

**NO-COST MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF SANTA CLARA AND
MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT**

This No-Cost Memorandum of Understanding (“MOU” or “Agreement”) is made and entered into by and between the County of Santa Clara (“County”) and Mountain View Whisman School District (“District”). The District and County shall collectively be referred to as “Parties.”

BACKGROUND AND PURPOSE

The Mission of the Office of the Lesbian, Gay, Bisexual, Transgender, Queer (LGBTQ) Affairs is to provide leadership and support for the well-being and longevity of LGBTQ communities in Santa Clara County through coordinated, integrated approaches.

The County of Santa Clara is committed to creating strong bridges throughout Santa Clara County that affirm and embrace the whole person especially LGBTQ individuals and their families. The Office of LGBTQ Affairs strives to create inclusive systems of support that respond to the critical, often diverse and complex, needs of the over 1.8 million residents of this county, focusing primarily on those who have been most underserved. The Behavioral Health Services Department is additionally committed to serving the LGBTQ community that bears a disproportionate risk of mental health challenges because of bias, stigma, and other systemic factors. Therefore, Mental Health Services Act funding has been dedicated for trainings to build competence throughout the county to best support LGBTQ individuals and families.

As such, the County wishes to provide trainings to Mountain View Whisman School District that builds understanding and appreciation for the challenges faced by LGBTQ youth, and prepares users to lead real-life conversations with students to curtail harassment and support those who may be struggling as a result of bullying or isolation.

The County will procure licenses for such training from Kognito Solutions, LLC, for the “Step In, Speak Up!” module, and desires to extend the use of the licenses to District.

The District and the County mutually agree as follows:

I. SCOPE OF WORK

A. COUNTY RESPONSIBILITIES

1. The County will purchase licenses for Kognito Solutions’ “Step In, Speak Up!” simulation or training module and provide access to those licenses at no cost to District for District’s youth-serving staff, including but not limited to teachers, administrative staff, school leadership, and volunteers. The County has the authority to decrease or increase licenses made available to the District, in the sole discretion of the County.
2. The County will designate a liaison to coordinate access to the training simulation.

B. DISTRICT RESPONSIBILITIES

1. The District will provide the County with a list of names and work titles of the staff that will be utilizing the training simulations. The District will inform the County if there are any changes to this list, including whether the District anticipates using all licenses provided by the County.

The District will ensure that training simulations are used consistent with the intent of the simulation training module. The District will provide staff with resources to complete the training, such as computer equipment and internet access. Staff may take the training in one 30-minute session, or three 10-minute sessions.

C. TERM

The term of this Agreement begins upon execution of this Agreement through February 28, 2021.

II. COUNTY STANDARD PROVISIONS

A. ENTIRE AGREEMENT

This Agreement and its Appendices (if any) constitutes the final, complete and exclusive statement of the terms of the agreement between the parties. It incorporates and supersedes all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

B. AMENDMENTS

This agreement may only be amended by a written instrument signed by the Parties.

C. CONFLICTS OF INTEREST

District shall comply, and require its subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by the County. In accepting this Agreement, District covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. District further covenants that, in the performance of this Agreement, it will not employ any District or person having such an interest. District, including but not limited to District's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests. If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, District shall, upon execution of this Agreement, provide the County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to District's employees, agents and subcontractors, that could be substantively involved in "making a governmental decision" or "serving in a staff capacity and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position," (2 CCR 18701(a)(2)),

as part of District's service to the County under this Agreement. District shall immediately notify the County of the names and email addresses of any additional individuals later assigned to provide such service to the County under this Agreement in such a capacity. District shall immediately notify the County of the names of individuals working in such a capacity who, during the course of the Agreement, end their service to the County. If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, District shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws and regulations listed in subsection (A) including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this Agreement, annually by April 1, and within 30 days of their termination of service pursuant to this Agreement.

D. GOVERNING LAW, VENUE

This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.

E. ASSIGNMENT

No assignment of this Agreement or of the rights and obligations hereunder shall be valid without the prior written consent of the other party.

F. ASSIGNMENT OF CLAYTON ACT, CARTWRIGHT ACT CLAIMS

District assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the District for sale to the County pursuant to this Agreement.

G. WAIVER

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party shall be in writing and shall apply to the specific instance expressly stated.

