

MEMORANDUM OF UNDERSTANDING

Between

WestEd

And

YONKERS PUBLIC SCHOOLS

THIS MEMORANDUM OF UNDERSTANDING (also referred to herein as “Agreement”) is entered into by and between WestEd (“partnering agency”) located at 730 Harrison Street, San Francisco, CA 94107, and the Yonkers Public Schools by and through its Board of Education (“School District”), located at One Larkin Center, Yonkers, New York 10701, each known as a “Party” or collectively as “Parties.”

WHEREAS, Partnering Agency has expressed an interest in collaborating with the School District in August 2018 for a period commencing on August 20, 2018 and ending on August 24, 2018;

WHEREAS, it is acknowledged and agreed that pursuant to the terms of that certain intermunicipal agreement (“IMA”) by and between the School District and the City of Yonkers the terms of the Agreement are subject to review and revision by the City’s Corporation Counsel, as well as approval, if applicable, by the City’s Board of Contract and Supply (“BOCS”).

NOW THEREFORE, the Parties agree as follows:

1. The School District will receive, at no cost to School District, the following direct benefits from Partnering Agency:

- a. WestEd will waive the cost of the English as a new Language (ENL) Intensive Instructional Institute (the “Institute”) for up to (10) ten participants. Yonkers Public Schools district leaders will be able to visit to show support for the initiative at no cost. In exchange for the waivers, School District will permit WestEd to hold the Institute at one of the schools in the district from August 20, 2018 through August 24, 2018, from 8:00a.m. to 4:00p.m, at no further cost to

WestEd. The Parties will mutually agree upon the school site, at which WestEd will be able to utilize one auditorium and five classrooms.

2. Partnering Agency will comply with all applicable Federal, state, local laws, and School District policies whether or not referenced herein, including, but not limited to:

- New York State Education Law;
- New York State Education Department (“NYSED”) requirements, a copy of which will be provided to WestEd by School District, including without limitation, with respect to criminal background checks, finger printing, compliance filings and regulations of the Commissioner of Education, as applicable. Contractor is responsible for all NYSED compliance filings, if any;
- The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99);
- School District policies, practices and procedures;
- All labor law requirements, including without limitation, prevailing wage, posting, training, pay-roll, filings;
- Title VI of the Civil Rights Act of 1964 as amended and Title VII of the Civil Rights Act of 1968 as amended; and
- Americans with Disabilities Act.

3. The School District reserves the right to terminate this Agreement and all services to be provided hereunder upon ninety (90) days’ written notice to Partnering Agency. Upon receipt of notice that the School District is terminating this Agreement in its best interests, Partnering Agency shall stop work immediately and incur no further costs in furtherance hereof without the express approval of the Corporation Counsel, and Partnering Agency shall direct subcontractors, if any, to do the same.

4. The School District agrees to cooperate with Partnering Agency to best meet the goals of the Institute.

5. Nothing in this Memorandum of Understanding shall be deemed to constitute a right of either Party to make commitments of any kind of behalf of the other Party. Nothing herein shall be

deemed to constitute either Party a partner, agent or legal representative of the other Party or to create any fiduciary relationship between or among the Parties.

6. This Memorandum of Understanding and any amendment hereto may be executed and delivered in one or more counterparts and by different Parties in separate counterparts. All of such counterparts shall constitute one and the same agreement and shall become effective (unless otherwise therein provided) when one or more counterparts have been signed by each Party and delivered to the other Party. Delivery of this Memorandum of Understanding by facsimile transmission or electronic email shall be as effective as delivery of a manually executed counterpart.

7. In the event that any provision of this Memorandum of Understanding shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the Parties shall negotiate in good faith and agree to such amendments, modifications, or supplements to this Memorandum of Understanding, or such other appropriate actions, as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Memorandum of Understanding shall, as so amended, modified, supplemented, or otherwise affected by such action, remain in full force and effect.

8. The terms of this Memorandum of Understanding shall constitute the entire agreement between the Parties with respect to participation in the program as outlined above. No amendment, modification, or change to this Agreement or its Exhibits or Schedules shall be effective unless the same shall be in writing, duly executed, authorized and approved by the Parties. No amendment, modification, or change to this Memorandum of Understanding shall be effective unless the same shall be in writing, duly executed, authorized, and approved by the Parties.

