

AGREEMENT

This Agreement between Effective School Solutions, LLC which has offices located at 121 Chanlon Road, Suite 310, New Providence, NJ 07974 (hereinafter referred to as “ESS”), and the San Mateo Union High School District, which has offices located at 650 N. Delaware Street, San Mateo, CA 94401 (hereinafter referred to as the “District”) (sometimes hereinafter referred to, collectively, as the “Parties”) is entered into as of the Effective Date (defined herein).

WHEREAS, ESS provides therapeutic mental health services through licensed professionals to students in public school districts; and

WHEREAS, the District is desirous of procuring such services from ESS for students enrolled at Capuchino High School and Mills High School (hereinafter each referred to as a “School” and collectively the “Schools”) in the San Mateo Union High School District; and

WHEREAS, ESS and the District, subject to approval by the District’s Governing Board, are desirous of entering into an agreement for the provision of therapeutic mental health services for the full 2020-2021 school year (“Full School Year”), defined as the period of August 1st 2020 through May 31st 2021. This Agreement will automatically renew for two (2) successive Full School Year periods, defined as each subsequent August through May school year, unless notice of non-renewal is received in writing by ESS before May 31st, the end of the contract term; all subsequent renewals will be subject to the terms agreed upon in this Agreement, unless otherwise specified in an addendum at the time of renewal; and

WHEREAS, the District has the requisite legal authority to enter into an agreement to procure therapeutic mental health services from ESS.

NOW THEREFORE, based on the foregoing recitals, and in consideration of the mutual promises and covenants of the Parties set forth below, the Parties agree as follows:

1. ESS shall provide the therapeutic mental health services of three (3) full time California-licensed mental health professionals for the Full School Year. Two mental health professionals shall be assigned to Capuchino High School and one to Mills High School. These professionals will hold a license in good standing from the California Board of Behavioral Sciences. The mental health professionals shall work under the direction and supervision of ESS, and in conjunction with staff designated by the Schools. The licensed mental health professionals shall satisfactorily complete a criminal history record check before providing services to the District, as further detailed in Section 14 of this Agreement. These mental health professionals

shall be present at all times during the term of this Agreement when School is in session during the school year. ESS shall provide therapeutic mental health services for a maximum of ten (10) students per licensed mental health professional (hereinafter referred to as “Cohort”) enrolled in the School at any given time during the Full School Year. The students in the Cohort need not necessarily be the same students for the entire period at the School. It is understood that ESS will be reasonably available prior to the start of each period above for consultation for preparation of the launching of ESS services and to provide parent informational sessions to help assist in the transition of students returning to the District and entering ESS programming. Furthermore, in the weeks preceding the beginning of each of the periods above, ESS will provide all necessary clinical evaluations of students to ensure that they are appropriate for ESS programming.

2. Unless otherwise determined by ESS based on an assessment of the needs of a particular student or students, the therapeutic mental health services shall include and be scheduled, as follows:

- a) one (1) individual psychotherapy session each week for each student and family therapy typically offered on a twice-monthly basis.
- b) one (1) daily group therapy session, in which the number of students assigned to a specific group shall not be greater than eleven (11) on a consistent basis; and
- c) one (1) multi-family group therapy session each month.

If elected by the District, ESS will provide its summer program (“summer program”) for up to ten (10) students per mental health professional enrolled at the School as noted below to the fee set forth in Section 10. The summer program is a five-week program scheduled during the months of June and July and includes twice-weekly group therapy sessions of ninety (90) minutes each and individual or family therapy sessions every other week. The students in the Summer Program need not necessarily be the same students for the entire period.

