

Board Office Use: Legislative File Info.	
File ID Number	20-2031
Introduction Date	10/14/2020
Enactment Number	20-1483
Enactment Date	10/14/2020 lf



Memo.

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Tara Gard, Deputy Chief Talent Officer, Talent Division

Board Meeting Date October 14, 2020

Subject **Professional Services Agreement – Oakland Unified School District and Robert Half International Inc. – Talent/Human Resources Department**

Action Requested Approval by the Board of Education of Professional Services Agreement between the District and Robert Half International Inc., for the later to provide up to five temporary positions at one time, for the period of August 31, 2020 through June 30, 2021 at a cost not to exceed \$300,000.

Background and Discussion The Talent and Legal/Labor Departments are seeking to procure temporary employees; other departments may also be interested. With this agreement, the District will be able to procure up to five positions at one time. The temporary employees are necessary due to workload and current vacancies.

Recommendation Approval by the Board of Education of Professional Services Agreement between the District and Robert Half International Inc., for the later to provide up to five temporary positions at one time, for the period of August 31, 2020 through June 30, 2021 at a cost not to exceed \$300,000.

Fiscal Impact Up to \$300,000. The specific budgets charged are dependent on which departments need the temporary positions (probably Talent and Legal/Labor). COVID-related funding, specifically CARES funding, will be used to cover most, if not all of the costs, with the exact amount to be determined on the focus of the temporary positions

Attachments Professional Services Agreement between the Oakland Unified School District and Robert Half International Inc.

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**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

PROFESSIONAL SERVICES AGREEMENT 2020-2021

This Professional Services Agreement (“Agreement”) is a legally binding contract entered into between the Oakland Unified School District (“OUSD”) and the below named entity or individual (“VENDOR,” together with OUSD, “PARTIES”):

Robert Half International Inc., doing business through its division Robert Half Management Resources and Robert Half Management Resources Salaried Professional Service.

The PARTIES hereby agree as follows:

1. **Term.**
 - a. This Agreement shall start on the below date (“Start Date”):
August 31, 2020
 - b. The work shall continue until no later than the below date (“End Date”):
June 30, 2021
2. **Services.** VENDOR shall provide OUSD with the temporary staffing services by assigning individuals to work at OUSD (“Assigned Individuals”) (“Services”) as described in #1A of **Exhibit A**, attached hereto and incorporated herein by reference. To the extent that there may be a school closure (e.g., due to poor air quality, planned loss of power, COVID-19) or similar event in which school sites and/or District offices may be closed or otherwise inaccessible, VENDOR shall describe in #1A of **Exhibit A** whether and how its services would be able to continue.
3. **Alignment and Evaluation.**
 - a. VENDOR agrees to work and communicate with OUSD staff,

both formally and informally, to ensure that the Services are aligned with OUSD's mission and are meeting the needs of students as determined by OUSD.

- b. OUSD may evaluate VENDOR in any manner which is permissible under the law. OUSD's evaluation may include, without limitation: (i) requesting that OUSD employee(s) evaluate the performance of VENDOR, each of VENDOR's employees, and each of VENDOR's subcontractors, and (ii) announced and unannounced observance of VENDOR, VENDOR's employee(s), and VENDOR's subcontractor(s).
4. **Inspection.** VENDOR agrees that OUSD has the right and agrees to provide OUSD with the opportunity to inspect any and all aspects of the Services performed including, but not limited to, any materials (physical or electronic) produced, created, edited, modified, reviewed, or otherwise used in the preparation, performance, or evaluation of the Services.
5. **Data and Information Requests.** Unless OUSD communicates to VENDOR in writing otherwise, VENDOR shall not be required to register with and maintain current information within OUSD's Enrichment Provider database. If and when VENDOR's programs and school site(s) change (either midyear or in subsequent years), VENDOR shall promptly update the information in the database.
6. **Confidentiality and Data Privacy.**
 - a. OUSD may share information with VENDOR pursuant to this Agreement in order to further the purposes thereof. VENDOR and all VENDOR's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services, provided such information is (i) marked or identified as "confidential" or "privileged," or (ii) reasonably understood to be confidential or privileged.
 - b. VENDOR understands that student data is confidential. If VENDOR will access or receive student data at its premises or upon its electronic systems in connection with this Agreement, it agrees to do so only after executing the [California Student Data Privacy Agreement](#) ("CSDPA"), which shall be incorporated by reference into this Agreement upon execution. All confidentiality

requirements, including in the CSDPA, extend beyond the termination of this Agreement.

