

AGREEMENT FOR SERVICE BETWEEN  
THE SAN MATEO-FOSTER CITY SCHOOL DISTRICT AND  
EFFECTIVE SCHOOL SOLUTIONS, LLC

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2020 between Effective School Solutions, LLC which has offices located at 121 Chanlon Road, Suite 310, New Providence, NJ 07974 (hereinafter referred to as “Effective School Solutions”), and the San Mateo-Foster City School District, which has offices located at 1170 Chess Drive, Foster City, CA 94404 (hereinafter referred to as the “District”) (each, a “Party” and together, the “Parties”).

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

WHEREAS, the District wishes to procure such services from Effective School Solutions for its students; and

WHEREAS, Effective School Solutions and the District wish to enter into an agreement for the provision of therapeutic mental health services; and

WHEREAS, the District’s Board of Trustees has the requisite legal authority to enter into an agreement to procure therapeutic mental health services from Effective School Solutions.

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:

**SECTION I. SERVICES:**

1. Effective School Solutions shall provide the therapeutic mental health services of one (1) full time California-licensed mental health professionals for the 2020-2021 school year (“Full School Year”), defined as the period of September 2020 through June 15<sup>th</sup>, 2021, in accordance with the following terms and provisions:

- a) This professional will hold a license from the California Board of Behavioral Sciences.
- b) The mental health professionals shall work under the direction and supervision of Effective School Solutions, and in conjunction with staff designated by the District.
- c) The licensed mental health professionals shall satisfactorily complete a criminal history record check before providing services to the District, as further detailed in Section II, Clause 12 of this Agreement.

- d) The mental health professional shall be present, at the school site or remotely, as the case may be, at all times during the term of this Agreement when School is in session during the school year.
- e) Effective School Solutions shall provide therapeutic mental health services for a maximum of 15-20 students (hereinafter referred to as “cohort”) per licensed mental health professional 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 District.
- f) Effective School Solutions 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 Effective School Solutions based on an assessment of the needs of a particular student or students, the therapeutic mental health services shall include and be scheduled in accordance with the following terms:

- a) one (1) to two (2) individual psychotherapy session each week (as determined by ESS in consultation with the District) for each student.
- b) family therapy offered on a twice-monthly basis.
- c) in-class observational support for students provided up to 2 times per week.
- d) one (1) multifamily support group/psychoeducation session each month.
- e) Level of care evaluations for participating students when it is required in the context of school guidelines for assessing high risk behavior (e.g. suicidality, homicidality).
- f) As needed interventions for participating students during the school day.
- g) If elected by the Board of Education, Effective School Solutions will provide its summer program (“summer program”) for up to fifteen (15) students per mental health professional enrolled in the District as noted below to the fee set forth in Section II, Clause 6. The summer program is a

five-week program scheduled during the months of June and July and includes weekly individual therapy sessions and family therapy sessions every other week. The students in the Summer Program need not necessarily be the same students for the entire period. In the event of a school- or District-wide closure (“District Closure”), the implementation of required virtual learning, staggered schedules, and/or other modifications to District opening plans for reasons of public health and safety, Effective School Solutions may make reasonable modifications to the delivery of the above services, in consultation with the District.

3. In the event one of the licensed mental health professionals is absent, if so requested by the District, Effective School Solutions shall exert its best efforts to assign a qualified substitute to provide the services. If a substitute cannot be obtained, Effective School Solutions shall provide the District with a credit of three-hundred (\$300) dollars for each day of service missed by the mental health professionals after an aggregate total of five absences per number of contracted licensed mental health professionals 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 professional assigned by Effective School Solutions, the District may request a change in the professional assigned, in which case Effective School Solutions shall use commercially reasonable efforts to effectuate the change as quickly as possible but in no event later than sixty (60) days from the date Effective School Solutions receives the change request in writing. For the avoidance of doubt, the District does not have the authority to discipline or terminate the employment of any Effective School Solutions personnel. Rather, the District will promptly report any concerns regarding the performance or conduct of an Effective School Solutions employee to the Executive Director of Effective School Solutions.

4. In addition to the services listed in Section I, Clause 2 of this Agreement, Effective School Solutions shall:

- a) 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, provided that they do not conflict with the other scheduled services outlined in this Agreement; and

- b) Provide up to two (2) professional development workshops of up to three (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.

5. Effective School Solutions 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 in the District during evening hours at the discretion of Effective School Solutions. If the student is absent on the date the individual or family therapy session is scheduled, or school is not held on the scheduled day for the services, such services will not be rescheduled and will not be considered an absence pursuant to Section I, Clause 3 above.