3. In the event one of the licensed mental health professionals is absent, if so requested by the District, ESS shall exert its best efforts to assign a qualified substitute to provide the services. If a substitute cannot be obtained, ESS shall provide the District with a credit of three-hundred (\$300) dollars for each day of service missed by the mental health professional, once that professional has reached four absences during the course of the school year. If the District is not satisfied with the services provided by one or more of the licensed mental health professionals

assigned by ESS, the Board may request a change in the professional assigned, in which case ESS shall provide a qualified substitute within 28 days and will use commercially reasonable efforts to effectuate a permanent replacement as quickly as possible but in no event later than sixty (60) days from the date ESS receives the change request in writing; provided that ESS will provide a credit of three hundred dollars (\$300) for each service day for which the District is without the services of a qualified replacement above and beyond the threshold of four absences listed above. If the requested change in assigned professional is misconduct-related, ESS will remove the assigned professional immediately and provide a qualified substitute within 10 days. For the avoidance of doubt, the District does not have the authority to discipline or terminate the employment of any ESS personnel, provided that the District reserves all rights to take appropriate steps to ensure the health and safety of its students and the security of its property. Rather, the District will promptly report any concerns regarding the performance or conduct of an ESS employee to the Executive Director of ESS.

4. In addition to the services listed in section two (“2”) of this Agreement, ESS shall:
 - a) direct its mental health professionals to regularly participate in a School teacher-led study skills class that is solely comprised of students in the Cohort;
 - b) have one (1) mental health professional monitor one (1) daily lunch period at each School that is solely comprised of students in the Cohort;
 - c) ensure that a mental health professional attends IEP meetings and Section 504 committee meetings, as needed, for students either in a Cohort or being considered for enrollment in a cohort, and to coordinate with District to avoid conflicts with the other scheduled services outlined in this Agreement; and
 - d) provide up to six (6) professional development workshops of up to 3 hours each and serving up to 25 district staff members in each session during normal school hours on regularly scheduled school days or staff development days.
 - e) ESS will also provide abbreviated, as-needed counseling services (with specific terms to be mutually agreed upon by the District and ESS) for up to

to (3) additional students at each of Mills High School and Capuchino High School.

- f) ESS will support the District in reviewing the waitlist for students entering the District's various therapeutic programs and in evaluating participation of students relative to program entrance and exit criteria.

5. ESS shall provide all the clinical and administrative services outlined in this Agreement during normal School hours on regularly scheduled School days, except that multi-family therapy sessions and some individual family therapy sessions may be scheduled at the School during evening hours at the discretion of ESS. If the student is absent on the date the individual or family therapy session is scheduled, or the School is not in session on the scheduled day for the services, ESS shall make its best efforts to reschedule such services but the missed sessions may not necessarily be rescheduled and will not be considered an absence pursuant to Section 3.

6. The District shall provide ESS with:

- a) a confidential office for the mental health professionals to provide individual therapy sessions at the Schools;
- b) a classroom or similar space to conduct group therapy sessions, multifamily therapy groups and study skills classes;
- c) filing cabinet(s) with locking mechanisms to secure confidential records; and
- d) use of telephones and laptops with Internet capabilities for each assigned mental health professional at no cost to ESS. The laptop will have a current, supported operating system and regularly updated anti-virus software and other security protocols in accordance with the district's security policies.
- e) access to student education records including grades, attendance rates and disciplinary incidents for each student in the Cohort provided services by ESS, in a manner prescribed by the District, subject to state and federal requirements for confidentiality of student education records and personally identifiable information. To the extent that confidential student education records or other confidential student information comes into the possession

of ESS, ESS shall not further disclose that information without appropriate parental consent unless required by applicable law.

7. ESS shall be designated as a “school official” by the District for the purpose of providing services to students pursuant to the terms of this Agreement. All records of the services provided by ESS to students of the District shall be considered Education Records, as defined by FERPA, and shall be maintained by ESS in accordance with applicable law on behalf of the District. ESS shall make all records of services provided to such students in the Cohort available to the District upon request or as required in order to deliver services to the student at issue, including but not limited to, in the event of a due process hearing under state or federal law. ESS shall provide parents/students with an acknowledgement for their signature, which confirms that any information received by ESS from the student may become part of the student’s Education Record retained by the District. Once a student is no longer receiving services, ESS shall deliver all original records pertaining to that student to the District for future reference electronically or in printed form, and any copies retained by ESS shall continue to be treated as Education Records pursuant to FERPA.

