

San Ysidro School District Governing Board

SPECIAL BOARD MEETING

AGENDA

Monday
April 5, 2021
5:00 p.m.
Via Zoom Teleconference

Pursuant to Governor Newsom's Executive Order N-29-20, this Special Meeting of the San Ysidro School District Board shall be held by teleconference. Trustees of San Ysidro School District Board and the public shall participate in this meeting via teleconference. The Public may view this meeting by accessing the following link <https://www.youtube.com/channel/UCGyF01068pwbhe-B5xnyl-A/videos>. Public comment may be submitted by email to publiccomment@sysdschools.org on or before Monday, April 5, 2021 at 3:00 p.m. Public wanting to address the Governing Board telephonically may submit the Public Comment Request Form: <https://forms.gle/qGVj2skQ6Nt4xijK7> on or before Monday, April 5, 2021 at 3:00 p.m. Any meeting participant who engages in disorderly conduct which disturbs the peace and good order of the meeting, or refuses to comply with the lawful orders of the Board may be ordered removed from the meeting, and may be guilty of a misdemeanor (Cal. Penal Code Sec. 403). To listen to this meeting in Spanish, please call 1 (321) 351-6795 and enter the access code 828 507 684#. Closed Session to be held at 5:00 p.m. to 6:00 p.m., and will reconvene into Open Session at 6:00 p.m. Closed Session will be conducted in accordance with applicable sections of California Law.

GENERAL ADMINISTRATION

**SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA**

TO: Governing Board

BOARD MEETING DATE: April 5, 2021

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Assistant Superintendent of Educational
Leadership, Pupil Services and Safety
David Farkas, Ed.D., Asst. Superintendent

Informational
 Action

AGENDA ITEM: AGREEMENT WITH PRIMARY HEALTH FOR COVID-19 APPLICATION SERVICES

BACKGROUND INFORMATION:

The San Ysidro School District is in the process of implementing COVID-19 Testing at school sites. These sites will utilize antigen testing to identify any potential individuals with COVID-19. The Primary Health software application is used to support the testing process by administering consent forms and the test reporting process to individuals in a confidential manner. Individuals register through the Primary app which then communicates the results to each individual through a bar code process used at each testing site. This eliminates much of the time consuming manual steps needed to organize and communicate each test.

The cost implications are per the rate schedule found in Schedule #001. The term of the agreement is effective April 6, 2021 through December 31, 2021 with up to two automatic renewal years.

RECOMMENDATION:

Approve the agreement with Primary Health for services related to COVID-19 testing. Primary provides applications for electronic consent and reporting tests results to individuals at a cost up to \$25,000.00 for fiscal year 2020-21 paid from CARES Act and ESSER funds.

LCAP GOAL AND ACTION/SERVICE (please indicate):

Renewal New Amendment Ratify Other

Financial Implications?

Yes No

Are funds for this item available in the 2020-2021 Budget?

Yes No

Requisition #

UP TO

\$25,000.00

(Amount)

CARES ACT AND ESSER FUNDS

(Name of funding source and/or location)

Recommended for: Approval Denial Certification Requested Yes No



PRIMARY MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT

Table with contact information for San Ysidro School District, including Customer Name, Address, Contact Name, Title, Telephone, and Email.

THIS MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT, including Attachment A, ("MSA") is entered into by and between Primary Diagnostics, Inc., a Delaware company with its principal place of business at 595 Pacific Avenue, Floor 4, San Francisco, CA 94133 ("Primary"), and the entity identified above ("Customer").

This MSA sets forth the general terms that shall apply to the licensing of certain software products and the performance of certain services by Primary. No products are licensed or services furnished pursuant to this MSA, except to the extent that Primary and Customer enter into an SOW or Schedule (as defined in Section 1 below), that sets forth the specific terms of the particular transaction.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this MSA as of the date first set forth above.

Primary Diagnostics, Inc.

San Ysidro School District

Accepted By: _____ Accepted By: _____
Printed Name: Andrew Kobylinski Printed Name: Marilyn Adrianzen
Title: CEO Title: CBO
Date: _____ Date: _____
Board Approved: _____

Primary E-mail Address for Notices: contracts@primary.health

Customer E-mail Address for Notices: david.farkas@sysdschools.org and marilyn.adrianzen@sysdschools.org

GENERAL TERMS AND CONDITIONS

RECITALS

Primary is the owner of, or has acquired rights to, the Software and Documentation (each as defined below).

Primary has the capability to provide the Services related to such Software and Documentation.

Primary desires to grant and Customer desires to obtain a non-exclusive license to use the Software, the Documentation, and the Primary Data, in accordance with applicable Schedule(s) and the terms and on the conditions set forth in this MSA.

Primary desires to provide Customer with Maintenance Services and Professional Services in accordance with applicable Schedule(s) or SOW(s) and the terms and conditions set forth in this MSA. Customer desires to receive such Maintenance Services and Professional Services, as applicable, in accordance with such applicable Schedule(s) or SOW(s).

1. Definitions

The following are definitions of terms used in this MSA:

- a) "**Client**" shall mean any of the third parties, including childcare facilities, schools and employers, who contract with Customer for the purpose of facilitating and streamlining COVID-19 testing for such third parties' employees, students, and other individuals associated with such third party. In
- b) "**Confidential Information**" shall mean any information that is disclosed by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**"), in written, graphic, machine-readable or other tangible form and (i) is marked "Confidential," "Proprietary," or in some other manner to indicate its confidential nature, or, if orally disclosed or obtained by observation, is identified as confidential at the time of disclosure and confirmed in writing to have been confidential within thirty (30) days of disclosure or observation; or (ii) should reasonably be known to be confidential based on the nature of the information and the context of the disclosure. Primary Confidential Information includes, without limitation, the Software (including in all formats, including in source code and object code formats), Documentation, Primary Data, and Data Derivatives. Customer Confidential Information includes Customer Data.
- c) "**Customer Data**" shall mean the data (in any format or media) entered, provided by or otherwise made accessible to Primary, by Customer or its End Users in connection with use of the Software or Services. For the avoidance of doubt, Customer Data does not include any Public Data or Primary Data.
- d) "**Customer Marks**" shall mean Customer's name, logos, trade name, and trademarks.
- e) "**Documentation**" shall mean all manuals, user documentation, and other related materials pertaining to the Software, as updated by Primary from time to time, which are furnished to Customer by Primary in connection with this MSA.
- f) "**Effective Date**" means the date of this MSA comes into force as set forth on the signature page.
- g) "**End Users**" shall mean the individuals Customer has authorized and designated to utilize the Software, Documentation, Primary Data (if applicable under the particular Schedule or SOW), or Maintenance Services, as provided under the terms of this MSA and in accordance with the

- applicable Schedule or SOW, provided that any such individual: (i) is a Customer employee, agent or contractor, or is an employee, agent, contractor of a Client; (ii) have a need to access and use the Software, Documentation, Primary Data or Maintenance Services (as applicable), based upon their relationship with Customer; and (iii) have agreed in writing to adhere to and be bound by the terms of this MSA.
- h) **"Fee(s)"** shall mean the fees that Customer pays Primary under a Schedule or SOW.
 - i) **"FERPA"** shall mean Family Educational Records and Privacy Act, 20 U.S.C. § 1232g and § 1232h, and 34 C.F.R. Parts 98 and 99.
 - j) **"HIPAA"** shall mean collectively, the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations, as amended from time to time.
 - k) **"Maintenance Services"** shall mean the applicable maintenance services as specified in a Schedule for licensed Software.
 - l) **"MSA"** shall mean this MSA and includes all Schedules and SOWs governed by it and incorporating it by reference.
 - m) **"Personal Information Laws"** shall mean any law, rule, regulation, decree, statute, or other enactment, order, mandate or resolution, applicable to Customer or Primary, relating to data security, Personally Identifiable Information and/or privacy including, but not limited to, FERPA.
 - n) **"Personally Identifiable Information"** or **"Personal Information"** shall have the same meaning as in Personal Information Laws.
 - o) **"Professional Services"** shall mean data collection, data validation, implementation, development, virtual training or such other services provided by Primary for or on behalf of Customer as agreed upon in a Schedule or an SOW.
 - p) **"Public Data"** shall mean data (in any format or media) that is generally available and in the public domain (through no act or omission of a party), and that is not proprietary to, or subject to exclusive ownership by, any party.
 - q) **"Primary Data"** shall mean any and all data (in any format or media) that Primary uses, creates, collects or receives from various sources (including from any healthcare providers or licensed by Primary from third party vendors), that Primary makes available or provides to Customer through or in connection with any of the Services or the Software or as otherwise specified in a Schedule, including but not limited to, any databases, compilations, enhancements, improvements, transformations, and derivative works created by Primary based on such data or any Public Data.
 - r) **"Primary Marks"** includes "Primary", the Primary logos, slogans, marks, combinations thereof, and any and all other source-identifying devices now or hereafter used by Primary or by any of its affiliates, or its suppliers.
 - s) **"Schedule"** shall mean a written purchase order for Services or to license Software, that is governed by and incorporates by reference this MSA.
 - t) **"Schedule Effective Date"** and **"SOW Effective Date"** shall mean, respectively, the date on which the applicable Schedule or SOW goes in effect.
 - u) **"Services"** shall mean collectively the Professional Services and the Maintenance Services.
 - v) **"Software"** shall mean the software as a service computer programs in provided using a cloud-based platform as applicable to Customer under the applicable Schedule or SOW, any error

- corrections or updates supplied by Primary to Customer, if applicable, and the design, function, and content (e.g., layout, text, graphics, user interfaces) of the foregoing.
- w) **“SOW”** shall mean a statement of work describing a particular service.
 - x) **“Submissions”** shall mean any suggestions, feedback, ideas, concepts, comments, illustrations, and other materials that Customer or End Users disclose, submit, make available, or offer to Primary at any time during the course of this MSA, or any Schedule or SOW.
 - y) **“Subscription Period”** shall mean the period of time during which Primary will provide a license to use the Software or Services under a Schedule. The Subscription Period is comprised of the Initial Period and each Renewal Period (if applicable), where the **“Initial Period”** is for a period of one year from the Effective Date. The agreement may be renewed for 12 month **“Renewal Periods”** if mutually agreed to in writing.
 - z) **“Term”** shall mean the time period beginning on the Effective Date and ending upon the termination of this MSA.
 - aa) **“Terms of Use”** shall mean any terms of use or other “clickwrap” agreement entered into by End Users to the extent applicable for the particular Software or Service.
 - bb) **“Territory”** shall mean the geographic scope of the license to use Services or Software. Unless expressly agreed in a Schedule, the Territory shall not include any locations outside the United States.

2. Ordering

Customer may from time to time procure Software, Maintenance Services, or Professional Services, as the case may be, using a Schedule or SOW that will reference this MSA. Such Schedule or SOW will be binding upon Primary and Customer upon signature by both Primary and Customer. In the event of a conflict between the terms and conditions of this MSA and those of a Schedule or SOW, the terms and conditions of this MSA will control; provided, however, that to the extent any Schedule or SOW includes terms and conditions not addressed in this MSA or not in conflict with the terms and conditions of this MSA, then such additional and non-conflicting terms and conditions will supplement and be deemed to be a part of such Schedule or SOW. Any such additional terms and conditions will be applicable only, and limited to, the particular transaction governed by such Schedule or SOW, but such additional terms and conditions will not be deemed to amend this MSA or any other Schedule or SOW. If a Schedule or SOW expressly cites and amends a specific term or condition of this MSA, such terms and conditions will be deemed to be amended solely for purposes of such Schedule or SOW, but will not be deemed to amend this MSA or any other Schedule or SOW.

3. Scope of Licenses, Restrictions and Obligations.

- a) Grant of Rights. For the duration of the applicable Subscription Period, and subject to Customer’s compliance with the terms of this MSA and the applicable Schedule or SOW, including Customer’s payment obligations, Primary hereby grants, and Customer hereby accepts, a limited, non-exclusive, non-transferable, non-sublicensable right to access and use within the Territory, the Software and Documentation specified in the Schedule, (and if applicable, the Primary Data), subject to the terms and restrictions of this MSA (and any additional terms and restrictions set forth in the particular Schedule or SOW). Customer does not acquire under this MSA any other right or license (including any implied licenses) to use the Software, Documentation or Primary Data, except as expressly granted in this Section 3(a).
- b) Third Party Licensed Components. Customer acknowledges and agrees that certain data and technology included in the Software is provided by third party vendors whose services have been contracted by Primary.

In the event that a data or technology third-party vendor fails to provide such data or technology as agreed between Primary and such third-party vendor, Primary will exercise commercially reasonable efforts to continue to provide Software and Services to Customer as described herein, including working in good faith to find an acceptable replacement. In the event Primary is unable to provide a replacement to the third-party data or technology, Customer and Primary may terminate the applicable Schedule or SOW that requires the use of such third-party components.

