

Board Office Use: Legislative File Info.	
File ID Number	21-1838
Introduction Date	9-8-2021
Enactment Number	21-1450
Enactment Date	9/8/2021 lf



**OAKLAND UNIFIED  
SCHOOL DISTRICT**

*Community Schools, Thriving Students*

# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Tadashi Nakadegawa, Deputy Chief, Division Facilities Planning and Management

**Board Meeting Date** September 8, 2021

**Subject** General Services Agreement – Xebec Data Corporation – Utility O & M Operations Project - Division of Facilities Planning and Management

**Action Requested** Approval by the Board of Education of General Services Agreement between the District and Xebec Data Corporation, Lafayette, Colorado, for the latter to provide data transfers from PG&E on a weekly basis, map and test documents with Subscriber’s Partner (PG&E) to insure that the services are configured to communicate them correctly, for the Utility O & M Operations Project, in the not-to-exceed amount of **\$5,000.00**, as the selected consultant, with work scheduled to commence on **July 1, 2021**, through **June 30, 2022**, pursuant to the contract.

**Discussion** Consultant will provide specialty services for system access. No bidding or RFP required. Price is below bid threshold of \$96,700. (Public Contract Code §20111(a).)

**LBP** (Local business participation percentage) 00.00%

**Recommendation** Approval by the Board of Education of General Services Agreement between the District and Xebec Data Corporation, Lafayette, Colorado, for the latter to provide data transfers from PG&E on a weekly basis, map and test documents with Subscriber’s Partner (PG&E) to insure that the services are configured to communicate them correctly, for the Utility O & M Operations Project, in the not-to-exceed amount of **\$5,000.00**, as the selected consultant, with work scheduled to commence on **July 1, 2021**, through **June 30, 2022**, pursuant to the contract.

**Fiscal Impact** Fund 21, Measure J

**Attachments**

- Agreement
- Scope of work



**CONTRACT JUSTIFICATION FORM**  
**This Form Shall Be Submitted to the Board Office With Every**  
**Agenda Contract.**

**Legislative File ID No.**    21-1838

**Department:**                Facilities Planning & Management

**Vendor Name:**              Xebec Data Corporation

**Project Name:**              Utility O & M Operations

**Project No.:**                21109

**Delivery Deadline:**        July 1, 2021

**Intended End Date:**      June 30, 2022

**Annual (if annual contract) or Total (if multi-year agreement) Cost:** \$5,000.00

**Approved by:**    Tadashi Nakadegawa

**Is Vendor a local Oakland Business or have they meet the requirements of the**

**Local Business Policy?**     Yes (No if Unchecked)

**How was this contractor or vendor selected?**

This vendor was referred by consultant responsible for setting up the utility database and was selected based on their experience receiving and formatting PG&E energy bill data. The district identified the chosen vendor as the most qualified at the most reasonable price.

**Summarize the services or supplies this contractor or vendor will be providing.**

Vendor will provide data transfers from PG&E on a weekly basis, map and test documents with Subscriber's Partner (PG&E) to insure that the services are configured to communicate them correctly.

**Was this contract competitively bid?**        Check box for "Yes" (If "No," leave box unchecked)

If "No," please answer the following questions:

1) How did you determine the price is competitive?

Price is nominal and critical for the functioning of Oakland Unified School District utility management software.

2) Please check the competitive bidding exception relied upon:

Construction Contract:

- Price is at or under UPCCAA threshold of \$60,000 (as of 1/1/19)
- CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- Emergency contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- No advantage to bidding – *contact legal counsel to discuss if applicable*
- Sole source contractor – *contact legal counsel to discuss if applicable*
- Completion contract – *contact legal counsel to discuss if applicable*
- Lease-leaseback contract RFP process – *contact legal counsel to discuss if applicable*
- Design-build contract RFP process – *contact legal counsel to discuss if applicable*
- Energy service contract – *contact legal counsel to discuss if applicable*
- Other: \_\_\_\_\_ – *contact legal counsel to discuss if applicable*

Consultant Contract:

- Construction project manager, land surveyor, or environmental services – selected based on demonstrated competence and professional qualifications (Government Code §4526)
- Architect or engineer – use of a fair, competitive RFP selection process (Government Code §§4529.10 et seq.)
- Architect or engineer when state funds being used – use of competitive process consistent with Government Code §§4526-4528 (Education Code §17070.50)
- Other professional or specially trained services or advice – no bidding or RFP required (Public Contract Code §20111(d) and Government Code §53060) – *contact legal counsel to discuss if applicable*
- For services other than above, the cost of services is \$96,700 or less (as of 1/1/21)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*

Purchasing Contract:

- Price is at or under bid threshold of \$96,700 (as of 1/1/21)
- Certain instructional materials (Public Contract Code §20118.3)
- Data processing systems and supporting software – choose one of three lowest bidders (Public Contract Code §20118.1)

- Electronic equipment – competitive negotiation (Public Contract Code §20118.2) – *contact legal counsel to discuss if applicable*
- CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- Piggyback contract for purchase of personal property (Public Contract Code §20118) – *contact legal counsel to discuss if applicable*
- Supplies for emergency construction contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*
- Other: \_\_\_\_\_

Maintenance Contract:

- Price is at or under bid threshold of \$96,700 (as of 1/1/21)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss*
- Other: \_\_\_\_\_

3) Explain in detail the facts that support the applicability of the exception marked above:

Vendor is providing services for the ECLynx WebEDI System. Additionally, contract price is under the threshold of \$96,700.00.

**OAKLAND UNIFIED SCHOOL DISTRICT  
GENERAL SERVICES AGREEMENT**

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This GENERAL SERVICES AGREEMENT (“Agreement”) is made and entered into effective **July 1, 2021** (the “Effective Date”), by and between the Oakland Unified School District (“District”) and **XEBEC Data Corporation** (“Contractor”).

1. **Contractor Services.** Contractor agrees to provide the following services to District (collectively, the “Basic Services”): Xebec shall map and test documents with Subscriber’s Partners to ensure that the Services are configured to communicate with them correctly. Upon completion of successful testing, Xebec shall provide Subscriber with the usernames, ID(s) and password(s) required to access the ECLynx WebEDI system for the purpose of sending and receiving data transmissions in accordance with the terms of this Agreement. The ECLynx Web-EDI System will be connecting to a mailbox setup exclusively for the Subscriber on the nuBridges Value Added Network, hereinafter “EDI System” 5.2. In the event data sent or received on the EDI System by Subscriber is lost, destroyed or impaired for the Prop 39 Energy Operations Project. The Basic Services include all work described in the June 10, 2021, proposal, which is attached to this Agreement as Exhibit A. Contractor may only provide other services (“Additional Services”) after authorized in writing by District. “Services” shall mean Basic and Additional Services.

2. **Contractor Qualifications.** Contractor represents and warrants to District that Contractor, and all of Contractor’s employees, agents or volunteers (the “Contractor Parties”), have in effect and shall maintain in full force throughout the Term of this Agreement all licenses, credentials, permits and any other qualifications required by law to perform the Services and to fully and faithfully satisfy all of the terms set forth in this Agreement. Contractor and any Contractor Parties performing services shall be competent to perform those services.

3. **Term.** This Agreement shall begin on **July 1, 2021**, and shall terminate upon completion of the Services, but no later than **June 30, 2022** (“Term”), except as otherwise stated in **Paragraph 4** below. There shall be no extension of the Term of this Agreement without the express written consent of all parties. Written notice by the District Superintendent or designee shall be sufficient to stop further performance of the Services by Contractor or the Contractor Parties. In the event of early termination, Contractor shall be paid for satisfactory Services performed to the date of termination. Upon payment by District, District shall be under no further obligation to Contractor, monetarily or otherwise, and District may proceed with the work in any manner District deems proper.

4. **Termination.** Either party may terminate this Agreement at any time by giving thirty (30) days advance written notice to the other party, however the parties may agree in writing to a shorter notice period. Notwithstanding the foregoing, District may terminate this Agreement at any time by giving written notice to Contractor if Contractor materially breaches any of the terms of this Agreement, any act or omission of Contractor or the Contractor Parties exposes District to potential liability or may cause an increase in District’s insurance premiums, Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed because of Contractor’s insolvency. Such termination shall be effective immediately upon Contractor’s receipt of the notice.