## SECTION II: ADDITIONAL TERMS

1. **DISTRICT CLOSURE.** In the event of a District Closure, the implementation of required virtual learning, staggered schedules, and/or other health and safety-related modifications to District opening plans, Effective School Solutions may make reasonable modifications to the delivery of services under this Agreement in consultation with the District. Any such modifications shall be memorialized in a written document signed by both Parties. Additionally, in the event of a District Closure, the following terms shall apply:

- a) Days during which there is an extended District facility closure shall not constitute “regularly scheduled School days” pursuant to Section I, Clause 5, and missed sessions due to extended School facility closures will not be considered absences pursuant to Section I, Clause 3.

- b) During extended District facility closures, Effective School Solutions will deliver virtual or telephonic support consisting of a combination of virtual or telephonic individual therapy sessions, virtual or telephonic family therapy sessions and virtual or telephonic group therapy, consistent with Section I, Clauses 2 and 4 of this Agreement. Effective School Solutions staff members will continue to work full-time.

2. **DISTRICT OBLIGATIONS.** The District shall provide Effective School Solutions with:

- a) a private and confidential office for the mental health professionals to provide individual therapy sessions at each School at which therapy will take place;
- b) a classroom or similar space to conduct multifamily therapy groups and study skills classes;
- c) filing cabinet(s) with locking mechanisms to secure confidentiality of records;
- d) use of District telephones; and
- e) access to student education records including grades, attendance rates and disciplinary incidents for each student in the cohort provided services by Effective School Solutions, in a manner prescribed by the District, subject to state and federal requirements for confidentiality of student education records and personally identifiable information. Effective School Solutions shall not release or share any information from student education records it obtains with any other party without parental consent, unless ordered to do so by court order or judicial subpoena. With the exception of student education records and/or data used by either Party pursuant to the Agreement or this Service Agreement, Effective School Solutions shall de-identify any student education records and/or data obtained pursuant to this Services Agreement before using any such records and/or data for any reports, analyses, or the like.

3. **STUDENT RECORDS.** Effective School Solutions 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 Effective School Solutions to students of the District shall be considered Education Records, as defined by FERPA and the Education Code, and shall be maintained by Effective School Solutions in accordance with applicable law on behalf of the District. Effective School Solutions shall make all records of services provided to such students in the cohort available to the District upon request or as otherwise 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. Effective School Solutions shall provide parents/students with an acknowledgement for their signature, which confirms that any information received by

Effective School Solutions from the student may become part of the student's Education Record retained by the District. Once a student is no longer receiving services, Effective School Solutions shall deliver all original records and any copies of such records pertaining to that student to the District for future reference electronically or in printed form, and any copies retained by Effective School Solutions shall continue to be treated as Education Records pursuant to FERPA and the Education Code.

4. TECHNOLOGY. All computers furnished by the District in accordance with the terms of this Agreement shall be password protected with access limited to Effective School Solutions. The District shall ensure that there will not be any unauthorized access to the confidential information contained on any such computer.

5. EFFECTIVE SCHOOL SOLUTIONS DISCRETION. It is within the sole discretion of Effective School Solutions to determine whether a student can enter or remain in the cohort once the student has been referred by the School for the services outlined in this Agreement. However, it is expressly understood that the primary reason for Effective School Solutions to either reject a student or remove a student from the cohort, after considering the input of the appropriate personnel of the School, is a student's unwillingness to appropriately participate in the services outlined in this Agreement or, in the sole opinion of Effective School Solutions staff, the student is a danger to himself/herself or others.

6. PAYMENT. For the 2020-2021 school year (Full School Year), the District shall pay Effective School Solutions two hundred and nine thousand eight hundred and seventy dollars (\$209,870) for the services set forth in this Agreement. Payment shall be made in ten (10) equal and consecutive monthly installments of twenty thousand nine hundred eighty seven dollars (\$20,987) within thirty (30) days of the District's receipt from Effective School Solutions of an invoice for such services. The first payment shall be due on November 1, 2020, and subsequent 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 up to two mental health professionals, the District will be billed \$8,000.
- b) for every subsequent mental health professional providing services for a summer program, the District will be billed \$4,000.

7. RENEWAL. If the district chooses to renew the full school year program by April 15<sup>th</sup> each year, the summer program will be offered at no charge for each summer preceding the school year for which renewal is confirmed. The District shall furnish Effective School Solutions with vouchers that Effective School Solutions shall execute and timely submit for payment.

