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9/28/21

Mountain View Whisman School District

Independent Contractor for Professional Services Agreement

(Non-construction Related)

THIS AGREEMENT is made and entered into on _____, 20 21 ("Agreement"), by and between and **Mountain View Whisman School District** ("District") and HeyTutor, Inc. ("Contractor"). Contractor and District may be referred to herein individually as a "Party" or collectively as the "Parties."

1. Services. The District is authorized by Gov. Code § 53060 to contract with any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if those persons are specially trained and experienced and competent to perform the special services required. The Contractor shall furnish to the District the following services ("Services" or "Work"). The Contractor warrants that it is specially trained, licensed and experienced and competent to perform the Services.

   ☐ As indicated in Exhibit "A" or ☐ as follows:

   Provide 10, vetted in-person tutors working at 10 school sites for 26 weeks. Each tutor will work on average 28 hours/week, during and/or after school. We will also provide a sub pool to cover tutors who call out for any reason.

2. Price & Payment. The Contractor shall furnish the Services to the District for the following compensation:

   ☐ Contractor is providing services for a total flat fee of:

   $_____; or

   ☒ Contractor will provide a maximum number of hours of service at a rate of

   $ 45.00

   per hour for a total not to exceed $

   $327,600.00; or

   ☐ Other:

   _____

   ("Agreement Price"). Payment for the Services shall be made in accordance with the Terms and Conditions. District must approve Contractor's form of invoice, which must be sufficiently detailed (e.g., name of school or department service was provided to, period of service, number of hours of service, brief description of services provided)

3. Agreement Time. The Services shall commence on October 13, 20 21 and

   shall be completed by May 27, 20 21. ("Agreement Time")

4. **Submittal of Documents**. The Contractor shall not commence the Services under this Agreement until the Contractor has submitted the following documents as indicated below (Check all that are required):

☒ Signed Agreement	☒ Insurance Certificates & Endorsements	☒ W-9 Form

5. **Notice**. Any notice under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered (effective upon receipt) or sent by overnight delivery service addressed as follows (effective the business day next following delivery thereof to the overnight delivery service).

6.

Mountain View Whisman School District **Contractor:** HeyTutor, Inc.

1400 Montecito Ave,
Mountain View, CA 94043
Attn: Chief Business Officer

Attn: 8939 S. Sepulveda Blvd. #102
Los Angeles, CA 90045
Patrick McClure, COO

7. **Fingerprinting / Criminal Background / Megan's Law (Sex Offenders).** I have verified and will continue to verify that the employees of Contractor that will be on any school site and the employees of any subconsultants and/or subcontractors that will be on any school site are **not** listed on California's "Megan's Law" Website (http://www.meganslaw.ca.gov/). In addition, one of these two boxes below **must** be checked:

☒ The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Contractor's services under this Agreement and Contractor certifies its compliance with these provisions as follows: "*Contractor certifies that the Contractor has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Contractor's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor, who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto*."

☐ [**TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.**] Contractor's employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Contractor's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Contractor for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Ed. Code, § 45125.1 (c).)

DS PM

District Representative's Name & Initials: Patrick McClure ***INITIAL HERE:*** _____

8. **Tuberculosis (TB) Screening.** Check one of the following boxes:

☒ Providing the District of a copy of TB clearance or statement of TB clearance.

☐ **Waiver of TB Screening.** Contractor is not required to provide evidence of TB Clearance because Contractor will not work directly with students on more than an occasional basis.

DS PM

INITIAL HERE: _____ (Contractor initials). ***INITIAL HERE:*** DS _____ (District Representative initials)

9. **Insurance:** Contractor shall have and maintain insurance in force during the term of this Agreement with minimum limits identified below. Contractor shall provide to the District certificate(s) of insurance and endorsements satisfactory to the District. The policy(ies) shall not be amended or modified and the coverage amounts shall not be reduced without thirty (30) days written notice to the District prior to modification. Except for worker's compensation insurance, the District shall be named as an additional insured on all policies. Contractor's policy(ies) shall be primary; any insurance carried by the District shall only be secondary and supplemental. Contractor shall not allow any subcontractor, employee, or agent to commence Work on this Agreement or any subcontract until the insurance required of Contractor, subcontractor, or agent has been obtained.

Commercial General Liability	$1,000,000 per occurrence; $2,000,000 aggregate
Automobile Liability, Any Auto, combined single limit	$1,000,000 per occurrence; $2,000,000 aggregate
Workers Compensation	Statutory limits pursuant to State law
Employers' Liability	$1,000,000
Professional Liability (E&O), If Contractor is providing professional services or advice (on a claims-made form)	$1,000,000

10. **Terms & Conditions.** The Contractor has read and agrees to comply with the Terms & Conditions attached hereto.

INITIAL HERE: DS PM (Contractor initials)***.***

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TERMS & CONDITIONS TO INDEPENDENT CONTRACTOR AGREEMENT FOR PROFESSIONAL SERVICES

1. **Expenses**. District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing the Work.