- c. This Paragraph shall not apply to (i) information that is in the public domain; (ii) information that was known to the receiving party before receipt of the information from the disclosing party; or, (iii) information received from a third party having the right to lawfully possess and disclose such information without breaching any promise of confidentiality. In addition, no receiving party shall be in violation of this Agreement if required to disclose such information by a court of competent jurisdiction or governmental agency with power to force disclosure. However, upon receipt of a subpoena or other order to produce confidential information, the receiving party shall promptly notify the disclosing party in writing of such disclosure requirement.
 - d. OUSD agrees to hold in confidence the identity of any Assigned Individual and the Assigned Individual's resume, social security number and other legally protected personal information, and OUSD agrees to implement and maintain reasonable security procedures and practices to protect such information from unauthorized access, use, modification or disclosure.
7. **Copyright/Trademark/Patent/Ownership.** VENDOR understands and agrees that all matters produced under this Agreement, excluding any intellectual property that existed prior to execution of this Agreement, shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in those works are the property of OUSD. These matters include, without limitation, drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, or other documents prepared by VENDOR, its Assigned Individuals, or its subcontractors in connection with the Services performed under this Agreement. VENDOR cannot use, reproduce, distribute, publicly display, perform, alter, remix, or build upon matters produced under this Agreement without OUSD's express written permission. OUSD shall have all right, title and interest in said matters, including the right to register the copyright, trademark, and/or patent of said matter in the name of OUSD. OUSD may, with VENDOR's prior written consent, use VENDOR's name in conjunction with the sale,

use, performance and distribution of the matters, for any purpose and in any medium.

8. **Compensation.** OUSD agrees to pay VENDOR for rendering Services in accordance with this Paragraph, Paragraph 10 (Invoicing), and #1C in **Exhibit A**.

- a. The total compensation under this Agreement shall not exceed ("Not-to-Exceed Amount"):

\$ Not-to-Exceed Amount (\$300,000.00).

This sum shall be for full performance of this Agreement and includes all fees, costs, and expenses incurred by VENDOR including, but not limited to, labor, materials, taxes, profit, overhead, travel, insurance, permitted subcontractor costs, and other costs. Notwithstanding anything to the contrary in this Agreement: (i) VENDOR may at any time, in its sole discretion, discontinue performance of Services once the Not-to-Exceed Amount has been attained.

- b. OUSD shall not pay and shall not be liable to VENDOR for any costs or expenses paid or incurred by VENDOR not described in **Exhibit A**.
- c. Payment for Services shall be made for all undisputed amounts within thirty (30) days after VENDOR submits an invoice to OUSD, in accordance with Paragraph 10 (Invoicing), for Services actually performed and after OUSD's written approval that Services were actually performed.
- d. Compensation for any Services performed prior to the Start Date or after the End Date shall be at OUSD's sole discretion. VENDOR agrees that it shall not expect or demand payment for the performance of Services prior to the Start Date or after the End Date.
- e. VENDOR acknowledges and agrees not to expect or demand payment for any Services performed prior to the PARTIES, particularly OUSD, validly and properly executing this Agreement until this Agreement is validly and properly executed and shall not rely on verbal or written communication from any individual, other than the President of the OUSD Governing Board, the OUSD Superintendent, or the OUSD General Counsel, stating that OUSD has validly and properly executed this Agreement.