- c) Restrictions on Use. Customer may use the Software (and if applicable, the Primary Data), only for the purposes described in the Schedule or Documentation and within the scope as expressly set forth in Section 3(a) above. Except as otherwise expressly stated in the applicable Schedule, Customer shall not (i) copy, reproduce, modify, adapt, translate, distribute, transmit, download, upload, post, sell, rent, license, sublicense, transfer, mirror, frame, create derivative works of, reverse engineer, decompile or disassemble any aspect of the Software, Primary Data or the Documentation (including, but not limited to, any underlying data), in whole or in part, in any form or by any means, without Primary's prior written permission (in its sole discretion) provided, however, Customer may disclose Primary Data to the Centers for Medicare & Medicaid Services or other local, state or federal regulatory agencies to the extent such disclosure is required by such agencies (iv) use the Software, Primary Data or Documentation in a manner that in material respects, delays, impairs, or interferes with system functionality for other users of the Software, Primary Data or Documentation or that compromises the security or integrity of the Software; (v) knowingly enter data through the use of the Software that is threatening, harmful, lewd, offensive, defamatory, or that injures or infringes the rights of others; (vi) apply systems to extract or modify information hosted through the Software using technology or methods such as those commonly referred to as "web scraping," "data scraping," or "screen scraping"; or (vii) use the Software, Primary Data or the Documentation, or any part or aspect of them, for any unlawful purpose (including any purpose that may violate or be prohibited by applicable law). Access to or the license to use of the Software, Primary Data or the Documentation may be limited or suspended immediately in Primary's reasonable discretion if the terms of this Section 3(c) are violated.
- d) Customer Responsibilities.
- i. Customer is responsible for approving access to End Users, for End Users' compliance with applicable requirements in this MSA (including applicable Schedules and SOWs) or in any Terms of Use, and for maintaining the confidentiality of log-in credentials issued in a commercially reasonable manner. Customer is also responsible for providing Primary with written notification within five (5) business days of Customer's termination of its relationship with any such End User for purposes of ensuring that log-in credentials or access rights are invalidated.
 - ii. Customer shall promptly notify Primary upon becoming aware of any unauthorized use of the Software, Primary Data or Documentation, whether by End Users or unauthorized individuals or entities.
 - iii. Customer is responsible for ensuring that it discloses, provides or otherwise makes available to Primary (including as part of Customer Data), any protected health information (as defined under HIPAA) or education records (as defined under FERPA), or any Personally Identifiable Information in compliance with Personal Information Laws. Customer acknowledges and agrees that it is responsible for its compliance with all applicable state, local and federal laws, including HIPAA, and state Personal Information Laws.

4. Maintenance Services

- a) General. During the applicable Subscription Period, and subject to Customer's compliance with the terms of this MSA and the applicable Schedule or SOW, including Customer's payment obligations, Primary will provide Customer with Maintenance Services as specified in a Schedule.

5. Professional Services

- a) General. Primary will provide the Professional Services as described in the applicable SOW. If Customer fails to timely pay any invoice, Primary will have the right, in addition to any other remedies it may have under this MSA or at law, to suspend its performance of any further Professional Services without any liability to Customer.
- b) Change Orders. No modification to the Professional Services or any other aspect of a SOW, including any resultant changes to pricing or project schedules, may be made except pursuant to a written change order that is signed by the parties. Each such change order will set forth in reasonable detail the nature of the change in the Professional Services or other aspect being changed, the recommended change in personnel or other deliverables, any change to the Fees, and any other impact the change order will have on the SOW.

6. Term & Termination

- a) Term.
 - i. Term of this MSA. This MSA will begin on the Effective Date and continue until terminated as described below.
 - ii. Term of Schedule(s). Each Schedule shall begin upon its Schedule Effective Date and continue until the end of the applicable Subscription Period for Software or Maintenance Services as provided under the Schedule. Unless otherwise specified in the Schedule, a Subscription Period may be renewed upon written agreement of the parties.
 - iii. Term of SOW(s). Each SOW shall begin upon the SOW Effective Date and continue until the completion of the Professional Services, as defined by the SOW, unless sooner terminated pursuant to the SOW.
- b) Termination for Breach.
 - i. Breach of the MSA. Upon a material breach of the MSA, the non-breaching party may elect in its sole discretion to terminate (A) this MSA only such that the breaching party cannot enter into any new Schedules or SOWs under this MSA; or (B) this MSA together with any current Schedules or SOWs, if in either case the breaching party shall have failed to cure the breach within ten (10) days after receiving written notice of the breach. For the purposes of this provision, material breach of this MSA includes, but is not limited to: (A) Customer's breach of its payment obligations; (B) a breach of a party's confidentiality obligations; (C) use by Customer of the Software, Primary Data or Documentation in excess of the scope of the license or in violation of any of the restrictions on use, as set forth in Section 3 of this MSA; or (D) a violation of a party's intellectual property rights. Such right to terminate in accordance with this provision is in addition to and shall not limit or prejudice any other right or remedy available under this MSA, at law, or in equity, except as provided herein.

- ii. Breach of Schedules or SOWs.
 - A. Right to Terminate. Either party may terminate a Schedule or SOW for a material breach of the other party's obligations under such Schedule or SOW (including material breach of this MSA), provided that the breaching party has failed to cure the breach within ten (10) days after written notice, unless the Schedule or SOW otherwise provides.
 - B. No Cross Default. The termination of a Schedule or SOW under this Section 6(b)(ii) shall not automatically entitle the non-breaching party to terminate any other SOW or Schedule, or this MSA, unless the performance of such other Schedule or SOW, or the ongoing relationship under this MSA, is materially impaired by the termination of the particular Schedule or SOW.
- c) Termination for Convenience of a Schedule or SOW. Customer may terminate a Schedule or SOW for convenience upon sixty (60) days prior written notice; provided however that if Customer desires to terminate a Schedule for convenience prior to the expiration of the then-current Subscription Period under such Schedule, Customer agrees to pay the Fees for the remainder of the Subscription Period. If Customer desires to terminate a SOW for convenience, Customer agrees to pay all amounts due under such SOW, with no refund of any pre-paid fees.
- d) Effect of Termination.
 - i. End of Rights to Software and Services. Upon the expiration or termination of a Schedule or SOW for any reason (or termination of all Schedules and SOWs pursuant to Section 6(b)(i)), Primary will have no further obligation to provide the Software, Primary Data, Documentation or Services and Customer will have no further rights to use or access the Software, Primary Data, Documentation or Services under the applicable Schedule or SOW. Customer shall cease any further use or access to such Software, Primary Data (except as otherwise provided in Section (d)(iii)), or Documentation, as applicable, unless Primary (in its sole discretion) otherwise agrees in writing. Within ten (10) days after termination of this Agreement, Customer shall return to Primary or if return is not feasible, shall destroy all copies of the Software (including any Primary Data, except as otherwise provided in Section (d)(iii)), and Documentation in Customer's possession, custody or under its control, unless Primary (in its sole discretion) otherwise agrees in writing, and Customer shall certify in writing to Primary that such copies have been destroyed.
 - ii. Return of Confidential Information. Except as otherwise provided in Section (d)(iii), upon the expiration or termination of the MSA, or any Schedule or any SOW for any reason, unless otherwise agreed in writing (including e-mail), each party shall promptly, at the other party's election, return or destroy (A) all of the other party's Confidential Information that was shared or disclosed in connection with all terminated Schedule(s) or SOW(s) or (B) in the case of a termination of the MSA and all Schedules and SOWs pursuant to Section 6(b)(i), all Confidential Information, in each case to the extent in its possession, custody or under its control (including copies, recordings, notes, archives, backups and summaries thereof, in all formats).
 - iii. Retention of Primary Data. Upon the termination of this MSA or any Schedule or SOW under which Customer obtained a license to use and access Primary Data, except in the case where termination is by Primary due to Customer's breach of this MSA or any Schedule or SOW, Customer may retain and use, after termination of the MSA, or the applicable Schedule or SOW, the latest version of the Primary Data that was provided to Customer by Primary prior to termination of the MSA, or the applicable Schedule or SOW, provided that Customer has paid the applicable fees for access to and use of such

version of the Primary Data, and subject to Customer's ongoing compliance with the license terms and restrictions set forth in Section 3 of the Agreement notwithstanding termination of the Agreement.

- iv. Payment. Upon any termination of the MSA or any Schedule or SOW, Customer agrees to pay all Fees owed or owing prior to such termination (including any Fees for the remainder of the then-current Subscription Period under the Schedule or any Fees owed under the SOW, whichever Customer seeks to terminate sooner for convenience).
- v. Survival. The terms and conditions in this MSA that by their nature and context are intended to survive any termination or expiration of this MSA, including, but not limited to Sections 8(d), 9, 11, 12(b) and 13, will survive such termination or expiration of the term of this MSA for any reason and will be fully enforceable thereafter.

7. Fees & Payment Terms

- a) Payment of Fees. Customer agrees to pay Primary the Fees set forth in each applicable Schedule or SOW within thirty (30) days of receipt of the invoice. All Fees are non-refundable and non-cancellable. Primary may discontinue Software, Maintenance Services, or Professional Services if fees for such Software or Service are not paid within thirty (30) days of the date they are billed.
- b) Effect of Failure to Pay. In the event that payment that is properly owed under a Schedule or SOW is not made when due, Customer will be in material default under the terms of this MSA and Primary may invoke any or all available remedies, including the right to suspend its performance under this MSA (and the applicable Schedule or SOW). Customer will reimburse Primary for all costs and expenses incurred by Primary arising from Customer's collection of amounts due under this MSA, including, without limitation, reasonable attorneys' fees if so ordered by a court of competent jurisdiction.
- c) Taxes and Other Charges. Customer shall be responsible for paying all sales, use, excise, value-added, or other tax or governmental charges imposed on the licensing or use of the Services or Software.

8. Warranty

- a) Software Warranty. Primary represents and warrants that the Software provided hereunder will operate substantially in accordance with the applicable Documentation, as described in an applicable Schedule. Primary will use commercially reasonable efforts to make such additions, modifications, or adjustments to the Software as may be necessary to correct any repeatable problems or defects discovered in the Software and reported to Primary in writing by the Customer, excluding defects or problems arising from misuse by the Customer. The foregoing shall be Customer's sole and exclusive remedy for breach of the Software warranty.
- b) Services Warranty. Primary further represents and warrants that Professional Services and Maintenance Services will be performed in accordance with the applicable SOW or Schedule. If there is a breach of a warranty in this Section 8(b), as Customer's sole and exclusive remedy, within thirty (30) days from the date Customer notifies Primary in writing of the breach, Primary shall (to the extent feasible) re-perform the Professional Service or Maintenance Service, at no additional cost, as reasonably required to address any material defects caused by Primary's failure to meet this warranty.
- c) The warranties in this MSA shall be null and void in the event that all or any part of the Software is modified by Customer.

- d) DISCLAIMER OF WARRANTIES. EXCEPT AS SPECIFICALLY AND EXPRESSLY DESCRIBED IN SECTIONS 8(a) AND 8(b) ABOVE, PRIMARY MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE SOFTWARE, THE DOCUMENTATION, MAINTENANCE SERVICES, PRIMARY DATA, PROFESSIONAL SERVICES OR ANY INFORMATION COLLECTED BY PRIMARY, OR FURNISHED BY PRIMARY. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL WARRANTIES ARE DISCLAIMED, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, COMPLETENESS, TIMELINESS, CORRECTNESS, AND FITNESS FOR ANY PARTICULAR USE, APPLICATION, OR PURPOSE. PRIMARY HAS NO RESPONSIBILITY FOR THE ACCURACY, ATTESTATION OR VERIFICATION, TIMELINESS, DELETION, MISDELIVERY, OR FAILURE TO STORE ANY COMMUNICATION, CONTENT, DATA, OR OTHER INFORMATION. NO ADDITIONAL STATEMENTS OUTSIDE THE TERMS OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE, WHETHER MADE BY EMPLOYEES OF PRIMARY OR OTHERWISE, IS A WARRANTY OR PROMISE BY PRIMARY, AND PRIMARY HAS NO RESPONSIBILITY OR LIABILITY FOR ANY SUCH STATEMENTS.

9. LIMITATION OF LIABILITY

IN NO EVENT WILL PRIMARY BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING FROM THE USE OF THE SERVICES, INCLUDING WITHOUT LIMITATION, INTERRUPTION OR LOSS OF BUSINESS, REFUNDS OF FEES, LOSS OF PROFITS, LOSS OF INCOME OR COST OF REPLACEMENT SERVICES. PRIMARY'S LIABILITY TO THE CUSTOMER ARISING OUT OF ANY CLAIM FOR DAMAGES FOR ANY CAUSE WHATSOEVER WILL UNDER NO CIRCUMSTANCES EXCEED, IN AGGREGATE, THE TOTAL AMOUNT OF THE SUMS ACTUALLY PAID BY THE CUSTOMER TO PRIMARY LIMITED TO A PRO-RATA PORTION OF THE FEES CUSTOMER PAID PRIMARY DURING THE PRECEDING TWELVE MONTHS. THE LIMITATIONS OF LIABILITY IN THIS SECTION 9 APPLY REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN.

10. Indemnity

- a) Primary Indemnification Obligations. Primary will hold harmless, indemnify, and defend Customer, its affiliates, and their respective directors, officers, shareholders, proprietors, partners, employees, agents, representatives, servants, attorneys, predecessors, successors and assigns (collectively, "**Customer Parties**") from and against any and all third party claims brought against Customer alleging that the Software provided under this MSA infringes an U.S.-issued patent or U.S.-registered copyright of a third party; provided that, if an infringement claim occurs, Primary, within its sole discretion, may (i) acquire the right for Customer to continue to use the affected Software in accordance with the terms of this MSA; (ii) replace or modify the Software so that it becomes non-infringing; or (iii) terminate this MSA or the applicable Schedule, and refund to Customer any pre-paid Fees for Maintenance Services, if any, of the unused remainder of the applicable Subscription Period (or part thereof). Notwithstanding the foregoing, Primary will have no liability to the Customer Parties with respect to any Claim that is based upon, arises out of, or would not have occurred but for (A) Customer's combination of Software with a non-Primary product, software, data, business process or other component; (B) Customer's operation or use of the

- Software with any content, software, hardware, product, or apparatus not set forth in the Documentation, an applicable Schedule, or otherwise not approved in writing by Customer; (C) Customer's use of the Software in violation of this MSA (including the applicable Schedule or SOW), not in accordance with the Documentation, or in excess of the scope of license granted; (D) Customer's use of any third party software other than in accordance with the license agreement for such third-party software; or (E) Customer's failure to install or implement a released upgrade to the Software that would have avoided infringement.
- b) This Section 10(a) sets forth Customer's sole and exclusive remedy with respect to any Claim for Primary's alleged violation of any intellectual property or other rights of third parties.
 - c) Indemnification Procedures. The indemnified party will provide prompt written notice to the indemnifying party of any Claim for which the indemnified party will seek indemnification under this MSA, and will provide reasonable assistance to the indemnifying party upon the indemnifying party's reasonable request. The indemnifying party will have the right to defend and compromise such claim at the indemnifying party's expense for the benefit of the indemnified party; provided, however, the indemnifying party will not have the right to obligate the indemnified party in any respect in connection with any such compromise or financial obligation without the written consent of the indemnified party. Notwithstanding the foregoing, if the indemnifying party fails to assume its obligation to defend, the indemnified party may do so to protect its interests and the indemnifying party will reimburse all costs incurred by the indemnified party in connection with such defense.