2. **Materials**. Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, including, without limitation, any personal protective equipment ("**PPE**") required to comply social distancing and/or public health guidelines issued by any and all local, state, and federal authorities in any way related to COVID-19, or any other similar or derivative strain or virus.

3. **Independent Contractor**. Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor's employees.

4. **Standard of Care**.

4.1. Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Contractor's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts. Contractor's Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.

4.2. Contractor hereby represents that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of the Agreement.

4.3. Contractor shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Contractor understands that the District relies upon such professional quality, accuracy, completeness, and coordination by Contractor in performing the Services.

4.4. Contractor shall ensure that any individual performing work under the Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the work assigned to them.

5. **Originality of Services**. Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except that submitted to Contractor by District as a basis for such services.

6. **Copyright/Trademark/Patent**. Contractor understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

7. **Termination**.

7.1. **Without Cause by District**. District may, at any time, with or without reason, terminate this Agreement and compensate Contractor only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by the Contractor or no later than three days after the day of mailing, whichever is sooner.

7.2. **Without Cause by Contractor**. Contractor may, upon sixty (60) days' notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Contractor for services satisfactorily rendered to the date of termination. Written notice by Contractor shall be sufficient to stop further performance of services to District. Contractor acknowledges that this sixty (60) day notice period is acceptable so that the District can attempt to procure the Services from another source.

7.3. **With Cause by District**. District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

7.3.1. material violation of this Agreement by the Contractor; or

7.3.2. any act by Contractor exposing the District to liability to others for personal injury or property damage; or

7.3.3. Contractor is adjudged a bankrupt or makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and, unless within three (3) calendar days after that notice the condition or violation shall cease or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required Services from another Contractor. If the expense, fees, and/or costs to the District exceeds the cost of providing the

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Services pursuant to this Agreement, the Contractor shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

7.4. Upon termination, Contractor shall provide the District with all documents produced maintained or collected by Contractor pursuant to this Agreement, whether or not such documents are final or draft documents.

8. **Indemnification**. To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, including without limitation the payment of all consequential damages ("Claim"), arising out of, pertaining to or relating to, in whole or in part, the negligence, recklessness, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services or from any activity, work, or thing done, permitted, or suffered by the Contractor in conjunction with this Agreement, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the indemnified parties.

9. **COVID-19 Provisions**.

9.1. **Vaccination / Testing.** Contractor agrees to the following COVID-19 vaccination/testing requirements with respect to any of Contractor's employees, agents, consultants, subconsultants, or employees of consultants and subconsultants ("**Applicable Worker(s)**"):

9.2. *Before* any Applicable Worker enters a District site to perform the Services, Contractor shall ensure that it does **either** of the following:

9.2.1. Verifies that any Applicable Worker is Fully Vaccinated. "**Fully Vaccinated**" shall mean that at least fourteen (14) days have elapsed from the final vaccination required for the particular type of COVID-19 vaccine administered to the Applicable Worker, including any booster, to the extent approved and required by public health guidelines.

9.2.2. For any Applicable Worker that is **not** Fully Vaccinated, Contractor has verified that the Applicable Worker is subject to weekly COVID-19 testing weekly, and that any weekly COVID-19 test demonstrates a negative COVID-19 test.

9.3. Contractor shall maintain written documentation reflecting verification of the testing/vaccination requirements herein and shall provide any documents to the District upon request.

9.4. H**ealth and Safety.**

9.4.1. Contractor must comply with the policies, safety protocols and practices established by the District, the Health Officer of the County of Santa Clara, the state of California, and OSHA and Cal-OSHA related to required health monitoring, cleaning and sanitization practices, physical distancing requirements, face coverings, use of PPE, site safety protocols, community infectious disease spread reduction plan, and communication matters (collectively "**Health & Safety Policies**") in effect as of the date of this Agreement, and as may be revised during the performance of Services. Contractor must always review and implement the Health & Safety Policies in its performance of Work, including the work of Contractor's consultants and subconsultants.

9.4.2. Contractor's employees, agents, consultants, subconsultants, any consultant or subconsultants' employees or agents and any other person that may enter upon any District site for purpose of performing Contractor's Services, will not be allowed to enter and District site if they have a fever, cough or other COVID-19 or infectious disease symptom(s).

9.4.3. Contractor agrees to implement, comply with, and fulfill the terms and requirements of the Health & Safety Policies. Contactor also acknowledges and hereby certifies that Contractor will require any of its employees, agents, subcontractors, or subcontractors' employees or agents to comply with the requirements of the Health & Safety Policies on the Project site.

9.5. **Release.** Contractor acknowledges that it is voluntarily and freely entering into this Agreement and deciding to perform the Services which may require Contractor to enter upon and into District's sites and that Contractor's use of District's sites includes the possible exposure to and illness from infectious disease including, but not limited to, MSRA, influenza and COVID-19 (collectively "**Infectious Disease**"). Contractor further acknowledges the dangers involved and with full knowledge of these dangers, voluntarily agrees to assume all risks of bodily injury, death, or property damage, whether those risks are known or unknown. Contractor hereby releases the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "**indemnified parties**") from any and all liabilities, causes of action, lawsuits, claims, demands, or damages of any kind whatsoever that Contractor, its employees, participants, relatives, children, spouse, partner, household members, family members, employees, guests, invitees, volunteers, agents, subcontractors and any other person tracing exposure or illness to Contractor, now have, or may have in the future, for injury, trauma, illness, loss, unwanted contact, harassment, disability, death or property damages related to being exposed to or contracting an Infectious Disease while using District Premises for the performance of the Work.

