIDER waives all rights to any further payment or damage. Upon termination, PROVIDER shall turn over to LEA all student records in its possession generated as a result of services rendered under this Contract, possessed by PROVIDER or under its control at the time of termination.
d. An Individual Supplementary Services Agreement may be terminated by PROVIDER only upon consent of the LEA.
e. An ISSA shall terminate if the student ceases to be enrolled in the District. Upon termination under this paragraph, final payment from LEA will be calculated based upon a pro-rata calculation of total services agreed-upon in the ISSA for which the LEA is responsible for payment, divided by that portion of services actually rendered.

22. Compliance with Laws

During the term of this Agreement, PROVIDER shall comply with all applicable Federal, State Board of Education, and local statutes, laws ordinances, rules and regulations relating to the provision of supplementary services, including securing and maintaining in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement, including, but not limited to, certification by the California Department of Education.

23. Entire Agreement

This Agreement constitutes the entire agreement between LEA and PROVIDER and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated.

24. Governing Law

The terms and conditions of this Agreement shall be governed by the laws of the State of California with venue in **Alameda County**, California.

25. Severability Clause

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement shall be severable and remain in effect, to the extent that the intent of the parties can be fulfilled.

26. **Notices/Authorized Representatives**

Notices required under this Contract shall be valid when mailed first class postage or personally delivered to the following representatives, as indicated below:

For the LEA: Debbie L. Wong
San Leandro Unified School District
14735 Juniper Street
San Leandro, CA 94579

For PROVIDER: **XCEL Global Services DBA XCEL Educational Services**
39270 Paseo Padre Parkway #429
Fremont, CA 94538

The persons signing this Contract certify they are the authorized representatives of the respective parties, and are authorized to sign this document.

The parties hereto have executed this Agreement by and through their duly authorized agents or representatives. This contract is effective November 16, 2011 and terminates at 5:00 p.m. on June 8, 2012**,** unless sooner terminated as provided herein, or until the sum of $847.62 per student has been expended.

PROVIDER: **XCEL Global Services**
DBA XCEL Educational Services

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By: Chris Norwood
Title: CEO

LEA: San Leandro Unified School District

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By: Debbie L. Wong
Title: Assistant Superintendent
Educational Services