- f. Hourly rates for all assignments will be agreed on a case-by-case basis. If applicable, overtime will be billed at 1.50 times the normal billing rate. Federal law defines overtime as hours in excess of 40 hours per week, state laws vary. If state law requires double time pay, the double time hours will be billed at 2.00 times the normal billing rate. VENDOR may charge OUSD a fee for the provision of equipment or technology, if OUSD requests that Assigned Individual use equipment or technology provided by VENDOR. Before VENDOR may increase VENDOR's rates (to reflect increases in VENDOR's cost of doing business, including costs associated with higher wages for workers and/or related taxes, benefits and other costs), VENDOR shall notify OUSD in writing at least ten (10) working days in advance of any increase. Any increase in rates will be prospective, starting as of the effective date VENDOR specifies.
- g. VENDOR guarantees OUSD's satisfaction with VENDOR's Assigned Individual's services by extending to OUSD a two (2) day (16 hours) guarantee period. If, for any reason, OUSD is dissatisfied with the Assigned Individual assigned to OUSD, VENDOR will not charge for the first sixteen (16) hours worked, provided VENDOR is allowed to replace the Assigned Individual. Unless OUSD contacts VENDOR before the end of the guarantee period, OUSD agrees that VENDOR's Assigned Individual is satisfactory for purposes of this guarantee.
- h. In the event OUSD wishes to convert any of VENDOR's Assigned Individuals, OUSD agrees to pay a conversion fee in accordance with this Paragraph. The conversion fee will equal 35% of the Assigned Individual's aggregate annual compensation, including bonuses. VENDOR's Assigned Individuals placed through Robert Half Salaried Professional Service ("Salaried Individuals") are full-time, salaried employees of VENDOR, and clients are discouraged from directly hiring VENDOR's Salaried Individuals. OUSD agrees to seek VENDOR's permission before OUSR hires VENDOR's Salaried Individual. The conversion fee will equal 50% of the Salaried Individual's aggregate annual compensation, including bonuses. OUSD agrees to pay a conversion fee if VENDOR's Assigned Individual or Salaried Individual is hired by an affiliate or other related business entity as a result of OUSD's subsequent referral of the Assigned Individual or Salaried Individual. The conversion

fee is payable if OUSD hires the Assigned Individual or Salaried Individual, regardless of the job classification, on either a full-time, temporary (including temporary assignments through another agency) or consulting basis within twelve months after the last day of the assignment. The same calculation will be used if OUSD converts VENDOR's Assigned Individual or Salaried Individual on a part-time basis using the full-time equivalent salary; however, the conversion fee will not be less than \$1,000.

9. **Equipment and Materials.** OUSD shall provide all equipment, materials, and supplies necessary for the performance of this Agreement.

10. **Invoicing.** Invoices furnished by VENDOR under this Agreement must be in a form acceptable to OUSD.
 - a. All amounts paid by OUSD shall be subject to audit by OUSD. Invoices shall include, without limitation: VENDOR name, VENDOR address, invoice date, invoice number, purchase order number, name of school or department to which Services were provided, name(s) of the person(s) performing Services, date(s) Services were rendered, brief description of Services provided on each date, the total invoice amount, and the basis for the total invoice amount (e.g., if hour rate, the number of hours on each date and the rate for those hours).
 - b. If OUSD, at its sole discretion and in good faith, determines an invoice fails to include the required material elements, OUSD will not pay the disputed portion of the invoice and will inform VENDOR of the missing items; VENDOR shall resubmit an invoice that includes the required elements before OUSD will pay the disputed portion invoice.
 - c. OUSD reserves the right to add or change invoicing requirements upon written agreement by the parties.
 - d. To the extent that VENDOR has described how the Services may be provided both in-person and not in-person, VENDOR's invoices shall—in addition to any invoice requirement added or changed under subparagraph (c)—indicate whether the Services are provided in-person or not.
 - e. All invoices furnished by VENDOR under this Agreement shall be delivered to OUSD via email unless OUSD requests, in

writing, a different method of delivery.

- f. Assigned Individual will present a time sheet or an electronic time record to OUSD for verification and approval at the end of each week. OUSD's approval of the Assigned Individual's timesheet will indicate its acceptance of the terms provided in VENDOR's letter confirming the engagement of that assigned individual ("Job Arrangement Letter"). VENDOR will bill OUSD weekly for the total hours worked. An form Job Arrangement Letter is attached hereto as Exhibit B.

11. **Termination.**

- a. For Convenience. Either party may at any time terminate this Agreement upon thirty (30) days prior written notice to the other party. OUSD shall compensate VENDOR for services provided through the date of termination. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or thirty (30) days after the notice was provided, whichever is later.
- b. Due to COVID-19. Notwithstanding Paragraph 19 (Coronavirus/ COVID-19) or any other language of this Agreement, if a shelter-in-place (or similar) order due to COVID-19 is issued or is in effect during the term of this Agreement that would prohibit or limit, at the sole discretion of OUSD, the ability of VENDOR to perform the Services, OUSD may terminate this Agreement upon seven (7) days prior written notice to VENDOR. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or seven (7) days after the notice was provided, whichever is later.
- c. For Cause. Either PARTY may terminate this Agreement by giving written notice of its intention to terminate for cause to the other PARTY. Written notice shall contain the reasons for such intention to terminate. Cause shall include (i) material violation of this Agreement or (ii) if either PARTY is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a

receiver is appointed on account of its insolvency. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or three (3) days after the notice was provided, whichever is later, unless the condition or violation ceases or satisfactory arrangements for the correction are made.