H. COMPLIANCE WITH ALL LAWS, INCLUDING NONDISCRIMINATION, EQUAL OPPORTUNITY, AND WAGE THEFT PREVENTION

(1) Compliance with All Laws. District shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, "Laws"), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.

(2) Compliance with Non-Discrimination and Equal Opportunity Laws: District shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County's policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, District shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex,

gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall District discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

(3) Compliance with Wage and Hour Laws: District shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.

(4) Definitions: For purposes of this Subsection H, the following definitions shall apply. A "Final Judgment" shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual's sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose's Office of Equality Assurance.

(5) Prior Judgments, Decisions or Orders against District: By signing this Agreement, Contractor affirms that it has disclosed any final judgments that (A) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and (B) found that District violated an applicable wage and hour law or pay equity law. District further affirms that it has satisfied and complied with – or has reached Agreement with the County regarding the manner in which it will satisfy – any such final judgments.

(6) Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract: If at any time during the term of this Agreement, District receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then District shall promptly satisfy and comply with any such Final Judgment. District shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. District shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.

(7) Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this Agreement concerning access to District's records, District shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County's request, District shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records, that are related to the purpose of this Subsection H, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during District's normal business hours upon no less than 10 business days' advance notice.

(8) Pay Equity Notification: District shall (1) at least once in the first year of this Agreement and annually thereafter, provide each of its employees working in California and each person applying to District for a job in California (collectively, "Employees and Job Applicants") with an electronic or paper copy of all applicable pay equity Laws or (2) throughout the term of this Agreement, continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of District's Employees and Job Applicants.

(9) Material Breach: Failure to comply with any part of this Subsection H shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and at law. County may, among other things, take any or all of the following actions: (i) Suspend or terminate any or all parts of this Agreement. (ii) Withhold payment to District until full satisfaction of a Final Judgment concerning violation of an applicable wage and hour Law or pay equity Law. (iii) Offer District an opportunity to cure the breach.

(10) Subcontractors: District shall impose all of the requirements set forth in this Subsection H on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

I. TERMINATION

The County may, by written notice to District, terminate all or part of this Agreement at any time for the convenience of the County. The notice shall specify the effective date and the scope of the termination. In the event of termination, District shall deliver to County all documents prepared pursuant to the Agreement, whether complete or incomplete. District may retain a copy for its records. Upon receipt of the documents, District shall be compensated based on the completion of services provided, as solely and reasonably determined by County

J. BUDGET CONTINGENCY

This Agreement is contingent upon the appropriation of sufficient funding by the County for the services covered by this Agreement. If funding is reduced or deleted by the County for the services covered by this Agreement, the County has the option to either terminate this Agreement with no liability occurring to the County or to offer an amendment to this Agreement indicating the reduced amount.

K. COUNTY NO-SMOKING POLICY

District and its employees, agents and subcontractors, shall comply with the County's No-Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding

County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

L. CALIFORNIA PUBLIC RECORDS ACT

The County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If District's proprietary information is contained in documents or information submitted to County, and District claims that such information falls within one or more CPRA exemptions, District must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, the County will make best efforts to provide notice to District prior to such disclosure. If District contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the County is required to respond to the CPRA request. If District fails to obtain such remedy within the time the County is required to respond to the CPRA request, County may disclose the requested information. District further agrees that it shall defend, indemnify and hold County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney's fees) that may result from denial by County of a CPRA request for information arising from any representation, or any action (or inaction), by the District. COUNTY OF SANTA CLARA SERVICE AGREEMENT Revision Date -- October 2019 Page 5 of 8

M. THIRD PARTY BENEFICIARIES

This agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the parties.

N. INTELLECTUAL PROPERTY RIGHTS

Ownership: County shall own all right, title and interest in and to the Deliverables. For purposes of this Agreement, the term "Deliverables" shall mean any documentation and deliverables created by District during the performance of services that are identified in this Agreement. District hereby assigns to the County all rights, title and interest in and to any and all intellectual property whether or not patentable or registrable under patent, copyright, trademark or similar statutes, made or conceived or reduced to practice or learned by District, either alone or jointly with others, during the period of District's agreement with the County or result from the use of premises leased, owned or contracted for by the County. District acknowledges that all original works of authorship which are made by District (either solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C. Section 101), and shall belong solely to County. District agrees that the County will be the copyright owner in all copyrightable works of every kind and description created or delivered by District, either solely or jointly with others, in connection with any agreement with the County.