8. All computers furnished by the District in accordance with the terms of this Agreement shall be password protected with access limited to ESS. The District shall ensure that the computers are equipped with security protections to restrict unauthorized access to the confidential information contained on any such computer.

9. Subject to the numerical limits on the Cohort set forth at § 1, the School will make referrals to Effective Solutions for the services outlined in this Agreement, including as to students to be included in the Cohort, which may be based on decisions made in connection with Individualized Education Program team meetings. ESS and the District will work collaboratively and in good faith to determine whether the clinical diagnosis of the student makes them suitable for participation in the Cohort. ESS may not remove a student from the Cohort absent advance written consent from the District, which consent will not be unreasonably withheld, conditioned or delayed.

10. Subject to ESS’s provision of the services described herein and absent termination under section 13 herein, for the 2020-2021 school year (Full School Year), the District shall pay ESS five hundred and twenty thousand dollars (\$520,000) for the services provided as set forth in this Agreement. Payment shall be made in ten (10) equal and consecutive monthly installments

of fifty-two thousand dollars (\$52,000), and is conditioned on delivery of the services provided as set forth in this Agreement. The first payment shall be due on August 1, 2020 and subsequent monthly payments shall be due on the first day of every month thereafter. In addition to the above amounts, the summer program will be billed separately on July 1 of every year according to the following rates:

- a) for a summer program of one mental health professional, the District will be billed \$4,000
- b) for every subsequent mental health professional providing services for a summer program, the District will be billed an additional \$4,000

Beginning in the spring of 2021, if the district chooses to renew the full school year program by April 15th each year, the summer program will be offered at no charge for each summer preceding the school year for which renewal is confirmed.

11. The parties each acknowledge and agree that ESS does not bill directly to Medicaid or to any other state-funded programs (including MediCal). The District will hold harmless, indemnify and defend ESS and its directors, employees, agents, successors and permitted assigns from any and all losses, damages, liabilities, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, incurred by ESS, relating to or resulting from any claim arising out of or occurring in connection with any actual or alleged overpayments or billings errors or improprieties concerning Medicaid or any other state or publicly funded programs, or any other actual or alleged violation by the District, its employees, representatives, agents, or assigns, of any applicable federal, state, or local statute, regulation, ordinance, or order.

12. Unless otherwise required by law, the Parties shall not release the terms and conditions of this Agreement, including but not limited to the financial terms of this Agreement and Section 16 of this Agreement, to any third party, except as required by applicable law (such as by a Public Records Act request under California law), regulation, or in legal proceedings or other similar process. If a Party is required to disclose the Agreement in a legal proceeding, the Party shall, unless prohibited by law, provide the other Party with reasonable notice of such requirement prior to disclosure of the Agreement.

13. This Agreement may be terminated by either Party upon written notice for Cause. With respect to the termination of the Agreement by the District, the term "Cause" means the

following: ESS's substantial failure to cooperate with the District that is absent negligence or misconduct of the District; gross negligence or intentional misconduct of an ESS employee; or the material breach by ESS of any material provision of this Agreement as reasonably determined by the District and failure to cure same within fifteen (15) business days after receipt of written notice of such breach. With respect to the termination of the Agreement by ESS, the term "Cause" means the following: The District's substantial failure to cooperate with ESS that is absent negligence or misconduct of ESS; gross negligence or intentional misconduct of a District employee; or the material breach by the District of any material provision of this Agreement as reasonably determined by ESS and failure to cure same within fifteen (15) business days after receipt of written notice of such breach. The parties hereby agree that the District's failure to pay any undisputed amounts due under this Agreement for two (2) consecutive months shall constitute a material breach of this Agreement, which requires no further notice or opportunity to cure.

14. ESS agrees to comply with California Education Code Section 45125.1, requiring all individuals providing services to public school students to be fingerprinted by the California Department of Justice for a criminal records check. No such individual may be permitted to come in contact with students until the records check is complete. No individual with a record of conviction for a serious or violent felony may be assigned to perform services that will place them in contact with students, with the exception of an employee, agent or volunteer who has obtained a certificate of rehabilitation and pardon pursuant to California Penal Code Section 4852.01 et seq. for a serious or violent felony listed under EC 45122.1.