- d. Upon termination, **VENDOR** shall provide OUSD with all materials produced, maintained, or collected by **VENDOR** pursuant to this Agreement, whether or not such materials are complete or incomplete or are in final or draft form.

- 12. **Legal Notices.** All legal notices provided for under this Agreement shall be sent via email to the email address set forth below and shall be either (i) personally delivered during normal business hours or (ii) sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other **PARTY** at the address set forth below.

OUSD

Name: Joshua R. Daniels
Site/Dept: Office of General Counsel
Address: 1000 Broadway, Suite 300
City, ST Zip: Oakland, CA 94607
Phone: 510-879-8535
Email: ousdlegal@ousd.org

VENDOR

Name: **Randall Micek**
Title: **Regional Vice President**
Address: **1999 Harrison St., Suite 1000,**
City, ST Zip: **Oakland, CA 94612-3576**
Phone: **Click or tap here to enter text.**

Email: Email **Randall.micek@roberthalf.com**

A copy of any notice sent to VENDOR shall be sent to: Robert Half International Inc. Attention: Client Contracts Dept. 2613 Camino Ramon San Ramon, CA 94583.

Notice shall be effective when received if personally served or emailed or, if mailed, three days after mailing. Either PARTY must give written notice of a change of mailing address or email.

13. Status.

- a. This is not an employment contract. VENDOR, in the performance of this Agreement, shall be and act as an independent contractor. VENDOR understands and agrees that it and any and all of its employees shall not be considered employees of OUSD, and are not entitled to benefits of any kind or nature normally provided employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. VENDOR shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to VENDOR's employees.
- b. VENDOR verifies all of the following:
 - (i) VENDOR is free from the control and direction of OUSD with respect to the human resources (non-operational) functions in connection with the performance of the Services;
 - (ii) VENDOR is providing Services directly to OUSD rather than to customers of OUSD;
 - (iii) the contract between OUSD and VENDOR is in writing;
 - (iv) VENDOR has the required business license or business tax registration, if the work is performed in a jurisdiction that requires VENDOR to have a business license or business tax registration;
 - (v) VENDOR maintains a business location that is separate from the business or work location of OUSD;
 - (vi) VENDOR is customarily engaged in an independently established business of the same nature as that involved

- in the Services performed;
- (vii) VENDOR actually contracts with other businesses to provide the same or similar Services and maintains a clientele without restrictions from OUSD;
- (viii) VENDOR advertises and holds itself out to the public as available to provide the same or similar Services;
- (ix) VENDOR may provide its own tools, and equipment to perform the services;
- (x) VENDOR can negotiate its own rates;
- (xi) VENDOR can set its own hours and location of work; and
- (xii) VENDOR is not performing the type of work for which a license from the Contractor's State License Board is required, pursuant to Chapter 9 (commencing with section 7000) of Division 3 of the Business and Professions Code.

14. Qualifications and Training.

- a. VENDOR represents and warrants that VENDOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of OUSD with respect to human resources functions for its Assigned Individuals. VENDOR will perform the Services in accordance with generally and currently accepted principles and practices of the staff augmentation industry for Services to California school districts and in accordance with applicable law, code, rule, regulation, and/or ordinance. All VENDOR Assigned Individuals shall have sufficient skill and experience to perform the work assigned to them.
- b. VENDOR represents and warrants that its Assigned Individuals are specially trained, experienced, competent and fully licensed to provide the Services identified in this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and/or regulations, as they may apply, if VENDOR was selected, at least in part, on such representations and warrants.

15. Certificates/Permits/Licenses/Registration. VENDOR's Assigned Individuals shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this Agreement.

16. Insurance.

- a. Commercial General Liability Insurance. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR shall maintain Commercial General Liability Insurance, including automobile coverage, with limits of at least one million dollars (\$1,000,000) per occurrence for bodily injury and property damage. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured with the additional insured endorsement. Vendor shall provide OUSD with a certificate of insurance evidencing the coverage above within 15 days of effective date of this Agreement (and within 15 days of each new policy year thereafter during the term of this Agreement). Evidence of insurance shall be attached to this Agreement or otherwise provided to OUSD upon request. Endorsement of OUSD as an additional insured shall not affect OUSD's rights to any claim, demand, suit or judgment made, brought or recovered against VENDOR. The policy shall protect VENDOR and OUSD in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.
- b. Workers' Compensation Insurance. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California (including, but not limited to, Labor Code section 3700) and Federal laws when applicable. Employers' Liability Insurance shall not be less than one million dollars (\$1,000,000) per accident or disease.