O. INTELLECTUAL PROPERTY INDEMNITY

District represents and warrants for the benefit of the County and its users that, to its knowledge, as of the effective date of this Agreement, District is the exclusive owner of all rights, title and interest in the Deliverables and/or services provided pursuant to this Agreement. District shall defend, indemnify and hold the County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and reasonable attorney's fees) by a third party alleging the Deliverables and/or services provided pursuant to

this Agreement infringe upon any intellectual property rights of third parties. This indemnity and duty to defend is in addition to and does not supersede the requirements stated in VII of this agreement.

P. OWNERSHIP RIGHTS TO MATERIALS/RESTRICTIONS ON USE

All materials obtained, developed or prepared by District in the course of performing services hereunder, including but not limited to videotapes, audio recordings, still photographs, ads or brochures, and the derivative works, patent, copyright, trademark, trade secret or other proprietary rights associated therewith (collectively "Deliverables"), shall be the sole and exclusive property of the County. To the extent District owns or claims ownership rights to said Deliverables, District hereby expressly assigns all said rights, title, and interest in and to the Deliverables to the County pursuant to the terms and conditions of this Agreement and at no additional cost. The County has the exclusive royalty-free irrevocable right to duplicate, publish or otherwise use for any purpose, all materials prepared under this Agreement. If District wishes to use the materials prepared hereunder for any purpose including but not limited to promotional, educational or commercial purposes, the District shall obtain prior written authorization from the County, which consent may be withheld by the County in its sole discretion. District acknowledges that all original works of authorship which are made by District (solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C., Section 101), and shall belong solely to County. District agrees that the County will be the copyright owner in all copyrightable works of every kind and description created or developed by District, solely or jointly with others, in connection with any agreement with the County. If requested to, and at no further expense to the County, District will execute in writing any acknowledgments or assignments of copyright ownership of such copyrightable works as may be appropriate for preservation of the worldwide ownership in the County and its nominees of such copyrights. This section shall apply to the extent not otherwise provided under this agreement.

Q. COUNTY DATA

(1) Definitions: "County Data" shall mean data and information received by District from County. County Data includes any information or data that is transported across a County network, or that resides in a County-owned information system, or on a network or system under the control and management of a contractor for use by County. "County Confidential Information" shall include all material, non-public information (including material, non-public County Data) appearing in any form (including, without limitation, written, oral or displayed), that is disclosed, directly or indirectly, through any means of communication by County, its agents or employees, to Contractor, its agents or employees, or any of its affiliates or representatives.

(2) District shall not acquire any ownership interest in County Data (including County Confidential Information). As between District and County, all County Confidential Information and/or County Data shall remain the property of the County. District shall not, without County's written permission, use or disclose County Data (including County Confidential Information) other than in the performance of its obligations under this Agreement.

(3) District shall be responsible for establishing and maintaining an information security program that is designed to ensure the security and confidentiality of County Data, protect against any anticipated threats or hazards to the security or integrity of County Data, and protect against unauthorized access to or use of County Data that could result in substantial harm or

inconvenience to County or any end users. Upon termination or expiration of this Agreement, District shall seek and follow County's direction regarding the proper disposition of County Data.

(4) District shall take appropriate action to address any incident of unauthorized access to County Data, including addressing and/or remedying the issue that resulted in such unauthorized access, and notifying County by phone or in writing within 24 hours of any incident of unauthorized access to County Data, or any other breach in District's security that materially affects County or end users. If the initial notification is by phone, District shall provide a written notice within 5 days of the incident. District shall be responsible for ensuring compliance by its officers, employees, agents, and subcontractors with the confidentiality, privacy, and information security requirements of this Agreement. Should County Confidential Information and/or legally protected County Data be divulged to unauthorized third parties, District shall comply with all applicable federal and state laws and regulations, including but not limited to California Civil Code sections 1798.29 and 1798.82 at District's sole expense. District shall not charge County for any expenses associated with Contractor's compliance with these obligations.

(5) District shall defend, indemnify and hold County harmless against any claim, liability, loss, injury or damage arising out of, or in connection with, the unauthorized use, access, and/or disclosure of information by District and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County.

R. CONTRACT EXECUTION

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County.

S. INDEMNITY

The District shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by District and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The District shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