11. Confidentiality

- a) Mutual Obligations. The Receiving Party agrees that, unless it has the prior written consent of the Disclosing Party, the Receiving Party will not use or disclose to any third party (other than for the purpose of performing the Services under this MSA) any Confidential Information of the Disclosing Party.
- b) Exceptions. Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the Disclosing Party, without any obligation of confidentiality; (ii) becomes known to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this MSA; or (iv) is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information. The Receiving Party may disclose Confidential Information of the Disclosing Party pursuant to the requirements of applicable law, legal process or government regulation, provided that it gives the Disclosing Party reasonable prior written notice (within statutory time constraints) to permit the Disclosing Party to contest such disclosure or to seek an appropriate protective order, and such disclosure is otherwise limited to the required disclosure.
- c) Level of Care. The Receiving Party will maintain the confidentiality of, and agrees to use the same care to prevent disclosure of, the Confidential Information of the Disclosing Party as it employs to avoid disclosure, publication, or dissemination of its own Confidential Information, but in no event less than a reasonable standard of care. The Receiving Party further agrees to use the Disclosing Party's Confidential Information only in connection with and in furtherance of the business transactions contemplated by this MSA. The Receiving Party may disclose the Disclosing Party's Confidential Information to its employees, directors, officers, affiliates, agents, subcontractors, attorneys, accountants, or professional advisors who have a need to have access to such Confidential Information in carrying out the business transactions contemplated by this MSA ("**Authorized Representatives**"). The Receiving Party will inform its Authorized Representatives of the confidential nature of the Confidential

Information and the applicability of this MSA thereto and will obligate and direct its Authorized Representatives to maintain the confidentiality of such Confidential Information and otherwise to observe the terms of this Section 11.

- d) Remedies. The Receiving Party acknowledges that improper dissemination of the Disclosing Party's Confidential Information may cause irreparable damage to the Disclosing Party and agrees that the Disclosing Party will have available to it, in addition to any other remedy provided by law, the right to apply for injunctive relief (without having to post bond) to enforce compliance by the Receiving Party with the provisions of this MSA.

12. Ownership and Use of Data, Marks and Intellectual Property Rights

a) Customer Intellectual Property and Data.

- i. Ownership of Customer Intellectual Property. Primary hereby acknowledges and agrees that as between Primary and Customer, Customer exclusively owns all rights, title and interest in and to Customer Marks and Customer Data (collectively, "**Customer Intellectual Property**"), and to all intellectual property rights worldwide thereto.
- ii. Right to Use Customer Data for the Services. Customer hereby grants to Primary a non-exclusive, transferable right to use and process Customer Data throughout the Term of this MSA and the applicable Subscription Period(s) under any Schedule or SOW in connection with Primary performing the Services for or on behalf of Customer.
- iii. Right to Use Customer Marks. Customer hereby grants Primary the right to use Customer Marks for purposes relating to and in connection with providing the Services. Primary shall not use Customer Marks for any other purpose without Customer's consent, which shall not be unreasonably withheld and may be provided by e-mail.
- iv. Education Records and Personal Information. Primary shall process Personal Information and/or Education Records, as defined in the Personal Information Processing Addendum attached to this MSA as Schedule 2 ("Schedule 2"), included in the Customer Data, if any, in accordance with Schedule 2.

- b) Ownership of Primary Intellectual Property. Customer hereby acknowledges and agrees that as between Primary and Customer, Primary exclusively owns all right, title, and interest worldwide in the Primary Marks, the Software (including in all formats, including in source code and object code formats), the Services, the Documentation, the Primary Data, and Submissions, including any and all modifications, enhancements, improvements, transformations or derivative works thereof (collectively, "**Primary Intellectual Property**"), and to all intellectual property rights worldwide thereto. To the extent that Customer has or asserts any rights in any Primary Intellectual Property, Customer hereby irrevocably and in perpetuity assigns to Primary all worldwide rights, title, and interest Customer may have therein.

13. General Provisions

- a) Entire MSA. This MSA, any Schedules and SOWs, any Terms of Use, and, if applicable, Appendix 1, constitute the entire agreement between Primary and Customer. The parties acknowledge that this MSA contains the whole of the contract and understanding between them. There are no conditions, warranties or other understandings affecting the arrangements between the parties other than those set out herein and this MSA replaces all prior agreements

and understandings with respect to the subject matter of this MSA. This contract shall be binding not only upon both parties but also any successor corporations.

- b) Amendment. Any modification to or variation of this MSA must be in writing and signed by authorized representatives of Primary and Customer.
- c) Independent Contractors. The parties are independent contractors. This MSA does not designate either party as the agent, employee, legal representative, partner, or joint venture of the other party for any purpose whatsoever and neither will have the right, power, or authority to create any obligation or responsibility on behalf of the other. Each party will be fully liable for the acts and omissions of their employees, subcontractors, agents hereunder.
- d) Assignment. Neither party may assign this MSA in whole or in part without the other party's prior written consent which shall not be unreasonably withheld; provided, however, that either party may assign this MSA and all Schedules and SOWs, as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets, or change of control. In the event of assignment by Customer, use of the Software, Primary Data, Documentation or Services hereunder following said assignment will be limited solely to the End Users approved to use such Software, Primary Data, Documentation or Services, as applicable, prior to said assignment. Accordingly, any attempted or contemplated expanded use of the Software, Primary Data, Documentation or any of the Services (including any increase in users), by the assignee will require an amendment to this MSA (and the applicable Schedules or SOWs), including additional fees as may be appropriate and Primary will not be obligated to accommodate such expanded use without such written amendment agreed by Primary and the assignee. Except as provided herein, any attempted assignment without the other party's consent will be null and void.
- e) Force Majeure. Neither party will be liable for any act, omission, or failure to fulfill its obligations under this MSA to the extent that such act, omission or failure arises from any cause reasonably beyond its control including acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental action after the date of this MSA, fire, communication line failures, power failures, earthquakes or other disasters (called "**Force Majeure**").
- f) Disputes and Escalation. If a dispute arises out of or relates to this MSA or its terms, including a Schedule or an SOW, the parties will first attempt in good faith to resolve the dispute. The parties agree to schedule a meeting within a reasonable time, but in no event, later than within thirty (30) days, after the party who believes there is a dispute notifies the other party of the dispute and requests a meeting. Each party shall designate a representative at a management or executive level to participate in such meeting. If despite such efforts, the parties are unable to resolve the dispute, the parties may jointly agree to submit the dispute to non-binding mediation with each party paying its own costs and both parties sharing the cost of the mediator. If the parties do not jointly agree to submit to mediation, either party may proceed to litigation in accordance with Section 13 (h).
- g) Governing Law; Venue. This MSA shall be governed by the laws of the State of California without reference to conflicts of law principles. The parties agree that the sole and exclusive jurisdiction and venue for any disputes arising hereunder will be in any court of competent jurisdiction sitting in San Francisco County, California, and each party hereby waives all defenses of lack of personal jurisdiction and forum non conveniens related thereto. Unless otherwise required by applicable law without the possibility of contractual waiver or

- limitation, neither party will bring a legal action, regardless of form, arising out of or related to this MSA or any Schedule or SOW more than two (2) years after the cause of action arose.
- h) Notices. Any notice given pursuant to this MSA will be sufficiently given if it is in writing and delivered, sent by prepaid post or facsimile to the other party at the address specified on the signature page, by email listed on the signature page with a reply email from the receiving party as acknowledgement of receipt, or to such other address as either party may designate subsequently in writing, and will be deemed effective upon receipt.
 - i) Waiver. No delay, neglect or forbearance by either party in enforcing against the other any provision of this MSA will be a waiver, or in any way prejudice any right, of that party.
 - j) Interpretation. For purposes of this MSA, including any Schedules, SOWs or appendices: (i) the words “include,” “includes” and “including” are deemed to be followed by the words “without limitation”; (ii) the word “or” is not exclusive; (iii) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this MSA as a whole (unless the language in the provision otherwise specifies) ; (iv) words denoting the singular have a comparable meaning when used in the plural, and vice versa; (v) words denoting any gender include all genders; (vi) “\$” refers to U.S. dollars. The Parties intend this MSA to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.
 - k) Counterparts; Electronic Signatures. This MSA may be executed in counterparts, each of which will be deemed to be an original and together will constitute one and the same instrument. In the event that any signature to this MSA or any amendment hereto is delivered by e-mail delivery of an image or Portable Document Format (“PDF”) data file, such signature will create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such image or PDF signature page were an original thereof.

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**SCHEDULE #001 TO THE
PRIMARY MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT**

This Schedule #001 (“**Schedule**”) is entered into by and between Primary Diagnostics, Inc., a Delaware company with its principal place of business at 595 Pacific Avenue, Floor 4, San Francisco, CA 94133 (“**Primary**”) and the San Ysidro School District with a principal place of business at 4350 Otay Mesa Road, San Ysidro, CA 92173 (“**Customer**”) as of April 6, 2021 (“**Schedule Effective Date**”). This Schedule incorporates by reference the terms of that certain Master Software License and Services Agreement dated April 6, 2021 (the “**MSA**”) and is governed by such MSA. Each of Primary and Customer will be referred to in this Schedule individually as a “**party**” and together as the “**parties.**” All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the MSA.

1. Software and Services

- a) Provision of Software Platform. Primary shall provide Customer the Software for the duration of the Subscription Period as described in Section 1.b. In connection with receiving such services, Customer will receive a license to access or receive Primary Data for the duration of the Subscription Period. Upon completion of the Subscription Period all sensitive data shall be purged from Primary’s systems in a manner mutually agreed upon with Customer, and in compliance with regulatory protocols. New features implemented to Primary’s Software platform will also be offered to Customer for the life of the MSA regarding updates and improvements. All processes will be HIPAA compliant and adhere to any additional regulatory requirements.
- b) Description of Services. As part of the Software platform, Primary will customize and support the needs of existing and future Customer client relationships which may include but are not limited to the following:
 - Virtually train on-site managers, admin, greeters, etc.
 - Customized registration portals
 - Technical setup support

2. Term

- a) Schedule Term. This Schedule shall begin upon its Schedule Effective Date and continue through December 31, 2021. The Subscription Period will automatically renew up to 2 consecutive years at the end of the Schedule Term with the expiration of the Schedule Term unless terminated upon ninety (90) days prior written notice.

3. Fees

- a) Onboarding Services Platform Fee. Customer shall pay Primary the following Onboarding Services Platform Fee with the Schedule Effective Date.

Onboarding Services Platform Fee	\$5,000
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- b) Software Per Participant Fee. Customer agrees to pay Primary a Software Per Participant Fee in relation to work completed and in accordance with the Fee Schedule as outlined in the definitive MSA.

Software Per Dose Fee (vaccine)	\$1.50 per dose administered in this Schedule #001
Software Per Participant Fee (rapid antigen, BinaxNOW)	\$1.50 per test administered in this Schedule #001

Software Per Test Fee (PCR)	\$3 per test administered in this Schedule #001
Per Positive Case Follow-up	N/A

Note: Pricing for new testing modalities will be \$3 unless otherwise agreed to via amendment.

- a) Time & Materials. Customer shall agree to pay Primary Time & Material fees in relation to work completed and in accordance with the Fee Schedule as outlined in the definitive MSA. Time & Materials should be approved prior to work commencing outside of scope.

Time and Expenses: Consultant in market fees and all reasonable expenses relating to deliverables when deploying to a test site: i.e. plane, rental car, gas, food, hotel, materials, project supplies.

Site Lead/Coordinator: \$125/hour

Onsite Trainer - Software and Staff Workflows: \$200/hour

Science and Medical Advisory Team: \$300/hour

C Suite Staff: \$275/hour

Time & Materials	TBD - Project Based
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- b) Pass-through 3rd Party Costs. When authorized by Customer, Customer agrees to pay Primary for 3rd party goods and services at cost plus a 5% markup to cover management and oversight of 3rd party vendors: i.e. PPE, tenting, site supplies, customer support staff, equipment, technical kits.

2. Miscellaneous

- a) Counterparts. This Schedule may be executed in counterparts, each of which will be deemed to be an original and together will constitute one and the same instrument. In the event that any signature to this Schedule or any amendment hereto is delivery by e-mail delivery of an image or Portable Document Format (“PDF”) data file, such signature will create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such image or PDF signature page were an original thereof.
- b) Modification. No change or modification of this Schedule will be valid unless made pursuant to a writing executed by both parties.
- c) Entire Agreement. This Schedule together with the MSA and amendments thereto constitutes the entire agreement between the parties with respect to the transaction described in this Schedule and supersedes all written or oral prior agreements or understandings with respect thereto.