17. Testing and Screening.

- a. Tuberculosis Screening. Unless specifically waived by OUSD as noted in **Exhibit A**, to the extent permitted by applicable law, VENDOR will have its third-party vendor conduct the following (the "Health Screening"): a two-step tuberculin skin test within the 60 days prior to the start of assignment. VENDOR will provide

confirmation to OUSD that Assigned Individual has completed the Health Screenings. OUSD represents and warrants that the above Health Screenings are being requested and used by OUSD (i) only in accordance with and as permitted by applicable law, and (ii) only to the extent consistent with business necessity. OUSD agrees to keep the results of the Health Screenings strictly confidential, in accordance with all applicable law, and will use the results for employment purposes only. At no time will Assigned Individual's medical records be under the custody or control of or stored or maintained by VENDOR.

- b. Fingerprinting/Criminal Background Investigation. To the extent permitted by applicable law, VENDOR will have a third-party vendor perform: (A) a seven-year criminal background investigation for (i) all state felony convictions and pending felony charges; and (ii) state misdemeanor convictions and pending misdemeanor charges involving crimes of dishonesty or violence, in each case, in each county where the Assigned Individual has resided or worked within the U.S. in the last seven years as stated on his or her application with Vendor; (B) perform (i) a seven-year criminal background investigation by having the third party vendor perform a search of its private database of U.S. national criminal records searching for all felony convictions and misdemeanor convictions for crimes of dishonesty or violence, and (ii) search the third party vendor's private database to confirm that the Assigned Individual's name is not included on select debarment lists or in select sex offender databases. OUSD understands and agrees that the third party vendor's database (i) is maintained by the third party vendor and not a governmental entity, (ii) is an incomplete aggregation of criminal records, debarment lists and sex offender databases and (iii) will not reveal or identify all criminal convictions or debarment or sex offender listings; and (C) a 10-panel urine drug screen on the Assigned Individual. If OUSD requests a copy of the results of the foregoing checks ("Report"), OUSD agrees to keep the Report strictly confidential and to use the Report in accordance with applicable laws and solely for employment purposes. In addition, unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR will send each Assigned Individual to OUSD or to OUSD's choice of third-party vendor for fingerprint screening and a criminal background investigation pursuant to OUSD's ORI

number and requirements in accordance with Education Code section 45125.1. OUSD represents and warrants that any fingerprint screening will be requested, conducted and used by OUSD in accordance with applicable law. VENDOR shall not be required to take possession of any completed fingerprint cards nor be liable for any third-party claims resulting from the processing or reporting of such fingerprint screening, including, but not limited to, those claims arising from any errors in the reported screening results. Upon OUSD's receipt of the fingerprint screening results, OUSD will notify VENDOR of the Assigned Individual's eligibility for placement.

Notwithstanding this certification, VENDOR agrees to immediately remove or cause the removal of any employee, representative, agent, or person under VENDOR's control person from OUSD property upon receiving notice from OUSD of such desire. OUSD is not required to provide VENDOR with a basis or explanation for the removal request.

18. Incident/Accident/Mandated Reporting.

- a. VENDOR shall notify OUSD, via email pursuant to Paragraph 12 (Legal Notices), within twenty-four (24) hours of learning of any significant accident or incident. Examples of a significant accident or incident include, without limitation, an accident or incident that involves law enforcement, possible or alleged criminal activity, or possible or actual exposure to a communicable disease such as COVID-19. VENDOR shall properly submit required accident or incident reports within one business day pursuant to the procedures specified by OUSD. VENDOR shall bear all costs of compliance with this Paragraph.
- b. To the extent that an employee, subcontractor, agent, or representative of VENDOR is included on the list of mandated reporters found in Penal Code section 11165.7, VENDOR agrees to inform the individual, in writing that they are a mandated reporter, and describing the associated obligations to report suspected cases of abuse and neglect pursuant to Penal Code section 11166.5.