9. Partnering Agency agrees to procure and maintain insurance, or contractually cause a third party to procure and maintain insurance, naming the Yonkers Public Schools and the City of Yonkers as additional insured (including without limitation, a waiver of subrogation), as more specifically provided and described in the Schedule "A" entitled "Standard Insurance Provisions," which is attached hereto and incorporated herein by reference. In addition to, and not in limitation of the foregoing, Partnering Agency agrees:

- (a) that except for the amount, if any, of damage contributed to, caused by, or resulting from the negligence or intentional tortious acts of the Yonkers Public Schools and/or the City of Yonkers, Partnering Agency shall defend, indemnify and hold harmless the Yonkers Public Schools and/or the City of Yonkers, and their respective officers, employees, agents and elected and appointed officials from and against any and all liability, damage, claims, demands, costs, judgments, fees, reasonable attorney's fees or loss (including but not limited to personal injury and death) to the extent arising directly or indirectly out of the willful misconduct or negligent performance or failure to perform hereunder by Partnering Agency or third parties under its direction or control, including without limitation, any claim that any materials provided by Partnering Agency infringes upon an intellectual property right. If such an intellectual property infringement claim is made, or appears likely to be made, Partnering Agency agrees to modify or replace the challenged material(s) with materials that are not alleged to infringe an intellectual property right of another;
- (b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto; and
- (c) Partner Agency agrees to give the School District immediate written notice to as to any notice it may receive with respect to any cause of action or claim that has been or may be initiated against the Yonkers Public Schools and/or the City of Yonkers in connection herewith.

The provisions of Section 9 will survive expiration, termination or other cancellation of this Agreement.

10. Partnering Agency understands that in performing this Agreement it may have access to confidential information in possession of the School District, including but not limited to student information, such as student names, and protected information. It is agreed that the definition of confidential information for purposes of this Agreement includes all documentary, electronic or oral information made known to Partnering Agency by Yonkers Public Schools through any activity related to this Agreement. Partnering Agency agrees not to reveal any confidential information received from Yonkers Public Schools or generated pursuant to this

Agreement to any third-party and understands that any such disclosure shall be considered a breach of this Agreement. Partnering Agency agrees that if it receives a subpoena for divulgence of confidential information, it shall notify Yonkers Public Schools prior to divulging the same. The parties further agree that the terms and conditions set forth in this Confidentiality section and all of its subparts shall survive the expiration and/or termination of this Agreement. Without limiting any of the foregoing statements in this paragraph, Partnering Agency further agrees, to the extent applicable:

- a. Not to sell or release a student's personally identifiable information for any commercial purposes;
- b. Not to use the education records of Yonkers Public Schools or any student, teacher and/or principal data of Yonkers Public Schools for any purpose other than those explicitly authorized in this Agreement;
- c. To use reasonable administrative, technical and physical safeguards consistent with industry standards and best practices, including but not limited to encryption, firewalls, and password protection, to protect the security, confidentiality and integrity of student, teacher and/or principal data of Yonkers Public Schools while in motion or in the custody of Partnering Agency from unauthorized disclosure;
- d. To limit internal access within Partnering Agency to the education records of Yonkers Public Schools as well as to the student, teacher and/or principal data of Yonkers Public Schools to those individuals that are determined to need such records or data to perform the services set forth in this Agreement;
- e. To safely store any data concerning the students, teachers and/or principals of Yonkers Public Schools, in accordance herewith;
- f. To immediately notify Yonkers Public Schools in the event that any personally identifiable information of Yonkers Public Schools, its employees, students or administrators is breached and/or released without authorization; and;

- g. Upon termination of this Agreement, Partnering Agency will return all such data to Yonkers Public Schools.

11. Partnering Agency acknowledges that federal and state laws protect the confidentiality of personally identifiable information of students of Yonkers Public Schools, as well as its teachers and principals. Partnering Agency represents and warrants that any officers, employees or agents of Partnering Agency, who will have access to student, teacher and/or principal data of Yonkers Public Schools, has received or will receive training on the federal and state laws governing confidentiality of such data prior to obtaining access to such data.

12. Partnering Agency shall notify School District in writing on five (5) days' notice if it intends to hire any School District employee to help facilitate the terms of this Memorandum of Understanding and hereby agrees to obtain the prior written consent of the School District prior to the hiring of any School District employee. If Partnering Agency hires a School District employee to help facilitate this Agreement, the School District hereby reserves the right to inspect and/or audit any and all of Partnering Agency's employment records that pertain to the School District employee Partnering Agency hires pursuant to this agreement, to the extent permitted by law. School District shall provide no less than three (3) days' notice to Partnering Agency prior to requesting an inspection of said records.