10. **FORCE MAJEURE CLAUSE:** Contractor shall be excused from performance hereunder during the time and to the extent

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that it is prevented from obtaining delivery, or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, product, plant, or facilities by the government, or pandemic when satisfactory evidence thereof is presented to the District, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the Contractor. Any delay associated with COVID-19, or any derivative or similar strain thereof, or any federal, state, or local order relating thereto, shall not be considered a Force Majeure Event unless it renders Contractor's performance of the Services impossible, and that event was not reasonably foreseeable at the time of the execution of this Agreement.

11. **Assignment**. The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor.

12. **Compliance with Laws**. Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If Contractor observes that any of the Services required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.

13. **Permits/Licenses**. Contractor and all Contractor's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this agreement.

14. **Safety and Security.** Contractor is responsible for maintaining safety in the performance of this Agreement. Contractor shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.

15. **Employment with Public Agency**. Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.

16. **Anti-Discrimination**. It is the policy of the District that in connection with all work performed under Agreements there be no discrimination against any employee engaged in the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).

17. **Workers' Compensation**. Contractor shall comply with the provisions of Labor Code § 3700, et seq., that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code. Contractor shall either being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State or by securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure.

18. **Audit**. Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.

19. **District's Evaluation of Contractor and Contractor's Employees and/or Subcontractors**. The District may evaluate the Contractor in any manner which is permissible under the law. The District's evaluation may include, without limitation: requesting that District employee(s) evaluate the Contractor and the Contractor's employees and subcontractors and each of their performance and announced and unannounced observance of Contractor, Contractor's employee(s), and/or subcontractor(s).

20. **Limitation of District Liability**. Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

21. **Disputes**: In the event of a dispute between the parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Contractor shall neither rescind the Agreement nor stop Work.

22. **Confidentiality**. The Contractor and all Contractor's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

23. **Integration/Entire Agreement of Parties**. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be

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amended or modified only by a written instrument executed by both Parties.

24. **California Law**. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the California county in which the District's administration offices are located.

25. **Waiver**. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

26. **Severability**. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

27. **Incorporation of Recitals and Exhibits**. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

28. **Drug-Free/Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, Contractors, or subcontractors are to smoke or use drugs or alcohol on these sites.

29. **Conflict of Interest.** Contractor shall abide by and be subject to all applicable District policies, regulations, statutes or other laws regarding conflict of interest. Contractor shall not hire any officer or employee of District to perform any service by this Agreement. Contractor affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between Contractor's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to District's attention in writing. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of Section 1090 *et seq*. and Section 87100 *et seq*, of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event Contractor receives any information subsequent to execution of this Agreement, which might constitute a violation of said provisions, Contractor agrees it shall notify District of this information.

30. **Agreement Contingent on Governing Board Approval.** The District shall not be bound by the terms of this Agreement until it has been formally approved or ratified by the District's Governing Board, and no payment shall be owed or made to Contractor absent formal approval.

ACCEPTED AND AGREED on the date indicated below. By signing this Agreement, each Party certifies, under penalty of perjury, that all the information provided in the Agreement is true, complete, and correct and that the person executing this Agreement has full power and authority to enter into the Agreement:

Information regarding Contractor:

Indicate type of entity or if individual:

____ Individual
____ Sole Proprietorship
____ Partnership
____ Limited Partnership
__X__ Corporation
____ Limited Liability Company
____ Other: _____

Employer Identification and/or Social Security Number: 46-5199755

NOTE: United States Code, title 26, sections 6041 and 6109 require non-corporate recipients of $600 or more to furnish their taxpayer identification number to the payer. The United States Code also provides that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these rules, the District requires your federal tax identification number or Social Security number, whichever is applicable.

Dept/Site Budget Program Coding
Program Code(s): Program 7388

Project Approvals Required Prior to Contract Start Date

Requesting Administrator/Authorized Signer:	**Contractor:**
Mountain View Whisman School District	**Contractor Name:** HeyTutor, Inc.
Dated: _____, 20___	Dated: September 29, 20 21
Signature: _____	Signature: DocuSigned by: Patrick McClure 8A8D29AA6CD44DB...
Print Name: _____	Print Name: Patrick McClure
Print Title: _____	Print Title: COO

APPROVAL	
Authorized Signer (if not above)	**Superintendent/Designee**
Dated: _____, 20_____	Dated: _____, 20_____
Signature: _____	Signature: _____
Print Name: _____	Print Name: _____
Print Title: _____	Print Title: _____

Board of Trustees Action (District Office Use Only)
Board of Trustees Meeting Date: _____ For Contract: Review Ratification