19. Coronavirus/COVID-19.

- a. Through its execution of this Agreement, VENDOR declares that

- it is able to meet its obligations and perform the Services required pursuant to this Agreement in accordance with any shelter-in-place (or similar) order or curfew (or similar) order (“Orders”) issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.
- b. To the extent that VENDOR provides Services in person and consistent with the requirements of Paragraph 10 (Invoicing), VENDOR agrees to include additional information in its invoices as required by OUSD if any Orders are issued by local or state authorities that would prevent VENDOR from providing Services in person.
 - c. Consistent with the requirements of Paragraph 18 (Incident/Accident/Mandated Reporting), VENDOR agrees to notify OUSD, via email pursuant to Paragraph 12 (Legal Notices), within twelve (12) hours if VENDOR or any employee, subcontractor, agent, or representative of VENDOR providing Services to OUSD pursuant to this Agreement tests positive for COVID-19, shows or reports symptoms consistent with COVID-19, or reports to VENDOR possible COVID-19 exposure.
 - d. VENDOR agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD employees to VENDOR or any employee, subcontractor, agent, or representative of VENDOR and information necessary to perform contact tracing.
 - e. VENDOR shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.
20. **Assignment.** The obligations of VENDOR under this Agreement shall not be assigned by VENDOR without the express prior written consent of OUSD and any assignment without the express prior written consent of OUSD shall be null and void.
21. **Non-Discrimination.** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, VENDOR agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code

section 12900 and Labor Code section 1735 and OUSD policy. In addition, VENDOR agrees to require like compliance by all its subcontractor (s). VENDOR shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation, or other legally protected class.

22. **Drug-Free/Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, VENDORS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.

23. **Waiver.** No delay or omission by either PARTY in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Agreement.

24. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

25. **Conflict of Interest.**
 - a. VENDOR shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest. During the term of this Agreement and for a period of one-year following the termination or expiration of this Agreement, VENDOR shall not hire any officer or employee of OUSD to perform any service by this Agreement without the prior approval of OUSD Human Resources. VENDOR will not be in violation of the foregoing provision by performing general solicitations for employment not directed to OUSD's personnel, or if the individual makes the initial contact on his or her own initiative.

- b. VENDOR affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between VENDOR's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing.
 - c. Through its execution of this Agreement, VENDOR acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event VENDOR receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, VENDOR agrees it shall notify OUSD in writing.
26. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Through its execution of this Agreement, VENDOR certifies to the best of its knowledge and belief, that it and its board members are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).
27. **Limitation of Liability.** Other than as provided in this Agreement, either party's financial obligations under this Agreement shall be limited to the payment of the compensation described in Paragraph 8 (Compensation). Notwithstanding any other provision of this Agreement, in no event shall either party be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the Services performed in connection with this Agreement.
28. **Indemnification.**

- a. To the furthest extent permitted by California law, VENDOR shall indemnify, defend and hold harmless OUSD, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (“OUSD Indemnified Parties”) from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of VENDOR’s negligent or willful misconduct in the performance of this Agreement. VENDOR also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by any supplier, VENDOR, or subcontractor furnishing work, services, or materials to VENDOR arising out of the negligent or willful misconduct in the performance of this Agreement. VENDOR shall, to the fullest extent permitted by California law, defend OUSD Indemnified Parties at VENDOR’s own expense, including reasonable attorneys’ fees and costs,. VENDOR shall control the defense of any claim and engage counsel of its choice after approval from OUSD, provided that such approval shall not be unreasonably withheld. Notwithstanding anything to the contrary in this Agreement, VENDOR shall not be liable for, or have any duty of indemnification with respect to any acts or omissions of OUSD Indemnified Parties.
 - b. To the furthest extent permitted by California law, OUSD shall indemnify, defend, and hold harmless VENDOR, its Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (“VENDOR Indemnified Parties”) from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of OUSD’s performance of this Agreement. OUSD shall, to the fullest extent permitted by California law, defend VENDOR Indemnified Parties at OUSD’s own expense, including attorneys’ fees and costs.
29. **Audit.** VENDOR shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of VENDOR transacted under this Agreement. VENDOR shall retain these books, records, and systems of account during the term of this Agreement and for three (3) years after the End Date. VENDOR shall permit OUSD, its agent, other

representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other billing data related to Services covered by this Agreement. Audit(s) may be performed at any time, provided that OUSD shall give reasonable prior notice to VENDOR and shall conduct audit(s) during VENDOR'S normal business hours, unless VENDOR otherwise consents. This audit provision shall not apply to confidential information, including but not limited to, VENDOR's Assigned Individual's personnel files or the remuneration paid by VENDOR to its Assigned Individuals and subcontractors.