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SCHEDULE #002

PERSONAL INFORMATION PROCESSING ADDENDUM

This Personal Information Processing Addendum, effective as of April 6, 2021 (“**Addendum**”), by and between Primary Diagnostics, Inc., (“**Primary**”), and San Ysidro School District (“**Participant**”), (collectively the “**Parties**”), sets forth the terms and conditions relating to the privacy, confidentiality and security of Personal Information (as defined below) received or otherwise processed by Primary in connection with services rendered by Primary (the “**Services**”) pursuant to the Master Software License and Services Agreement (the “**MSA**”) whereunder Primary may receive Personal Information (as defined below) from Participant.

WHEREAS, Primary is a contractor or consultant to whom Participant has outsourced institutional services or functions, and Primary performs an institutional service or function for which Participant would otherwise use employees; is under the direct control of Participant with respect to the use and maintenance of Education Records (as defined below); and is subject to the requirements of § 99.31(a) of FERPA (as defined below) governing the use and redisclosure of Personally Identifiable Information (as defined below) from Education Records; and

WHEREAS, Participant requires that Primary preserve and maintain the privacy, confidentiality, and security of Personal Information;

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Addendum and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Participant and Primary agree as follows:

I. Definitions.

“**COVID Testing Data**” means COVID-19 test results relating to Participant’s students and/or employees.

“**Education Records**” shall have the same meaning as in FERPA and shall include such Education Records that Primary receives from Participant in connection with the Services.

“**Personal Information Laws**” means any law, rule, regulation, decree, statute, or other enactment, order, mandate or resolution, applicable to Participant or Primary, relating to data security, Personally Identifiable Information and/or privacy including, but not limited to, Family Educational Records and Privacy Act, 20 U.S.C. § 1232g and § 1232h, and 34 C.F.R. Parts 98 and 99 (“**FERPA**”).

“**Personally Identifiable Information**” or “**Personal Information**” shall have the same meaning as in Personal Information Laws and shall include, not by way of limitation, COVID Testing Data, Education Records, and PSPII.

“**PSPII**” or “**Participant Staff Personally Identifiable Information**” means COVID Testing Data and other information relating to a reasonably identifiable employee or an independent contractor of the Participant including, but not limited to name, employee ID



number, place of work, date of birth, contact information, demographic information, health insurance information, and symptom questionnaire responses.

Any capitalized term used but not defined herein shall have the meaning ascribed to it in Personal Information Laws and/or the MSA. In the event of a conflict, definitions used in this Addendum shall prevail over any defined terms in the MSA.

II. Purpose of the Addendum.

The purpose of this Addendum is to describe the duties and responsibilities to protect Personal Information transmitted to Primary from Participant in connection with the Services, including compliance with all Personal Information Laws. In performing the Services, and for the purpose of Education Records, Primary shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by Participant. With respect to the use and maintenance of Education Records, Primary shall be under the direct control and supervision of Participant.

III. Education Record Ownership.

Education Records transmitted to Primary pursuant to the MSA are, and will continue to be, the property of and under the control of Participant. Primary further acknowledges and agrees that all copies of such Education Records transmitted to Primary, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this Addendum in the same manner as the original Education Records.

IV. Duties of Participant.

(1) Compliance.

Participant shall provide Personal Information, Education Records and PSPII for the purposes of the Services in compliance with FERPA and all other applicable Personal Information Laws.

(2) Virtual Training

Participant shall provide periodic security and compliance virtual training to those of its employees who operate or have access to Personal Information.

(3) Annual Notification of Rights.

If Participant has a policy of disclosing Education Records under FERPA, Participant shall include a specification of criteria for determining who constitutes a School Official and what constitutes a legitimate educational interest in its annual notification of rights.

(4) Reasonable Precautions.

Participant shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the Services, Education Records, and PSPII.

(5) Unauthorized Access Notification.

Participant shall notify Primary promptly of any known or suspected unauthorized access to Education Records and/or PSPII. Participant will assist Primary in any efforts by Primary to investigate and respond to any actual or suspected incidents relating to Education Records and/or PSPII.

V. Duties of Primary.

(1) Compliance.

Primary shall comply with all applicable state and federal Personal Information Laws in connection with Education Records and PSPII received in connection with the Services.

(2) Authorized Use.

Education Records and PSPII shared pursuant to the MSA shall be used for no purpose other than the Services or as otherwise authorized under the Personal Information Laws. Primary also acknowledges and agrees that it shall not make any re-disclosure outside the scope of the MSA of any Education Records or any portion thereof, without the express written consent of Participant.

(3) Employee Obligation.

Primary shall require all employees and agents who have access to Education Records and/or PSPII to comply with all applicable provisions of this Addendum with respect to Education Records shared under the MSA.

(4) Security of Personal Information.

Primary agrees to abide by and maintain adequate data security measures, consistent with industry standards and technology best practices, to protect Personal Information received in connection with the Services from unauthorized disclosure or acquisition by an unauthorized person. These measures shall include, but are not limited to:

- a) **Passwords and Employee Access.** Primary shall secure usernames, passwords, and any other means of gaining access to Personal Information. Primary shall only provide access to Personal Information received in connection with the Services to employees or contractors that are performing the Services. Employees with access to Personal Information shall have signed confidentiality agreements regarding Personal Information. All employees with access to Education Records

and/or PSPII shall be subject to criminal background checks in compliance with state and local ordinances.

- b) **Destruction of Personal Information.** Unless otherwise required by law, Primary shall destroy or delete all Personal Information obtained in connection with the Services when they are no longer needed for the purpose for which they were obtained, or transfer said Personal Information to Participant or Participant's designee.
- c) **Security Protocols.** Primary agrees to maintain security protocols that meet industry standards in the transfer or transmission of Personal Information, including ensuring that Personal Information may only be viewed or accessed by parties legally allowed to do so. Primary shall maintain all Personal Information obtained or generated in connection with the Services in a secure digital environment and not copy, reproduce, or transmit Personal Information obtained in connection with the Services, except as necessary to fulfill the purpose of requests for Personal Information by Participant.
- d) **Employee Virtual Training.** Primary shall provide periodic security and compliance virtual training to those of its employees who operate or have access to Personal Information received in connection with the Services. Further, Primary shall provide Participant with contact information of an employee who Participant may contact if there are any security concerns or questions.
- e) **Security Technology.** Primary shall host Personal Information received in connection with the Services in an environment using a firewall that is updated according to industry standards.
- f) **Security Coordinator.** If different from the designated representative identified in Article VI, section e), Primary shall provide the name and contact information of Primary's Security Coordinator for the Personal Information received in connection with the Services.
- g) **Service Providers Bound.** Primary shall enter into written agreements whereby its service providers used in connection with the Services, if any, with access to Personal Information agree to secure and protect Personal Information in a manner consistent with the terms of this Article V. Primary shall periodically conduct or review compliance monitoring and assessments of service providers to determine their compliance with this Article V.
- h) **Periodic Risk Assessment.** Primary further acknowledges and agrees to conduct digital and physical periodic (no less than semi-annual) risk assessments and remediate any identified information security and privacy vulnerabilities in a timely manner.
- i) **Information Security Incidents.** In the event that Personal Information received in connection with the Services is accessed or obtained by an unauthorized third

party (each an “**Incident**”), Primary shall, unless prohibited by law, provide notification to Primary within a reasonable amount of time of having become aware of the Incident, and in any event no later than forty-eight (48) hours from the time Primary became aware of the Incident.

- j) **Compliance with Laws.** Primary agrees to adhere to all requirements in applicable state and federal laws with respect to an Incident including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such an Incident.
- k) **Incident Response Plan.** Primary further acknowledges and agrees to have a written Incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to an Incident, and agrees to provide Participant, upon request, with a copy of said written Incident response plan.
- l) **Co-Operation.** In the event of an Incident originating from Participant’s use of the Services, Primary shall cooperate with Participant to the extent necessary to expeditiously secure Personal Information.

VI. Miscellaneous.

- a) **Term.** Primary shall be bound by this Addendum for the duration of the MSA or so long as Primary maintains any Education Records and/or PSPII received under the MSA.
- b) **Termination.** This Addendum shall be coterminous with the MSA, unless the Parties terminate this Addendum by mutual written consent. Participant shall have the right to terminate this Addendum in the event of a material breach of the terms of this Addendum.
- c) **Effect of Termination.** If the MSA is terminated, and unless otherwise required by law, Primary shall destroy all Personal Information received from Participant in connection with the Services.
- d) **Priority of Agreements.** This Addendum shall govern the processing of Personal Information in order to comply with applicable Personal Information Laws. In the event there is a conflict between this Addendum and the MSA, this Addendum shall apply and take precedence. Except as described in this paragraph herein, all other provisions of the MSA shall remain in effect.
- e) **Notice.** All notices or other communication required or permitted to be given hereunder must be in writing and given by personal delivery, or e-mail transmission (if contact information is provided for the specific mode of delivery), or first-class mail, postage prepaid, sent to the designated representatives below:

Designated Representatives:

- The designated representative for **Participant** for this Addendum is:

[Dr. David Farkas, Assistant Superintendent]

[(619) 428-4476 Email: david.farkas@sysdschools.org]

With copy to: Marilyn Adrianzen, CBO Email: Marilyn.adrianzen@sysdschools.org

- The designated representative for **Primary** for this Addendum is:

[Andrew Kobylnski](#)

contracts@primary.health

- f) **Entire Agreement, No Waiver.** This Addendum constitutes the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior communications, representations, or agreements, oral or written, by the Parties relating thereto. This Addendum may be amended and the observance of any provision of this Addendum may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both Parties. Neither failure nor delay on the part of any party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.
- g) **Severability.** Any provision of this Addendum that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Addendum, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the Parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this Addendum or affecting the validity or enforceability of such provision in any other jurisdiction.
- h) **Governing Law; Venue and Jurisdiction.** THIS ADDENDUM WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THEREOF. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS LOCATED IN SAN FRANCISCO COUNTY, CALIFORNIA FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS SERVICE ADDENDUM OR THE TRANSACTIONS CONTEMPLATED HEREBY.

- i) **Limitation of Liability.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS ADDENDUM, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES, WHETHER BASED ON CONTRACT, WARRANTY, BREACH OF STATUTORY DUTY, STRICT LIABILITY OR OTHER TORT, CONTRIBUTION OR OTHERWISE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF LIABILITY IN THIS ADDENDUM WILL NOT APPLY TO ANY LIABILITY ARISING FROM: (I) A PARTY’S DEFENSE AND INDEMNIFICATION OBLIGATIONS UNDER THIS ADDENDUM; (II) AN INCIDENT; (III) A PARTY’S BREACH OF ITS CONFIDENTIALITY, PRIVACY, OR SECURITY OBLIGATIONS; (IV) A PARTY’S VIOLATION OF APPLICABLE LAW; OR (V) A PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

- j) **Authority.** Primary represents that it is authorized to bind to the terms of this Addendum, including confidentiality and destruction of Education Records and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to Education Records and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where Education Records and portion thereof stored, maintained or used in any way. Primary agrees that any purchaser of Primary shall also be bound to the Addendum.

- k) **Successors Bound.** This Addendum is and shall be binding upon the respective successors in interest to Primary in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business.

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IN WITNESS WHEREOF, the parties have executed this Addendum as of the last day noted below.

BY: _____ Date : _____

Printed Name: Marilyn Adrianzen Title/Position: CBO

SAN YSIDRO SCHOOL DISTRICT

BY: _____ Date : _____

Printed Name: Andrew Kobylinski Title/Position: CEO

PRIMARY DIAGNOSTICS, INC.

**SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA**

TO: Governing Board

BOARD MEETING DATE: April 5, 2021

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
David Farkas, Ed.D.,
Assistant Superintendent of
Educational Leadership,
Pupil Services and Safety

Informational
 Action

AGENDA ITEM: AGREEMENT WITH THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
FOR MEDICAL CONSULTING SERVICES

BACKGROUND INFORMATION:

The District recognizes the importance of students' health and wellbeing and its relationship to learning. The District believes in the value of maintaining the quality of district health services offered to students and their families. The University employs physicians with specialized training and expertise in Pediatrics and healthcare special education.

The University will appoint physicians to provide medical consultation to the District as requested by District personnel. This may include: health-related protocols and procedures; advisement on students with special health care needs; interactions on behalf of the District with students' physicians; definition of 'medical necessity' for speech therapy and for occupational and physical therapies with prescriptions for services received by students at the District; as well as for standing orders for epinephrine.

As compensation for the services, the District will pay the University a sum of \$280.00 per hour for Physician's work. Services are on an "as needed" basis. The term of this agreement is from April 1, 2021 to March 31, 2022.

RECOMMENDATION:

Approve/Ratify the agreement with the Regents of the University of California to appoint physicians to provide medical consultation services on an "as needed" basis, at a fee of \$280.00 per hour from the CARES and ESSER funds.

LCAP GOAL AND ACTION/SERVICE (please indicate):

Renewal New Amendment Ratify Other

Financial Implications?

Yes No

Are funds for this item available in the 2020-2021 Budget?