15. ESS shall maintain liability insurance coverage in the minimum amount of \$1,000,000.00 per occurrence throughout the term of this agreement. ESS shall furnish the District with a copy of the certificate of insurance that names the district as an additional insured party prior to the rendering of the therapeutic mental health services set forth in this Agreement.

16. The District acknowledges ESS' representation herein that as a result of training by, experience with, and a relationship with ESS, all ESS's employees providing services to the District pursuant to this Agreement have separate agreements with ESS concerning information that ESS contends are trade secrets, confidential information, and proprietary information.

17. All intellectual property rights, including copyrights, patents, patent disclosures, and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how, and other confidential information, trade dress, trade names, logos, corporate names, and domain

names, together with all of the goodwill associated therewith, derivative works, and all other rights (collectively, "Intellectual Property Rights") that Effective School Solutions has in and to all documents, work product, and other materials that are delivered to the District under this Agreement or prepared by or on behalf of ESS in the course of performing its obligations under this Agreement (collectively, the "Deliverables") except for any confidential information or Intellectual Property Rights of the District or District materials, shall be owned by ESS. ESS hereby grants the District a license to use all Intellectual Property Rights in the Deliverables free of additional charge and on a non-exclusive, non-transferable, non-sublicenseable, fully paid-up, royalty-free, and perpetual basis to the extent necessary to enable the District to make reasonable use of the Deliverables.

18. This Agreement is subject to all applicable federal, state and local statutes, regulations and ordinances.

19. Failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement shall not be construed as a waiver of any right accruing under this Agreement; nor shall it affect any right that either party may have under the terms of this Agreement or preclude the party from seeking enforcement or claiming damages by instituting a lawsuit in a court of competent jurisdiction.

20. The provisions of this Agreement shall apply to, bind, and inure to the benefit of each of the parties hereto, and to their respective successors, assigns, and legal representatives.

21. Any and all notices and demands required or desired to be given under this Agreement shall be in writing and shall be deemed to have been given upon receipt by the other party, either by personal delivery, certified mail, or electronic mail with proof of transmittal, and addressed as provided herein. Such notices shall be addressed (and may be changed from time to time with notice as provided herein) as follows:

- a) if to the District, to: Holly Wade, Special Education Director, at 650 N Delaware St, San Mateo, CA 94401; email: hwade@smuhsd.org.
- b) if to ESS, to: Carol Petrosyan, Manager of Administration, at 121 Chanlon Road, New Providence, NJ 07974; email: cpetrosyan@effectiveschoolsolutions.com.

22. With the exception of indemnification liability, neither party shall be liable for special, incidental or consequential damages or lost profits (however arising, including negligence)

arising out of or in connection with this Agreement, even if such party has been advised of the possibility of such damages. With the exception of indemnification liability, in no event shall either party be liable to the other party in an amount greater than the amount paid or to be paid under this Agreement. This limitation of each party's liability is cumulative, with all payments for claims or damages in connection with this Agreement giving rise to the claim being aggregated to determine satisfaction of the limit. The existence of one or more claims will not enlarge the limit.

23. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original but all of which together will constitute one and the same instrument. Facsimile or pdf signatures will be deemed as effective as original signatures.


24. This Agreement is the sole agreement with respect to the subject matter hereof, and supersedes all proposals, negotiations, conversations, discussions, agreements and/or representations, whether oral or written, relating to the subject matter of this Agreement. This Agreement may not be changed or modified, in whole or in part, except by an instrument in writing signed by the Parties and approved by the District's Governing Board.

25. This Agreement shall be effective upon execution by the Parties and approval by the District's Governing Board (the "Effective Date").


[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the parties have hereunto set their hand and seals the day and year first above written.

EFFECTIVE SCHOOL SOLUTIONS, LLC

By: 
Title: CEO
Date: May 26, 2020

SAN MATEO UNION HIGH SCHOOL DISTRICT

By: 
Title: Superintendent
Date: May 21, 2020