[signature page to follow]

IN WITNESS WHEREOF, the Parties have caused this Memorandum of Understanding to be executed and delivered by their duly authorized representatives as of the date first set forth above.

YONKERS PUBLIC SCHOOLS

By: Yonkers Public Schools
Signature: _____ Name: Dr. Edwin M. Quezada
Title: Superintendent
Date: March 20, 2018

YONKERS PUBLIC SCHOOLS

By: Yonkers Public Schools
Signature: _____
Name: Roberto Scanga
Title: Director Language Acquisition
Date: March 20, 2018

WestEd

By: WestEd
Signature: Virgilio F. Tinio, Jr.
Virgilio F. Tinio, Jr. (Mar 30, 2018)
Name: Virgilio F. Tinio
Title: Contracts Manager
Date: March 29, 2018

Approved as to Form

Senior Associate Corporation Counsel

SCHEDULE "A"

STANDARD INSURANCE PROVISIONS SCHEDULE

1. Prior to commencing work in the Yonkers Public Schools, Partnering Agency shall obtain at its own cost and expense the required insurance from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better, and shall provide evidence of such insurance to the Yonkers Public Schools, as may be required and approved by the Office of Corporation Counsel of the City of Yonkers. The policies or certificates thereof shall provide that thirty days prior to cancellation or material change in the policy, notices of same shall be given to the Office of Corporation Counsel of the City of Yonkers by registered mail, return receipt requested, for all of the following stated insurance policies. All notices shall Partnering Agency and identify this Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the Yonkers Public Schools or the City of Yonkers, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Yonkers Public Schools or the City of Yonkers, Partnering Agency shall upon notice to that effect, promptly obtain a new policy, submit the same to the Office of Corporation Counsel of the City of Yonkers for approval and submit a certificate thereof. Upon failure of Partnering Agency to furnish, deliver and maintain such insurance, the Agreement, at the election of the Yonkers Public Schools, may be declared suspended, discontinued or terminated. Failure of Partnering Agency to take out, maintain, or the taking out or maintenance of any required insurance, shall not release Partnering Agency from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of Partnering Agency concerning indemnification. All property losses shall be made payable to and adjusted with the Yonkers Public Schools or the City of Yonkers as the Corporation Counsel may direct. It is acknowledged and agreed that the limits of the Yonkers Public Schools/the City of Yonkers' coverage, as an additional insured hereunder, is the greater of the limits set forth herein or under the policy holder's limits.

2. Partnering Agency shall provide proof of the following coverage:

(a) Workers' Compensation. Certificate form C-105.2 (9/07) or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Yonkers, New York."

If Partnering Agency claims it is not required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, Partnering Agency must complete NYS form CE- 200, available to download at: www.wcb.state.ny.us (click on Employers/Businesses, then Business Permits/Licenses/Contracts to see instruction manual).

If Partnering Agency is self-insured for Worker's Compensation, he/she should present a certificate from the New York State Worker's Compensation Board evidencing that fact (Either SI-12, Certificate of Workers' Compensation Self-Insurance, or GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance).

(b) Employer's Liability with minimum limit of \$100,000.

(c) Commercial General Liability Insurance with a minimum limit of liability per occurrence of \$500,000 for bodily injury and \$500,000 for property damage or a combined single limit of \$2,000,000 (c.s.l), naming the Yonkers Public Schools and the City of Yonkers, NY as an additional insured. This insurance shall include the following coverages:

- (i) Premises - Operations.
- (ii) Broad Form Contractual.
- (iii) Independent Contractor and Sub-Contractor.
- (iv) Products and Completed Operations.
- (v) Sexual Abuse and Molestation.

(d) Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages:

- (i) Owned automobiles.
- (ii) Hired automobiles.
- (iii) Non-owned automobiles.

3. All policies of Partnering Agency shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the Yonkers Public Schools or the City of Yonkers (including their respective officers, elected officials, employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the Yonkers Public Schools and/or the City of Yonkers is named as an insured, shall not apply to the City of Yonkers.

(c) The insurance companies issuing the policy or policies shall have no recourse against the Yonkers Public Schools or the City of Yonkers (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of Partnering Agency.