8. HOLD HARMLESS. Effective School Solutions agrees to indemnify and defend the District, its employees, and agents from any and all claims, damages, and liability resulting from Effective School Solutions's negligence, misconduct, or breach of this Agreement and for any actual or alleged violation by Effective School Solutions, its employees, representatives, agents, or assigns, of any applicable federal, state, or local statute, regulation, ordinance, or order. The District agrees to indemnify and defend Effective School Solutions, its employees, and agents from any and all claims, damages, and liability resulting from the District's negligence, misconduct, or breach of this Agreement and for any 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.

9. COMPLIANCE WITH STATE, FEDERAL, AND LOCAL LAWS, REGULATIONS, AND ORDINANCES: Each Party shall ensure compliance with all state, federal and local laws or rules applicable to its respective performance of the work required under this agreement, and shall execute all necessary certifications of compliance therewith.

10. MEDICAID. The parties each acknowledge and agree that Effective School Solutions does not bill directly to Medicaid or to any other state-funded programs. The District will hold harmless, indemnify and defend Effective School Solutions 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 Effective School Solutions, 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.

11. TERMINATION. Either Party may terminate this Agreement upon ninety (90) days written notice to the other Party. District shall compensate Effective School Solutions for services satisfactorily provided through the date of termination. In addition, District may terminate

this Agreement for cause should Effective School Solutions fail to perform any part of this Agreement and fail to cure such performance within fifteen (15) days of written notification from the District. In the event of termination for cause, District may secure the required services from another contractor.

12. FINGERPRINTING. Effective School Solutions 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.

13. INSURANCE. Effective School Solutions shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Effective School Solutions and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Effective School Solutions's operations under this Agreement, whether such operations be by Effective School Solutions, any subcontractor, anyone directly or indirectly employed by either of them, or by an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amount(s) specified below:

- a) Comprehensive General Liability insurance coverage in the minimum amount of \$1,000,000.00.

Effective School Solutions shall provide proof of insurance to the District and will identify the District as an additional insured.

14. NON-SOLICITATION. The Board of Education agrees that it shall not hire, use as a consultant, or use as an independent contractor for a vendor other than Effective School Solutions any employee or former employee of Effective School Solutions who provides and/or provided services to the School in particular, or the Board of Education in general, pursuant to this Agreement for a period of two (2) years from the date the employee last provided services to the

Board of Education as an employee of Effective School Solutions. Since damages for violating this Agreement are incapable of precise calculation and would be difficult to prove, the parties agree that the District would pay to Effective School Solutions liquidated damages in an amount equal to four (4) times the employee's annual salary for the time period equal to the breach of this restrictive covenant. The parties agree that this liquidated damages amount is fair and reasonable and is intended to compensate Effective School Solutions, and not constitute a penalty. The parties acknowledge and agree that Effective School Solutions' harm caused by a District Breach would be impossible or very difficult to accurately estimate as of the date of contract, and that the liquidated damages are a reasonable estimate of the anticipated or actual harm that might arise from a Board of Education breach. The District's payment of the liquidated damages would be the District's sole liability and entire obligation and the Effective School Solution's exclusive remedy for any breach of this Section II, Clause 14. The provisions of this Section II, Clause 14 of this Agreement shall remain in full force and effect, regardless of whether the Agreement is terminated prior to the expiration of the term of this Agreement or the Agreement is not renewed by the parties upon the expiration of the term of this Agreement.

15. **INTELLECTUAL PROPERTY.** 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") 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 Effective School Solutions in the course of performing its obligations under this Agreement (collectively, the "Deliverables") except for any confidential information of the District, including student education records, or District materials shall be owned by Effective School Solutions. Effective School Solutions 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.

16. **GOVERNING LAW.** This Agreement, including any exhibits, shall for all purposes be deemed subject to the laws of the State of California, and in the event of a lawsuit

concerning this Agreement shall be venued in the County of San Mateo or in the United States District Court for the Northern District of California.

17. **DISPUTE RESOLUTION.** Should any dispute arise out of this Agreement, the Parties should meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. The costs of the mediator, if any, shall be shared by Effective School Solutions and the District. If a mediated settlement is reached, neither party shall be the prevailing party for the purposes of this settlement. Neither party shall be permitted to file legal action without first meeting in mediation and maintaining a good faith attempt to reach a mediated resolution.

18. **NO WAIVER.** 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.

19. **SUCCESSORS AND ASSIGNS.** 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.

20. **NOTICES.** 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, mail, or electronic mail with proof of transmittal.

21. **LIABILITY LIMIT.** 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.

22. COUNTERPARTS. 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.

23. COMPLETENESS OF AGREEMENT. This Agreement constitutes the entire understanding of the parties and any changes shall be agreed to in writing.

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: \_\_\_\_\_

SAN MATEO-FOSTER CITY SCHOOL DISTRICT

By: \_\_\_\_\_

Title: \_\_\_\_\_