Yes No

Requisition #

TBD

(Amount)

CARES and ESSER Funds

(Name of funding source and/or location)

Recommended for: Approval Denial Certification Requested Yes No

**AGREEMENT BETWEEN
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
AND
SAN YSIDRO SCHOOL DISTRICT
CONCERNING CONSULTING SERVICES**

THIS AGREEMENT is made by and between The Regents of the University of California on behalf of the University of California, San Diego, School of Medicine, Department of Pediatrics ("UNIVERSITY") and San Ysidro School District, a political subdivision of San Diego County ("DISTRICT") with reference to the following facts:

WHEREAS, DISTRICT recognizes the importance of students' health and wellbeing and its relationship to learning; and,

WHEREAS, DISTRICT believes in the value of maintaining the quality of DISTRICT health services offered to students and their families; and,

WHEREAS, UNIVERSITY employs physicians with specialized training and expertise in Pediatrics and healthcare special education, and in particular, Howard Taras, M.D. and Adam L. Braddock, M.D., ("PHYSICIAN" or "PHYSICIANS"); AND

WHEREAS, it would benefit both parties to enter into an agreement where DISTRICT desires to secure, and UNIVERSITY desires to provide, the non-exclusive services of PHYSICIAN to provide special education health services to DISTRICT;

NOW, THEREFORE, it is agreed:

1. **RESPONSIBILITIES OF UNIVERSITY**

- 1.1 UNIVERSITY shall appoint PHYSICIANS to provide medical consultation to DISTRICT as requested by DISTRICT personnel. This may include: health-related protocols and procedures; advisement on students with special health care needs; interactions on behalf of DISTRICT with students' physicians; definition of 'medical necessity' for speech therapy and for occupational and physical therapies with prescriptions for services received by students at DISTRICT; as well as for standing orders for epinephrine.
- 1.2 If PHYSICIAN shall become permanently unavailable, for any reason, UNIVERSITY may, in its sole discretion, appoint another PHYSICIAN or terminate this Agreement. If UNIVERSITY elects to appoint another PHYSICIAN, such an appointment shall be made with the prior written consent of DISTRICT and such services shall be provided pursuant to the terms of this Agreement.
- 1.3 **Space and Equipment.** UNIVERSITY shall ensure that adequate and appropriate space and facilities are provided as necessary for the proper performance of services pursuant to this Agreement.

2. **RESPONSIBILITIES OF PHYSICIANS**

- 2.1 PHYSICIANS shall supervise and assign staff, as necessary to perform the services as described in subsection 1.1.
- 2.2 PHYSICIANS shall maintain in good standing an unrestricted license to practice medicine in the State of California, certifications and qualifications required hereunder or contemplated hereby.
- 2.3 Other Duties: PHYSICIANS shall
 - 2.3.1 shall work with DISTRICT to establish a mutually agreed upon schedule necessary to perform the services as described in subsection 1.1.
 - 2.3.2 as applicable, shall advise DISTRICT of needed repairs or replacement of DISTRICT provided equipment necessary for the proper performance of services under this Agreement either recognized by or brought to the attention of PHYSICIANS.

3. **RESPONSIBILITIES OF DISTRICT**

- 3.1 **Equipment.** DISTRICT, at its expense, shall supply for PHYSICIANS' use such equipment as mutually agreed upon by the parties as necessary for the proper performance of services under this Agreement, within DISTRICT'S budgetary limitations and subject to required governmental licenses and approvals.
- 3.2 **Use of UNIVERSITY'S Name**
California Education Code section 92000 prohibits use of UNIVERSITY'S name to suggest that UNIVERSITY endorses a product or service DISTRICT will not use the Regents' or UNIVERSITY'S name, or any acronym thereof, including "UCSD," in any way that implies or suggests endorsement by UNIVERSITY, or the Regents, of the product(s) utilized or in association with the program produced under this agreement without prior written approval, except to identify UNIVERSITY as the copyright holder, or as the work site when required to do so by law.
- 3.3 DISTRICT acknowledges that UNIVERSITY employees shall follow the ethical and legal standards established by the UNIVERSITY'S Compliance Program, as well as those of DISTRICT'S compliance program, if such program exists, and a copy has been provided to the UNIVERSITY'S employee.

4. **COMPENSATION AND BILLING**

- 4.1 As compensation for the services rendered by PHYSICIANS to DISTRICT pursuant to sections 1.1 and 2.1 of this Agreement, DISTRICT shall pay UNIVERSITY a sum of Two Hundred Eighty-dollars (\$280.00) per hour of PHYSICIAN'S work. Payment is due within thirty (30) days of receipt of UNIVERSITY'S invoice and upon termination

of this Agreement or earlier upon UNIVERSITY'S completion of the services. Services performed for each DISTRICT location will be invoiced separately.

Invoices will be sent to: San Ysidro School District
Attention: Gina Potter, Superintendent
Email: Gina.Potter@sysdschools.org
4350 Otay Mesa Road
San Ysidro, CA 92173

And sent to: SYSD Accounts Payable to blanca.vega@sysdschools.org

Checks will be made payable to: The Regents of the University of California

And sent to: UCSD Campus Main Depository
P.O. Box 741539
Los Angeles, CA 90074-1539
UCSD Re # 2021-0349
Federal Tax ID# 95-6006144

5. INSURANCE

DISTRICT and UNIVERSITY will maintain liability insurance or self insurance sufficient to cover the indemnification obligations under this Agreement.

6. INDEMNIFICATION

6.1 DISTRICT'S Indemnification. DISTRICT shall defend, indemnify and hold UNIVERSITY, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of DISTRICT, its officers, employees, or agents.

6.2 UNIVERSITY'S Indemnification. UNIVERSITY shall defend, indemnify and hold DISTRICT, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of UNIVERSITY, its officers, employees, or agents.

7. COOPERATION IN DISPOSITION OF CLAIMS

DISTRICT and UNIVERSITY agree to cooperate with each other in the investigation and disposition of third-party liability claims arising out of any services provided under this Agreement. It is the intention of the parties to fully cooperate in the disposition of all such claims. Such cooperation may include joint investigation, defense and disposition of claims of third parties arising from services performed under this Agreement. DISTRICT and UNIVERSITY agree to promptly inform one another whenever an incident report, claim or complaint is filed or when an investigation is initiated concerning any professional service

performed under this Agreement. To the extent allowed by law, DISTRICT and UNIVERSITY shall have reasonable access to the medical records and charts of the other relating to any such claim or investigation; provided, however, that nothing in this section shall require either DISTRICT or UNIVERSITY to disclose any peer review documents, incident reports, records or communications which are privileged under Section 1157 of the California Evidence Code, under the Attorney-Client Privilege or under the Attorney Work-Product Privilege.

8. TERM AND TERMINATION

8.1 Term of Agreement. The term of this Agreement shall be for the period from April 1, 2021 through March 31, 2022. This Agreement may be renewed upon the mutual written agreement of both parties.

8.2 Termination Without Cause. Notwithstanding any other provision to the contrary, this Agreement may be terminated without cause, for any reason, at any time by DISTRICT or UNIVERSITY upon thirty (30) days prior written notice to the other party. Termination without cause shall not include termination based upon the volume of revenue or referrals generated under this Agreement.

8.3 Termination For Material Breach. In the event of a material breach of this Agreement, the aggrieved party may terminate this Agreement by giving written notice of termination to the breaching party, which termination shall be effective immediately upon delivery or as otherwise specified in such notice; provided, however, that if the nature of the breach is such that it can be reasonably cured, said notice shall specify the nature of such breach, and shall further state that the breaching party shall have thirty (30) days from the effective date of such notice to cure such breach, at which time, if the breach is not cured, this Agreement shall be terminated.

8.4 Cause for Automatic Termination. This Agreement shall automatically terminate in the event of: (1) the loss of DISTRICT'S State of California professional or business license; (2) the loss of DISTRICT'S insurance coverage as described in Section 6 of this Agreement; (3) the insolvency or bankruptcy of DISTRICT.

8.5 Effect of Expiration or Termination. Upon the expiration or earlier termination of this Agreement, as herein above provided, and except as specifically provided herein, no party shall have any further obligation hereunder except for obligations, debts or liabilities arising hereunder prior to the date of expiration or earlier termination.

9. INDEPENDENT CONTRACTOR

None of the provisions of this Agreement shall be construed to or shall create a relationship of agency, representation, joint venture, ownership, control or employment between the parties, and it is understood and agreed that UNIVERSITY is at all times acting and performing the services pursuant to this Agreement as an independent contractor and not as an employee or agent of DISTRICT. DISTRICT shall not control or direct the manner or methods by which UNIVERSITY performs the contemplated medical services. However, UNIVERSITY shall be responsible for performing the services in a manner and at times so as to ensure that the

contemplated services are performed and rendered in a competent, efficient and satisfactory manner.

10. **MODIFICATIONS AND AMENDMENTS**

This Agreement may be amended or modified at any time by mutual written consent of the authorized representatives of both parties. DISTRICT and UNIVERSITY agree to amend this Agreement if such amendment is required by applicable regulatory authority and does not materially affect the relative economic benefits of the parties.

11. **DISPUTE RESOLUTION**

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. If they are unable to do so, then the following procedures shall apply.

11.1 **Mediation.** Any dispute between the parties which cannot be resolved in accordance with Article 14 of this Agreement may be submitted to mediation. If the parties mutually agree that mediation is appropriate, within ten (10) business days of the delivery of a request for mediation, the parties shall agree upon a mediator. If the parties are unable to agree on a mediator, a mediator shall be appointed by JAMS/Endispute. In consultation with the mediator selected, the parties shall promptly designate a mutually convenient time and place for the mediation. At the mediation, each party shall be represented by persons with authority to negotiate a resolution of the dispute, and may be represented by counsel. The mediator shall determine the format for the meetings. The mediation session shall be private. The fees and expenses of the mediator shall be borne equally by the parties, each of whom shall be responsible for their own costs. The entire mediation process shall be confidential and the privileges and protection of Evidence Code Section 1152.5 shall apply. Prior to commencement of mediation, the parties and the mediator shall execute a written confidentiality agreement in accordance with the provisions of Evidence Code Section 1152.5. At any time, either party may withdraw from the mediation process and submit the matter to binding arbitration.

12. **GOVERNING LAW**

This Agreement shall be governed in all respects by the laws of the State of California.

13. **ASSIGNMENT**

Neither DISTRICT nor UNIVERSITY shall assign their rights, duties, or obligations under this Agreement, either in whole or in part, without the prior written consent of the other.

14. **SEVERABILITY**

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable. This Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions shall remain in full force and effect unaffected by such severance, provided that the invalid provisions are not material to the overall purpose and operation of this Agreement.

15. **WAIVER**
Waiver by either party of any breach of any provision of this Agreement or warranty of representation herein set forth shall not be construed as a waiver of any subsequent breach of the same or any other provision. The failure to exercise any right hereunder shall not operate as a waiver of such right. All rights and remedies provided for herein are cumulative.
16. **ENTIRE AGREEMENT**
This Agreement, including attached exhibits, contains all the terms and conditions agreed upon by the parties hereto regarding the subject matter of the Agreement and supersedes any prior agreements, oral or written, and all other communications between the parties relating to such subject matter.
17. **ATTORNEYS' FEES**
In the event of any action, suit or proceeding, between the parties hereto, the cost of such action, suit or proceeding, including reasonable attorneys' fees, shall be borne by the losing party or, in the case of an arbitration, as determined by the arbitrator.
18. **INTERRUPTION OF SERVICES**
Any of the parties shall be excused from any delay or failure in performance hereunder caused by reason of any occurrence or contingency beyond its reasonable control, including, but not limited to, acts of God, acts of war, fire, insurrection, labor disputes, riots, earthquakes, or other acts of nature. The obligations and rights of the parties so excused shall be extended on a day-to-day basis for the time period equal to the period of such excusable interruption. In the event the interruption of the excused party's obligations continues for a period in excess of thirty (30) days, the other party shall have the right to terminate this Agreement upon ten (10) days prior written notice to the excused party.
19. **SUBJECT HEADINGS**
The subject headings used in this Agreement are for convenience only and shall not be deemed to affect the meaning or construction of any of the terms, provisions, covenants or conditions of this Agreement.
20. **METHOD OF NOTIFICATION**
All notices required or permitted to be given hereunder which may be given by any party to the other, shall be deemed to have been fully given when made in writing and sent by facsimile to the number set forth below or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, and addressed as follows:

TO UNIVERSITY: Chief Operating Officer
UC San Diego Health Sciences
9500 Gilman Drive, MC 0602
La Jolla, CA 92093-0602

TO DISTRICT: Superintendent
San Ysidro School District
4350 Otay Mesa Road
San Ysidro, CA 92173

21. COUNTERPARTS

This Agreement may be executed in separate counterparts, none of which need contain the signatures of all parties, each of which shall be deemed to be an original, and all of which taken together constitute one and the same instrument. Telecopied signatures will be deemed to have the same effect as an original.

The parties have executed this Agreement as set forth below.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,
on behalf its San Diego School of Medicine, Department of Pediatrics

By:  3/23/21
Gene Hasegawa Date
Chief Operating Officer
UC San Diego Health Sciences

SAN YSIDRO SCHOOL DISTRICT

By: _____ Date _____

Name: Marilyn Adrianzen

Title: Chief Business Official

Board approved: _____

**SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA**

TO: Governing Board

BOARD MEETING DATE: April 5, 2021

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Business Services
Marilyn Adrianzen, Chief Business Official

Informational
 Action

AGENDA ITEM: AB1200 AND AMENDMENT NO. 2 TO THE COLLECTIVE BARGAINING MEMORANDUM OF UNDERSTANDING WITH THE SAN YSIDRO EDUCATION ASSOCIATION

BACKGROUND INFORMATION:

On August 13, 2020, the Governing Board approved the Memorandum of Understanding between the San Ysidro School District and the San Ysidro Education Association (SYEA) regarding school reopenings due to the COVID-19 pandemic. The MOU is effective July 1, 2020 through June 30, 2021. On October 15, 2020, the Governing Board approved the submittal of AB1200 regarding the school reopenings due to the COVID-19 pandemic. On March 11, 2021, Amendment No. 1 was approved to extended the number of days for COVID-19 related leaves and other compensation for unit members re-assigned or volunteering for special assignments.

Amendment 2 is related to the COVID-19 and opening of schools for the 2020-21 school year. The following Section of the SYEA agreement date August 10, 2020 and originally amended on February 26, 2021 has been amended:

- Section 14 (e)
 - Section 14.12 Beginning as early as April 12, 2021, the District shall implement 2 Hybrid Learning Program Stipend Choices.