30. **Litigation.** This Agreement shall be deemed to be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.
31. **Incorporation of Recitals and Exhibits.** Any recitals and exhibits attached to this Agreement are incorporated herein by reference. VENDOR agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Professional Services Contract, the terms and provisions of this Professional Services Contract shall govern.
32. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the PARTIES and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both PARTIES. This Agreement is only applicable to, and the only Robert Half International Inc. branch and divisions obligated under this Agreement are, the Robert Half Management Resources and Robert Half Management Resources Salaried Professional Service divisions of the branch office located at 1999 Harrison St., Suite 1000, Oakland, CA 94612-3576.

33. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
34. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
35. **Captions and Interpretations.** Section and paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a PARTY because that PARTY or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the PARTIES.
36. **Calculation of Time.** For the purposes of this Agreement, “days” refers to calendar days unless otherwise specified and “hours” refers to hours regardless of whether it is a work day, weekend, or holiday.
37. **Counterparts and Electronic Signature.** This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either PARTY and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing PARTY and the receiving PARTY may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been

received. Through its execution of this Agreement, each PARTY waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.

38. **W-9 Form.** If VENDOR is doing business with OUSD for the first time, VENDOR acknowledges that it must complete and return a signed W-9 form to OUSD.

39. **Agreement Publicly Posted.** This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.

40. **Signature Authority.**
 - a. Each PARTY has the full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each PARTY has been given the proper authority and empowered to enter into this Agreement.
 - b. Notwithstanding subparagraph (a), only the Superintendent, Chiefs, Deputy Chiefs, and the General Counsel has authority to sign contracts for OUSD and only under limited circumstances, which required ratification by the OUSD Governing Board. VENDOR agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this Agreement or as legally binding in any way.

41. **Contract Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Agreement unless and until it has been (i) formally approved by OUSD's Governing Board or (ii) validly and properly executed by the OUSD Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code or Board Policy, and no payment shall be owed or made to VENDOR absent such formal approval or valid and proper execution.

42. **Additional VENDOR Specific Terms.**

- a. OUSD shall supervise Assigned Individuals providing Services to OUSD. OUSD shall not permit or require Assigned Individuals (i) to perform Services outside of the scope of his or her assignment; (ii) to sign contracts or statements (including SEC documents); (iii) to make any management decisions; (iv) to make any final decisions regarding system design, software development or the acquisition of hardware or software; (v) to sign, endorse, wire, transport or otherwise convey cash, securities, checks, or any negotiable instruments or valuables; (vi) to use computers, or other electronic devices, software or network equipment owned or licensed by Assigned Individual; or (vii) to operate machinery (other than office machines) or automotive equipment. OUSD may request that VENDOR permit its Assigned Individuals to provide services to OUSD remotely (i.e., from a location other than OUSD's offices) using VENDOR's laptop and/or other computer or telecommunications equipment ("VENDOR's Equipment") or OUSD's laptop and/or other computer or telecommunications equipment ("OUSD's Equipment"). OUSD acknowledges and agrees that VENDOR shall have no control over (i) the logical or physical performance, reliability or security of OUSD's Equipment or related devices, network accessibility and availability, software and e-mail accounts (collectively, "Computer Systems") used by the Assigned Individual, or (ii) the security or integrity of, nor be responsible for backing up, the data and other information stored therein or transmitted thereby. OUSD shall not permit any Assigned Individual to use VENDOR equipment while on any OUSD premises and the Parties shall direct all Assigned Individuals not to save or store any of OUSD's files or other OUSD data on VENDOR's Equipment nor on any software, services or tools provided by VENDOR (including, but not limited to, any virtual desktop infrastructure or Microsoft Office 365 solution). Except as provided for the Paragraph 28 (Indemnification), OUSD agrees that VENDOR shall not be liable for any loss, damage, expense, harm, business interruption or inconvenience resulting from the use of such Computer

Systems.