RECOMMENDATION:

Approve/Ratify the submittal of AB1200 to the San Diego County Office of Education and Amendment No. 2 to the Collective Bargaining Agreement with San Ysidro Education Association (SYEA) to implement the Hybrid Learning Program. The funding source for this Memorandum of Understanding with SYEA is the State Reopening In Person Instruction Grant.

LCAP GOAL AND ACTION/SERVICE (please indicate):

Renewal New Amendment Ratify Other

Financial Implications?

Are funds for this item available in the 2020-2021 Budget?

Requisition #

Yes No

Yes No

2020-2021

\$1,409,557.46

(Amount)

State Reopening In Person Instruction Grant

(Name of funding source and/or location)

Recommended for: Approval Denial Certification Requested Yes No

Disclosure of Collective Bargaining Agreement

In Accordance with AB 1200 (Statutes of 1991, Chapter 1213);
GC § 3547.5 (Statutes of 2004, Chapter 52)

San Ysidro School District

Name of Bargaining Unit: San Ysidro Education Association Certificated: X Classified: _____

The proposed agreement covers the period: Beginning: 07-01-20 Ending: 06-30-21

This agreement will be acted upon by the Governing Board at its meeting on: April 5, 2021
Date

A. Proposed Change in Compensation

Compensation	Cost Prior to Proposed Agreement 03-11-2021 (a) \$	Fiscal Impact of Proposed Agreement					
		Current Year 2020-2021		Year 2 2021-2022		Year 3 2022-2023	
		(b) \$	(c) %	(b) \$	(c) %	(b) \$	(c) %
1. Step & Column - Increase (Decrease) due to movement plus any changes due to settlement	\$22,335,796.16	\$0.00	0.00%	\$446,715.92	2.00%	\$455,650.24	2.00%
2. Salary Schedule - Increase (Decrease)	\$22,335,796.16	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
3. Other Compensation - Increase (Decrease) in Stipends, Bonuses, etc.	\$22,335,796.16	\$1,356,100.00	6.07%	\$0.00	0.00%	\$0.00	0.00%
4. Statutory Benefits - Increase (Decrease) in STRS, PERS, FICA, WC, UI, Medicare, etc.	\$4,487,708.16	\$53,457.46	1.19%	\$93,997.96	2.07%	\$95,877.92	2.07%
5. Health/Welfare Benefits - Increase (Decrease)	\$2,232,500.00	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
6. Total Compensation - Increase (Decrease) Total Lines 3(a), 4(a), 5(a)	\$29,056,004.32	\$1,409,557.46	4.85%	\$540,713.89	1.77%	\$551,528.17	1.78%
7. Total Number of Represented Employees	235.00	235.00		235.00		235.00	
8. Total Compensation Cost for Average Employee - Increase (Decrease)	\$123,642.57	\$5,998.12	4.85%	\$2,300.91	1.77%	\$2,346.93	1.78%

Impact on other Funds: No impact on other funds

A. Provide a brief narrative of the proposed change in compensation, including percentage change(s), effective date(s), and comments and explanations as necessary:

Beginning as early as April 12th 2021, the District shall implement three Hybrid Learning Program Stipend Choices, as follows:

1. Hybrid Learning Program Stipend Choice 1: (FRI In Person & M-TH Distance Learning Only)
 - i. Unit members who select this option shall earn \$175-per day up to \$1,400 total.
 - ii. SDC Teacher unit members who choose this option shall earn \$200 per day up to \$1600 total.
2. At the middle school level, every other Friday will alternate with a different set of the three periods being on campus (Periods 1 2 3 vs Periods 4 5 6).
3. Hybrid Learning Program Stipend Choice 2: (T/TH In Person w/ simultaneous instruction of online students & M/W/F Online)
 - a. Unit members who select this option shall earn \$275 per day up to \$4,950 total.
 - b. This option shall be made available for all unit members (including preschool teachers).
 - c. SDC Teacher unit members who choose this option shall
 - d. \$300-per day up to \$5400 total.

Unit members who teach at both middle school sites shall be compensated as per the CBA. Unit members shall not be forced to cover or monitor a class during their prep period. However, if the member agrees to do so, they shall be paid according to the CBA at 1/6th per diem for the loss of prep period.

b. Proposed Negotiated Changes in Non-Compensation Items (class size adjustments, staff development days, teacher prep time, etc.)

1. The district shall ensure safety measures are in place as outlined in the original MOU, Amendment #1 and within the district's COVID-19 Safety Plan (CSP).
2. Multiple face masks shall be provided to all unit members.
3. All unit members who select Hybrid Learning Program Stipend Choices 2 (two) shall receive training on the technology necessary to teach both groups simultaneously, but all unit members shall receive adequate training on the new equipment in their classroom as well as the hand-washing & sanitation procedures.
4. Each unit member shall notify Human Resources of their Hybrid Learning Stipend Choice no later than Wednesday March 17, 2021.
5. All unit members returning on site shall be required to submit a negative COVID test result no later than the day before their first day on campus.

After the teaching in-person portion of the school day has finished, all unit members who are teaching on site shall have the option to leave campus and work remotely until the end of contract time. Travel time shall occur during the unit member's duty-free lunch period and shall not interfere with contractual obligations. This duty-free lunch period shall not be affected, limited, nor impaired by any dismissal of students as they obtain their grab-and-go-lunches.

B. What are the specific impacts on instructional/support programs to accommodate the settlement? Include the impact of non-negotiated changes such as staff reductions and program reductions/eliminations.

In the case of onsite COVID exposure, a unit member who is teaching any of the Hybrid Learning Programs shall be allowed to work from home via online distance learning during the quarantine period while still receiving their stipend pay. A unit member who is absent due to personal necessity or non-COVID illness, shall not receive the stipend for the day. However, after contact tracing, it is determined the employee was not exposed on site, that unit member shall not receive the stipend for the day. A unit member who is absent for the specific other absence reasons of IEP days, professional development, association days, or negotiations shall receive the stipend for the day.

D. What contingency language is included in the proposed agreement? Include specific areas identified for reopeners, applicable fiscal years, and specific contingency language.

The provisions of this MOU shall function in tandem with the MOU amendments except for provisions that are in conflict. None of the agreements shall supersede each other. For any provisions in conflict, they shall be modified by mutual agreement of the District and the Association. The Parties affirm the obligation to comply with all provisions of the CBA not in conflict with these MOUs.

This MOU shall expire in full without precedent on June 30, 2021 unless extended by mutual written agreement of the Parties. All provisions of this MOU are subject to the negotiated grievance procedure in the CBA.

Except as expressly amended herein, all other terms and conditions of the MOU shall remain in full force and effect.

Nothing in this agreement shall be considered precedent setting or the establishment of a past practice.

E. Source of Funding for Proposed Agreement

1. The cost of this MOU will be funded by the reopening grants: In-person Instruction Grant and the Expanded Learning Opportunities Grant.

2. How will the ongoing cost of the proposed agreement be funded in future years?

Provisions of this MOU will be effective beginning as early as April 12th 2021 through June 30, 2021.

3. If multi-year agreement, what is the source of funding, including assumptions used, to fund these obligations in future years? (Remember to include compounding effects in meeting obligations)

This is not a multi-year agreement.

F. Impact of Proposed Agreement on Current Year Unrestricted Reserves

1. State Reserve Standard

a. Total Expenditures, Transfers Out, and Uses (Including Cost of Proposed Agreement)	\$64,529,769
b. State Standard Minimum Reserve Percentage for this District	3.00%
c. Projected P-2 ADA	4,211.37
d. State Standard Minimum Reserve Amount for this District <i>(Line 1a times Line 1b, or \$50,000, whichever is greater, for a district with less than 1,001 ADA)</i>	\$1,935,893.08

2. Budgeted Unrestricted Reserve (After Impact of Proposed Agreement)

a. General Fund Budgeted Unrestricted Designated for Economic Uncertainties	\$1,947,796.00
b. General Fund Budgeted Unrestricted Unappropriated Amount	\$0.82
c. Special Reserve Fund 17-Budgeted Designated for Economic Uncertainties	\$0.00
d. Special Reserve Fund 17-Budgeted Unappropriated Amount	\$0.00
e. Total District Budgeted Unrestricted Reserves	\$1,947,796.82

3. Do unrestricted reserves meet the state standard minimum reserve amount? Yes No

G. Certification

The information provided in this document summarized the financial implications of the proposed agreement and is submitted to the Governing Board for public disclosure of the major provisions of the agreement in accordance with the requirements of AB 1200 and Government Code § 3547.5.

We hereby certify that the costs incurred by the school district under this agreement can be met by the district during the term of the agreement.



District Superintendent
(Signature)

3/14/2021

Date



Chief Business Official
(Signature)

3/14/2021

Date

Contact Person: Marilyn Adriaen Telephone No.: (619) 428-4476

H. Impact of Proposed Agreement on Current Year Operating Budget*

Date of governing board approval of budget revisions in Col. 2: April 5, 2021
 in accordance with Education Code § 42142 and Government Code § 3547.5

Provide a copy of board-approved budget revisions and board minutes. In addition, provide two expenditure reports generated by the district's financial system: one showing the budget by major object before the changes and a second showing the budget by major object after the changes.

If the board-approved revisions are different from the proposed budget adjustments in Col. 2, provide a revised report upon approval of the district governing board.

	(Col. 1) Latest Board- Approved Budget Before Settlement as of 03-11-2021	(Col. 2) Adjustments as a Result of Settlement	(Col. 3) Other Revisions	(Col. 4) (Cols. 1 + 2 + 3) Total Impact on Budget
REVENUES:				
Revenue Limit Sources (8010-8099)	46,255,924			46,255,924
Remaining Revenues (8100-8799)	19,482,101		1,409,557	20,891,658
TOTAL REVENUES	65,738,025	0	1,409,557	67,147,582
EXPENDITURES:				0
1000 Certificated Salaries	24,455,336	1,356,100		25,811,436
2000 Classified Salaries	10,422,919			10,422,919
3000 Employee Benefits	13,175,251	53,457		13,228,708
4000 Books and Supplies	5,723,681			5,723,681
5000 Services and Operating Expenses	9,938,560			9,938,560
6000 Capital Outlay	169,000			169,000
7000 Other	494,681			494,681
TOTAL EXPENDITURES	64,379,427	1,409,557	0	65,788,985
OPERATING SURPLUS (DEFICIT)	1,358,598	(1,409,557)	1,409,557	1,358,597
OTHER SOURCES AND TRANSFERS IN				0
OTHER USES AND TRANSFERS OUT	150,342			150,342
CURRENT YEAR INCREASE (DECREASE) IN FUND BALANCE	1,208,256	(1,409,557)	1,409,557	1,208,255
BEGINNING BALANCE	1,325,391			1,325,391
CURRENT YEAR-ENDING BALANCE	2,533,646	(1,409,557)	1,409,557	2,533,646
COMPONENTS OF ENDING BALANCE:				
Nonspendable (9711-9719)	50,000			50,000
Restricted (9740)	535,849	(1,409,557)	1,409,557	535,849
Committed (9750/9760)				0
Assigned (9780)				0
Reserve Economic Uncertainties (9789)	1,947,796			1,947,796
Unassigned/Unappropriated (9790)	1			1

If the total amount of the adjustment in Column 2 does not agree with the amount of the total cost shown on page 1, please explain:

*This supplement is a composite recap of "all" the bargaining agreements shown on the preceding pages.

DISCLOSURE OF COLLECTIVE BARGAINING AGREEMENT

GENERAL INSTRUCTIONS

- Please submit this form to the county superintendent of schools and make available to the public for review at least ten (10) working days prior to the date the governing board will take action on the proposed bargaining agreement.
- Separate documents must be completed for each collective bargaining agreement, but if more than one agreement is discussed at the same time, you may summarize the financial impact of “all” agreements on page 4 (supplement).
- Include, as applicable, *Cost Prior to Proposed Agreement, Current Year, Year 2 and Year 3* information for the period covered in the proposed agreement. For example, for a 2-year multi-year agreement, complete *Cost Prior to Proposed Agreement, Current Year and Year 2*.
- Any time a contract is reopened with a financial impact on “any area of compensation,” a disclosure of the proposed agreement must be made.
- The specific manner in which the public is made aware of the proposed agreement and its availability for public inspection and review is at the discretion of the local district.
- The governing board shall adopt revisions to its budget needed in the current fiscal year to fulfill the terms of the collective bargaining agreement within 45 days of adoption (EC § 42142). Provide a copy of the board-approved budget revisions and board minutes to the county office. In addition, provide two expenditure reports generated by the district’s financial system: one showing the budget by major object before the changes and a second showing the budget by major object after the changes.
- All revisions to the budget needed in the current fiscal year to meet the costs of the collective bargaining agreement shall be adopted no later than the statutory deadline for certification of the next interim report by the county superintendent of schools (GC § 3547.5, EC § 42131).

SPECIFIC INSTRUCTIONS FOR COMPLETION

PROPOSED CHANGE IN COMPENSATION

1. Step and Column

- a. Cost Prior to Proposed Agreement: Enter the total annual cost of all salaries for the bargaining unit prior to the proposed agreement. Remove any “one-time” bonuses or payments that were paid in prior year, if applicable.
- b. \$: Enter the annual increase cost of *Step and Column* movement on the *Salary Schedule* for the affected bargaining unit.
- c. %: Divide the annual cost of *Step and Column*, Line 1(b), by the *Cost Prior to Proposed Agreement*, Line 1(a).

2. Salary Schedule

- a. Cost Prior to Proposed Agreement: Enter the amount from Line 1(a) plus Line 1(b).
- b. \$: Enter the annual \$ amount of the proposed change in the *Salary Schedule*.

3. Other Compensation

Description: Indicate specific changes in *Other Compensation* for the current year. For example: 1% off schedule or \$200/employee. For *Year 2* and *Year 3*, explain in “Comments” section, if applicable.