- b. OUSD represents and warrants that (i) it will require Assigned Individuals to not have unsupervised contact with (a) minors or (b) adults who are under OUSD's care, custody, or supervision because of mental health impairments; and (ii) an OUSD representative will escort any Assigned Individual while working (a) near minors or (b) near adults who are under OUSD's care, custody, or supervision because of mental health impairments.
- c. Subject to Paragraph 18 (Incident/Accident/Mandated Reporting) and to Paragraph 19 (Coronavirus/COVID-19), it is understood that OUSD has full responsibility for: (i) providing safe working conditions as required by law, including compliance with all public health and occupational safety regulations and guidelines applicable to OUSD's business, and (ii) ensuring that safety plans exist for, and safety related training is provided to, Assigned Individuals working on OUSD's premises.
- d. Notwithstanding any language in this Agreement to the contrary (including any references to fixed-price, deliverables, acceptance of deliverables, or milestones), VENDOR shall be compensated on a time and materials basis only. VENDOR is a temporary staffing contractor and does not provide deliverables.
- e. Any respective obligations of VENDOR or OUSD hereunder which by their nature would continue beyond the termination, cancellation or expiration of this Agreement shall survive such termination, cancellation or expiration.

REST OF PAGE IS INTENTIONALLY LEFT BLACK

IN WITNESS WHEREOF, the PARTIES hereto agree and execute this Agreement and to be bound by its terms and conditions:

ROBERT HALF INTERNATIONAL INC.^{EOE}

Name: Randall Micek

Signature: 
DocuSigned by:
538A3B22FA384BB...

Position: Regional Vice President

Date: 10/8/2020

One of the terms and conditions to which VENDOR agrees by its signature is subparagraph € of Paragraph 8 (Compensation), which states that VENDOR acknowledges and agrees not to expect or demand payment for any Services performed prior to the PARTIES, particularly OUSD, validly and properly executing this Agreement until this Agreement is validly and properly executed and shall not rely on verbal or written communication from any individual, other than the President of the OUSD Governing Board, the OUSD Superintendent, or the OUSD General Counsel, stating that OUSD has validly and properly executed this Agreement. VENDOR specifically acknowledges and agrees to this term/condition on the above date.

OUSD

Name: Jody London

Signature: 

Position: President, Board of Education

Date: 10/15/2020

- Board President
- Superintendent
- Chief/Deputy Chief

Name: Kyla Johnson-Trammell

Signature: 

Position: Secretary, Board of Education

Date: 10/15/2020

EXHIBIT A

1A. **General Description of Services to be Provided:** *Provide a description of the service(s) VENDOR will provide.*
VENDOR will provide temporary staffing services by assigning individuals to work at OUSD (“Assigned Individuals”). The temporary staffing will work on-site unless prohibited to do so due to a shelter-in-place (or similar) order due to COVID-19 or otherwise directed not to do so by OUSD.

1B. **Rate of Compensation:** *Please describe the basis by which compensation will be paid to VENDOR:*

Hourly Rate: \$ **Hourly Rates for services will be negotiated on a case-by-case basis** per hour

Daily Rate: \$ per day

Weekly Rate: \$ per week

Monthly Rate: \$ per month

Per Student Served Rate: \$ per student served

Up-Front/One-Time Payment: \$

Performance/Deliverable Payments: Describe the performance and/or deliverable(s) as well as the associated rate(s) below:

2. **Waivers:** *OUSD has waived the following:*

Commercial General Liability Insurance

Workers' Compensation Insurance

Tuberculosis Screening

Fingerprinting/Criminal Background Investigation

EXHIBIT B

FORM OF JOB ARRANGEMENT LETTER

[DATE]

Personal & Confidential

Job Order Number: _____

Dear _____,

Thank you for selecting _____ to meet your staffing needs. _____ is scheduled to start with _____ as an _____ on _____.

As agreed, we will invoice your firm at the rate of _____ per hour. If applicable, overtime will be billed at 1.50 times such rate. Federal law defines overtime as hours in excess of 40 hours per week, state laws may vary. If state law requires double time pay, the double time hours will be billed at 2.00 times the normal billing rate. Applicable sales and service taxes shall be added to all invoices. Our professional will submit either an electronic time record or a time sheet for verification and approval at the end of each week. Your approval thereby will indicate your acceptance of the terms herein.

Our accounting and operational procedures require you receive this document. This standard document will be sent with each Job Order you place with _____. We acknowledge that _____ and _____ have a signed agreement. The terms of the signed agreement, along with the terms of this letter, shall govern the services provided by such employee or consultant at _____.

Please do not hesitate to contact us if you have any questions or we can be of additional service. We look forward to working with you.

Sincerely,