- a. **Cost Prior to Proposed Agreement:** Enter the amount from Line 2(a).
- b. **\$:** Enter the annual amount of the proposed change in *Other Compensation*.
- c. **%:** Divide the amount by the *Cost Prior to the Proposed Agreement*, Line 3(a).

4. Statutory Benefits

- a. **Cost Prior to Proposed Agreement:** Enter the total prior year cost of *Statutory Benefits* of the bargaining unit prior to the proposed agreement. If applicable, exclude any “one-time” benefit costs that would not carry over to current year.
- b. **\$:** Enter the amount of the proposed change in *Statutory Benefits* resulting from changes in *Salary Schedule*, *Step and Column*, and *Other Compensation* reported on Line 1(b) through Line 3(b).
- c. **%:** Divide Line 4(b) by the amount of dollars shown in *Cost Prior to Proposed Agreement*, Line 4(a).

5. Health/Welfare Benefits

- a. **Cost Prior to Proposed Agreement:** Enter the total annual cost of *Health/Welfare Benefits* of the bargaining unit prior to the proposed agreement. If applicable, exclude any “one-time” costs that would not carry over to current year.
- b. **\$:** Enter the amount of the proposed change in *Health/Welfare Benefits*, resulting from the affected bargaining unit agreement.
- c. **%:** Divide Line 5(b) by the amount of dollars shown in *Cost Prior to Proposed Agreement* Line 5(a).

6. Total Compensation

- a. **Cost Prior to Proposed Agreement:** Total Lines 3(a), 4(a), and 5(a).
- b. **\$:** Total Lines 1(b), 2(b), 3(b), 4(b), and 5(b).
- c. **%:** Divide the total by *Cost Prior to Proposed Agreement*, Line 6(a).

7. Total Number of Represented Employees

Enter the total full-time equivalent (FTE) employees for the affected bargaining unit for each applicable year.

8. Total Compensation Cost for Average Employee

- a. **Cost Prior to Proposed Agreement:** Divide *Cost Prior to Proposed Agreement*, Line 6(a) by Prior Year FTE Employees, Line 7.
- b. **\$:** Divide *Total Compensation*, Line 6(b) by FTE employees, Line 7, for each applicable year.
- c. **%:** Divide *Total Compensation Cost for Average Employee*, Line 8(b) by *Cost Prior to Proposed Agreement*, Line 8(a).

Amendment No. 2

**MEMORANDUM OF UNDERSTANDING REGARDING COVID-19 CORONAVIRUS
AND OPENING SCHOOLS FOR THE 2020-21 SCHOOL YEAR**

The Memorandum of Understanding between San Ysidro School District (“District”) and the San Ysidro Education Association (“SYEA”) dated August 10, 2020 and originally amended on February 26, 2021 is hereby amended as follows:

1. Section 14 (Instruction):

e. **Add Section 14.12:** Beginning as early as April 12th 2021, the District shall implement two Hybrid Learning Program Stipend Choices, as follows:

1. Hybrid Learning Program Stipend Choice 1: (FRI In Person & M-TH Distance Learning Only)

- a. Unit members who select this option shall teach on site one day per week (Friday).
- b. Unit members who select this option shall conduct in-person teaching to all students on their current roster who choose the on-site learning option.
- c. Unit members who select this option shall be required to teach the students on site following the hybrid learning instructional schedule.
- d. Unit members who work at the elementary school level and who select this option shall not be required to follow the full distance learning schedule and instead shall only be required to do a synchronous check-in including attendance/engagement accounting with their distance learning students for the day.
- e. This option shall be made available to all unit members (including preschool teachers).
- f. Unit members who select this option shall earn \$175 per day up to \$1,400 total.
- g. SDC Teacher unit members who choose this option shall earn \$200 per day up to \$1,600 total.

2. At the middle school level, every other Friday will alternate with a different set of the three periods being on campus (Periods 1, 2, and 3 vs Periods 4, 5, and 6). For example, if the first week of this program, only students from Periods 1, 2, and 3 will be on campus, then the second week of this program, only students from Periods 4, 5, and 6 will be on campus. If a period does not have an available teacher on campus, there will be a certificated employee in their place.

3. Hybrid Learning Program Stipend Choice 2: (T/TH In Person w/ simultaneous instruction of online students & M/W/F Online)

- a. Unit members at the elementary level who select this option shall teach on site two days per week (Tuesday and Thursday).
 - b. Unit members at the middle school level who select this option shall teach on site on two days per week (Mondays & Tuesdays).
 - c. Unit members who select this option shall conduct in-person teaching to all students on their current roster who choose the on-site learning option.
 - d. Unit members who select this option shall be required to teach their entire roster of students both at home via distance learning and the students on site simultaneously following the hybrid learning instructional schedule.
 - e. This option shall be made available for all unit members (including preschool teachers).
 - f. Unit members who select this option shall earn \$275 per day up to \$4,950 total.
 - g. SDC Teacher unit members who choose this option shall earn \$300 per day up to \$5,400 total.
4. The following shall be in place for all Hybrid Learning Stipend Choices listed above:
- a. The district shall ensure safety measures are in place as outlined in the original MOU, Amendment #1 and within the district's COVID-19 Safety Plan (CSP).
 - i. Multiple face masks shall be provided to all unit members.
 - b. All unit members who select Hybrid Learning Program Stipend Choice 2 (two) shall receive training on the technology necessary to teach both groups simultaneously, but all unit members shall receive adequate training on the new equipment in their classroom as well as the hand-washing & sanitation procedures.
 - c. Each unit member shall notify Human Resources of their Hybrid Learning Stipend Choice no later than Wednesday March 17, 2021.
 - i. Unit members who have a medical work restriction on file shall not be required to select a Hybrid Learning Stipend Choice and can continue with distance learning for the remainder of the school year if their work restrictions continue to require this accommodation.
 - d. All unit members returning on site shall be required to submit a negative COVID test result no later than the day before their first day on campus.

5. Sci-Phy Teachers, Resource Teachers, and Classroom Teachers Assigned to the District may be given the option, depending upon the needs of the District, to select one of the above Hybrid Learning Stipend Choices to provide In-Person Instruction for classrooms that have a teacher instructing online or to conduct required assessments in person. They shall receive the stipend associated with whichever of the choice they select.
6. Adapted PE Teacher, RSP Teachers, LSH, Social Worker, School Nurse, School Counselors and School Psychologists may also select one of the above Hybrid Learning Stipend Choices to provide In-Person Instruction (i.e., services) and assessments. They shall receive the stipend associated with whichever of the choice they select.
7. In the case of on-site COVID exposure, a unit member who is teaching any of the Hybrid Learning Programs shall be allowed to work from home via online distance learning during the quarantine period while still receiving their stipend pay. A unit member who is absent due to personal necessity or non-COVID illness, shall not receive the stipend for the day. A unit member who takes a personal illness day due to COVID exposure shall receive the stipend for the day. However, after contact tracing, if it is determined the employee was not exposed on site, then that unit member shall not receive the stipend for the day. A unit member who is absent for the specific absence reasons of IEP days, professional development, association days, or negotiations shall receive the stipend for the day.
8. In accordance with the COVID-19 Safety Plan, the district shall inform families and students of the safety procedures related to entering classrooms and related to passing periods at middle schools including - but not limited to - social distancing guidelines of remaining 6 feet apart & handwashing/sanitation procedures.
9. For all grade levels, in terms of bathroom breaks, one student at a time per class may be permitted to leave their classroom to use the bathroom, go to the health clerk/nurse office, and/or carry out other necessary tasks with the teachers' permission. However, if the teacher requires support in terms of locating the student and/or assisting the student in any way, school staff will be available to help the teachers respond to the situations as needed. The same approach shall be applied for behavior issues as they arise, in accordance with the school site's respective discipline plan and procedures.
10. Combo classes shall begin at a time that does not affect either grade level. In the event of a multiple grade level combo class, that class will follow only one grade level's start, break, and dismissal time. We will continue to work together on the logistics of students arriving on campus with the intention of staggering their arrival to school sites.

11. After the teaching in-person portion of the school day has finished, all unit members who are teaching on site shall have the option to leave campus and work remotely until the end of contract time. Travel time shall occur during the unit member's duty-free lunch period and shall not interfere with contractual obligations. This duty-free lunch period shall not be affected, limited, nor impaired by any dismissal of students as they obtain their grab-and-go-lunches.
12. Unit members who teach at both middle school sites shall be compensated as per the CBA. Unit members shall not be forced to cover or monitor a class during their prep period. However, if the member agrees to do so, they shall be paid according to the CBA at 1/6th per diem for the loss of prep period.
13. In consideration of the needs of student IEPs, adult to student ratio, and social/emotional needs, support staff shall be available to work in Special Education Programs to help support the continuum of special education services and to assist with instruction & related activities. Support staff shall not be arbitrarily pulled away at any point to perform other tasks that may interfere with their already-assigned classroom schedule.
14. Unit members who have signed a waiver to allow their school-aged child to be at the worksite may bring their child to the classroom as long as the child remains in their space and allows the teacher to work.
15. All future staff meetings shall also be held virtually.
16. All unit members returning on site shall receive wireless headphones with a microphone by April 2nd. Each classroom will have the webcam set up and the teacher desktop ready & fully functional by April 2nd. For any equipment or technology that is not fully functional by April 2nd, the Unit Member shall place a work order as soon as possible and the district shall complete that work order with haste. Each classroom shall receive a power strip for charging laptops/devices. Students shall be expected and required to bring their charged laptops/devices to campus with them. However, each classroom will have a loaner Chromebook available for students to borrow on a temporary basis as needed.

17. April 2 will be a full day of teacher prep for all teachers to provide them enough time to prepare their classrooms, their instructional materials, and any other needs - with the exception of a two-hour online training in which the specific methods for hybrid instruction shall be taught, the technical aspects of the equipment will be demonstrated, all teachers will be confirmed to have the necessary supplies to begin teaching, any teachers missing materials will be provided them no later than April 7th, appropriate handwashing & sanitation procedures will be taught, and all necessary schedules/rules/guidelines will be reviewed. There will be other opportunities for training as needed.
18. Unit members returning on site shall be permitted to work in their classrooms as soon as they want to as long as they have a recent negative COVID test. The ability to work on site over spring break shall be coordinated with the site or department administrator.
19. All stipends will be clearly delineated on the members' following monthly paycheck.
20. Unit members shall not be penalized in any way for their Hybrid Learning Program Stipend choice.
21. We will continue to work together on finalizing the Hybrid Learning Program instructional schedules to minimize the amount of different schedules to the extent possible.

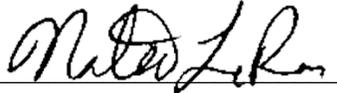
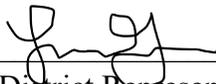
The provisions of this MOU shall function in tandem with the MOU amendments except for provisions that are in conflict. None of the agreements shall supersede each other. For any provisions in conflict, they shall be modified by mutual agreement of the District and the Association. The Parties affirm the obligation to comply with all provisions of the CBA not in conflict with these MOUs.

This MOU shall expire in full without precedent on June 30, 2021 unless extended by mutual written agreement of the Parties. All provisions of this MOU are subject to the negotiated grievance procedure in the CBA.

Except as expressly amended herein, all other terms and conditions of the MOU shall remain in full force and effect.

Nothing in this agreement shall be considered precedent setting or the establishment of a past practice.

These amendments have been mutually agreed upon by the parties.

	<u>3/18/2021</u>		<u>03/18/2021</u>
SYEA Representative	Date	District Representative	Date

**SAN YSIDRO SCHOOL DISTRICT
GOVERNING BOARD AGENDA**

TO: Governing Board

BOARD MEETING DATE: April 5, 2021

VIA: Gina A. Potter, Ed.D.
Superintendent

FROM:
Business Services
Marilyn Adrianzen, Chief Business Official

Informational
 Action

AGENDA ITEM: AB1200 FOR CLASSIFIED/CERTIFICATED MANAGEMENT AND CLASSIFIED CONFIDENTIAL STAFF

BACKGROUND INFORMATION:

The San Ysidro School District approved stipends for both the certificated and classified bargaining units via COVID and Opening of Schools related Memorandums of Understanding for school year 2020-21. In line with those MOUs, the District is providing classified and certificated management staff and classified confidential staff:

- a one-time only stipend to administer and support the district's hybrid model.
- Extended COVID related days.
- The ability to bring minor children to work with approved child waiver through the duration of distance learning; and
- authorization to work a specific number of days on nonwork days or weekends.

RECOMMENDATION:

Approve the AB1200 for Classified/Certificated Management and Classified Confidential staff for the 2020-2021 school year and the submittal of AB1200 to the San Diego County Office of Education to implement the Hybrid Learning Program and to extend the Families First Coronavirus Relief Act. The Elementary and Secondary School Relief (ESSER II) fund is the funding source for the AB1200 for Classified/Certificated Management and Classified Confidential Staff.

LCAP GOAL AND ACTION/SERVICE (please indicate):

Renewal New Amendment Ratify Other

Financial Implications?

Are funds for this item available in the 2020-2021 Budget?

Requisition #

Yes No

Yes No

2020-2021

\$413,835.69

(Amount)

ESSER II Funds

(Name of funding source and/or location)

Recommended for: Approval Denial Certification Requested Yes No

Disclosure of Collective Bargaining Agreement

In Accordance with AB 1200 (Statutes of 1991, Chapter 1213);
GC § 3547.5 (Statutes of 2004, Chapter 52)

San Ysidro School District

Certificated/Classified Management and
Classified Confidential

Name of Bargaining Unit: _____ Certified: _____ Classified: _____

The proposed agreement covers the period: Beginning: 07-01-20 Ending: 06-30-21

This agreement will be acted upon by the Governing Board at its meeting on: April 5, 2021
Date

A. Proposed Change in Compensation

Compensation	Cost Prior to Proposed Agreement 03-11-2021 (a) \$	Fiscal Impact of Proposed Agreement					
		Current Year 2020-2021		Year 2 2021-2022		Year 3 2022-2023	
		(b) \$	(c) %	(b) \$	(c) %	(b) \$	(c) %
1. Step & Column - Increase (Decrease) due to movement plus any changes due to settlement	\$3,602,832.03	\$0.00	0.00%	\$72,056.64	2.00%	\$73,497.77	2.00%
2. Salary Schedule - Increase (Decrease)	\$3,602,832.03	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
3. Other Compensation - Increase (Decrease) in Stipends, Bonuses, etc.	\$3,602,832.03	\$343,339.15	9.53%	\$0.00	0.00%	\$0.00	0.00%
4. Statutory Benefits - Increase (Decrease) in STRS, PERS, FICA, WC, UI, Medicare, etc.	\$883,334.59	\$70,496.54	7.98%	\$15,162.16	1.59%	\$15,465.40	1.60%
5. Health/Welfare Benefits - Increase (Decrease)	\$266,000.00	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
6. Total Compensation - Increase (Decrease) Total Lines 3(a), 4(a), 5(a)	\$4,752,166.62	\$413,835.69	8.71%	\$87,218.80	1.69%	\$88,963.17	1.69%
7. Total Number of Represented Employees	28.00	28.00		28.00		28.00	
8. Total Compensation Cost for Average Employee - Increase (Decrease)	\$169,720.24	\$14,779.85	8.71%	\$3,114.96	1.69%	\$3,177.26	1.69%

Impact on other Funds: No impact on other funds

A. Provide a brief narrative of the proposed change in compensation, including percentage change(s), effective date(s), and comments and explanations as necessary:

1. From January 2021 until May 31, 2021, the District shall provide paid sick leave similar to that provided by HR 6201 as follows:
 - a. Ten (10) work days of district provided COVID leave paid at the employee's regular rate of pay if:
 - The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
 - The employee has been advised by a health care provider to self-quarantine because of COVID-19; or
 - The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
 - b. Seven (7) work days of district provided COVID leave paid at the employee's regular rate of pay up to \$200 per day and \$1,400 total if:
 - The employee is caring for a family member subject to an order, advised to self-isolate, or experiencing symptoms of COVID-19 and is seeking a medical diagnosis
 - The employee may utilize accrued leave balances to supplement any loss in pay as a result of utilizing this leave.
2. All unit members shall be entitled to the leave balances referenced above regardless if they used any portion of FFCRA leave prior to January 1, 2021.
3. The district will extend the ability for unit members to bring their minor children to district property consistent with the terms and conditions of the child waiver, through the duration of the distance learning only program.
4. Unit members who utilized their own hours of Personal Illness due to one of the COVID related reasons listed above during the period of January 1, 2021 through the execution date of this agreement shall have their balances restored.
5. The District may request verification prior to placing a unit member on paid COVID leave.
6. Any employee reporting to work who is sent home due to coronavirus exposure on site shall not be deducted any leaves or pay for the duration of quarantine period set forth by the District.

Effective March 20, 2021 through June 30, 2021, certificated and classified management will be allowed to work extra days on non-workdays and weekend days (Saturday/Sunday) up to three (3) days at their per diem daily rate. Confidential employees will be allowed to work extra days on non-workdays and weekend days (Saturday/Sunday) up to two (2) days at their per diem daily rate. A timesheet must be approved by the site/department supervisor in order to be paid the extra work days.

In addition, certificated and classified management employees will receive a one-time stipend in the amount of \$7,000 and classified confidential employees will receive a one time off-cycle amount equal to 7% of the classified confidential employee's annual salary to administer and support the district's hybrid model.

B. What are the specific impacts on instructional/support programs to accommodate the settlement? Include the impact of

non-negotiated changes such as staff reductions and program reductions/eliminations.

There are no specific impacts on instructional / support programs to accommodate the settlement.

Revised 07/04

D. What contingency language is included in the proposed agreement? Include specific areas identified for reopeners, applicable fiscal years, and specific contingency language.

The term of this agreement will extend from January 1, 2021, until May 31, 2021. Should a new law providing greater paid coronavirus leave be enacted, either party may demand bargaining over its effects and over the orderly termination or modification of this agreement.

E. Source of Funding for Proposed Agreement

1. The cost of this MOU will be funded by the Expanded Learning Opportunities Grant, ESSER I and/or ESSER II.

2. How will the ongoing cost of the proposed agreement be funded in future years?

The cost of this proposed agreement is one-time only in fiscal year 2020-21.

3. If multi-year agreement, what is the source of funding, including assumptions used, to fund these obligations in future years? (Remember to include compounding effects in meeting obligations)

This is not a multi-year agreement.

Revised 07/04

F. Impact of Proposed Agreement on Current Year Unrestricted Reserves

1. State Reserve Standard

a. Total Expenditures, Transfers Out, and Uses (Including Cost of Proposed Agreement)	\$64,529,769
b. State Standard Minimum Reserve Percentage for this District	3.00%
c. Projected P-2 ADA	4,211.37
d. State Standard Minimum Reserve Amount for this District <i>(Line 1a times Line 1b, or \$50,000, whichever is greater, for a district with less than 1,001 ADA)</i>	\$1,935,893.08

2. Budgeted Unrestricted Reserve (After Impact of Proposed Agreement)

a. General Fund Budgeted Unrestricted Designated for Economic Uncertainties	\$1,947,796.00
b. General Fund Budgeted Unrestricted Unappropriated Amount	\$0.82
c. Special Reserve Fund 17-Budgeted Designated for Economic Uncertainties	\$0.00
d. Special Reserve Fund 17-Budgeted Unappropriated Amount	\$0.00
e. Total District Budgeted Unrestricted Reserves	\$1,947,796.82

3. Do unrestricted reserves meet the state standard minimum reserve amount?

Yes

No

G. Certification

The information provided in this document summarized the financial implications of the proposed agreement and is submitted to the Governing Board for public disclosure of the major provisions of the agreement in accordance with the requirements of AB 1200 and Government Code § 3547.5.

We hereby certify that the costs incurred by the school district under this agreement can be met by the district during the term of the agreement.

Nina A. Pett

District Superintendent
(Signature)

3/19/2021

Date

Marilyn A. Adrianzen

Chief Business Official
(Signature)

3/19/2021

Date

Contact Person: Marilyn Adrianzen

Telephone No.: (619) 428-4476

H. Impact of Proposed Agreement on Current Year Operating Budget*

Date of governing board approval of budget revisions in Col. 2: April 5, 2021
 in accordance with Education Code § 42142 and Government Code § 3547.5

Provide a copy of board-approved budget revisions and board minutes. In addition, provide two expenditure reports generated by the district's financial system: one showing the budget by major object before the changes and a second showing the budget by major object after the changes.

If the board-approved revisions are different from the proposed budget adjustments in Col. 2, provide a revised report upon approval of the district governing board.

	(Col. 1) Latest Board- Approved Budget Before Settlement as of 03-11-2021	(Col. 2) Adjustments as a Result of Settlement	(Col. 3) Other Revisions	(Col. 4) (Cols. 1 + 2 + 3) Total Impact on Budget
REVENUES:				
Revenue Limit Sources (8010-8099)	46,255,924			46,255,924
Remaining Revenues (8100-8799)	19,482,101		413,836	19,895,937
TOTAL REVENUES	65,738,025	0	413,836	66,151,861
EXPENDITURES:				0
1000 Certificated Salaries	24,455,336	157,143		24,612,479
2000 Classified Salaries	10,422,919	186,196		10,609,115
3000 Employee Benefits	13,175,251	70,497		13,245,747
4000 Books and Supplies	5,723,681			5,723,681
5000 Services and Operating Expenses	9,938,560			9,938,560
6000 Capital Outlay	169,000			169,000
7000 Other	494,681			494,681
TOTAL EXPENDITURES	64,379,427	413,836	0	64,793,263
OPERATING SURPLUS (DEFICIT)	1,358,598	(413,836)	413,836	1,358,598
OTHER SOURCES AND TRANSFERS IN				0
OTHER USES AND TRANSFERS OUT	150,342			150,342
CURRENT YEAR INCREASE (DECREASE) IN FUND BALANCE	1,208,256	(413,836)	413,836	1,208,256
BEGINNING BALANCE	1,325,391			1,325,391
CURRENT YEAR-ENDING BALANCE	2,533,646	(413,836)	413,836	2,533,647
COMPONENTS OF ENDING BALANCE:				
Nonspendable (9711-9719)	50,000			50,000
Restricted (9740)	535,849	(413,836)	413,836	535,850
Committed (9750/9760)				0
Assigned (9780)				0
Reserve Economic Uncertainties (9789)	1,947,796			1,947,796
Unassigned/Unappropriated (9790)	1			1

If the total amount of the adjustment in Column 2 does not agree with the amount of the total cost shown on page 1, please explain:

*This supplement is a composite recap of "all" the bargaining agreements shown on the preceding pages.

DISCLOSURE OF COLLECTIVE BARGAINING AGREEMENT

GENERAL INSTRUCTIONS

- Please submit this form to the county superintendent of schools and make available to the public for review at least ten (10) working days prior to the date the governing board will take action on the proposed bargaining agreement.
- Separate documents must be completed for each collective bargaining agreement, but if more than one agreement is discussed at the same time, you may summarize the financial impact of "all" agreements on page 4 (supplement).
- Include, as applicable, *Cost Prior to Proposed Agreement, Current Year, Year 2 and Year 3* information for the period covered in the proposed agreement. For example, for a 2-year multi-year agreement, complete *Cost Prior to Proposed Agreement, Current Year and Year 2*.
- Any time a contract is reopened with a financial impact on "any area of compensation," a disclosure of the proposed agreement must be made.
- The specific manner in which the public is made aware of the proposed agreement and its availability for public inspection and review is at the discretion of the local district.
- The governing board shall adopt revisions to its budget needed in the current fiscal year to fulfill the terms of the collective bargaining agreement within 45 days of adoption (EC § 42142). Provide a copy of the board-approved budget revisions and board minutes to the county office. In addition, provide two expenditure reports generated by the district's financial system: one showing the budget by major object before the changes and a second showing the budget by major object after the changes.
- All revisions to the budget needed in the current fiscal year to meet the costs of the collective bargaining agreement shall be adopted no later than the statutory deadline for certification of the next interim report by the county superintendent of schools (GC § 3547.5, EC § 42131).

SPECIFIC INSTRUCTIONS FOR COMPLETION

PROPOSED CHANGE IN COMPENSATION

1. Step and Column

- a. Cost Prior to Proposed Agreement: Enter the total annual cost of all salaries for the bargaining unit prior to the proposed agreement. Remove any "one-time" bonuses or payments that were paid in prior year, if applicable.
- b. \$: Enter the annual increase cost of *Step and Column* movement on the *Salary Schedule* for the affected bargaining unit.
- c. %: Divide the annual cost of *Step and Column*, Line 1(b), by the *Cost Prior to Proposed Agreement*, Line 1(a).

2. Salary Schedule

- a. Cost Prior to Proposed Agreement: Enter the amount from Line 1(a) plus Line 1(b).
- b. \$: Enter the annual \$ amount of the proposed change in the *Salary Schedule*.

3. Other Compensation

Description: Indicate specific changes in *Other Compensation* for the current year. For example: 1% off schedule or \$200/employee. For Year 2 and Year 3, explain in "Comments" section, if applicable.

- a. **Cost Prior to Proposed Agreement:** Enter the amount from Line 2(a).
- b. **\$:** Enter the annual amount of the proposed change in *Other Compensation*.
- c. **%:** Divide the amount by the *Cost Prior to the Proposed Agreement*, Line 3(a).

4. Statutory Benefits

- a. **Cost Prior to Proposed Agreement:** Enter the total prior year cost of *Statutory Benefits* of the bargaining unit prior to the proposed agreement. If applicable, exclude any "one-time" benefit costs that would not carry over to current year.
- b. **\$:** Enter the amount of the proposed change in *Statutory Benefits* resulting from changes in *Salary Schedule, Step and Column*, and *Other Compensation* reported on Line 1(b) through Line 3(b).
- c. **%:** Divide Line 4(b) by the amount of dollars shown in *Cost Prior to Proposed Agreement*, Line 4(a).

5. Health/Welfare Benefits

- a. **Cost Prior to Proposed Agreement:** Enter the total annual cost of *Health/Welfare Benefits* of the bargaining unit prior to the proposed agreement. If applicable, exclude any "one-time" costs that would not carry over to current year.
- b. **\$:** Enter the amount of the proposed change in *Health/Welfare Benefits*, resulting from the affected bargaining unit agreement.
- c. **%:** Divide Line 5(b) by the amount of dollars shown in *Cost Prior to Proposed Agreement* Line 5(a).

6. Total Compensation

- a. **Cost Prior to Proposed Agreement:** Total Lines 3(a), 4(a), and 5(a).
- b. **\$:** Total Lines 1(b), 2(b), 3(b), 4(b), and 5(b).
- c. **%:** Divide the total by *Cost Prior to Proposed Agreement*, Line 6(a).

7. Total Number of Represented Employees

Enter the total full-time equivalent (FTE) employees for the affected bargaining unit for each applicable year.

8. Total Compensation Cost for Average Employee

- a. **Cost Prior to Proposed Agreement:** Divide *Cost Prior to Proposed Agreement*, Line 6(a) by Prior Year FTE Employees, Line 7.
- b. **\$:** Divide *Total Compensation*, Line 6(b) by FTE employees, Line 7, for each applicable year.
- c. **%:** Divide *Total Compensation Cost for Average Employee*, Line 8(b) by *Cost Prior to Proposed Agreement*, Line 8(a).