5. **Payment of Fees for Services.** District agrees to pay Contractor based on the hourly rates listed in Exhibit B for Services satisfactorily performed. Contractor shall not increase these hourly

rates over the course of this Agreement. Total fees paid by District to Contractor for Services under the Agreement shall not exceed Five Thousand Dollars (\$5,000.00), which consists of a not-to-exceed amount of Five dollars (\$5,00) for performance of the Basic Services, and a not-to-exceed amount of Zero Dollars (\$ 0 ) for performance of any Additional Services. Contractor shall perform all Services required by the Agreement even if the applicable not-to-exceed amount has already been paid and no more payments will be forthcoming. District agrees to make payment within sixty (60) days of receipt of a detailed invoice from Contractor based on hours worked and hourly rates, including any additional supporting documentation that District reasonably requests. Contractor shall not submit its invoices to District more frequently than monthly. Contractor shall not be reimbursed directly for any of its expenses, as the fees to be paid under this Agreement include compensation for any and all of Contractor's expenses.

6. **Indemnity.** Contractor shall defend, indemnify, and hold harmless District and its agents, representatives, officers, consultants, employees, Board of Trustees, members of the Board of Trustees (collectively, the "District Parties"), from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to attorney fees and costs including fees of consultants) of any kind, nature and description (collectively, the "Claims") directly or indirectly arising out of, connected with, or resulting from any act, error, omission, negligence, or willful misconduct of Contractor, the Contractor Parties or their respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees in the performance of or failure to perform Contractor's obligations under this Agreement, including, but not limited to Contractor's or the Contractor Parties' use of the site, Contractor's or the Contractor Parties' performance of the Services, Contractor's or the Contractor Parties' breach of any of the representations or warranties contained in this Agreement, or for injury to or death of persons or damage to property or delay or damage to the District or the District Parties. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph.

7. **Equipment and Materials.** Contractor at its sole cost and expense shall provide and furnish all tools, labor, materials, equipment, transportation services and any other items (collectively, "Equipment") which are required or necessary to perform the Services in a manner which is consistent with generally accepted standards of the profession for similar services. Notwithstanding the foregoing, District shall not be responsible for any damages to persons or property as a result of the use, misuse or failure of any Equipment used by Contractor or the Contractor Parties, even if such Equipment is furnished, rented or loaned to Contractor or the Contractor Parties by District. Furthermore, District may reject any Equipment or workmanship that does not conform to the requirements of this Agreement and Contractor must then promptly remedy or replace it at no additional cost to District and subject to District's reasonable satisfaction.

8. **Insurance.** Without in any way limiting Contractor's liability, or indemnification obligations set forth in Paragraph 6 above, Contractor shall secure and maintain throughout the Term of this Agreement the following insurance: (i) comprehensive general liability insurance with limits of not less than **\$1,000,000** each occurrence and **\$2,000,000** in the aggregate; (ii) commercial automobile liability insurance with limits not less than **\$1,000,000** each occurrence and **\$2,000,000** in the aggregate, if applicable; and (iii) worker's compensation insurance as required by Labor Code section 3200, *et seq.*, if applicable. Neither Contractor nor any of the Contractor Parties shall commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverages have been delivered to and approved by District. All insurance policies shall include General Services – XEBEC Data Corporation – Utility O & M Operations Project - \$5,000.00 {SR565566}

an endorsement stating that District and District Parties are named additional insureds. All of the policies shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to District. If such a notice is not given or even if District receives a notice, District may, at its sole option, terminate this Agreement. All insurance policies shall include an endorsement stating that it is primary to any insurance or self-insurance maintained by District and shall waive all rights of subrogation against District and/or the District Parties. A copy of the declarations page of Contractor's insurance policies shall be attached to this Agreement as proof of insurance.

9. **Independent Contractor Status.** Contractor is engaged in an independently established trade, occupation, or business to provide the Services required by this Agreement and is hereby retained to provide specialized services for District that are outside the usual course of District's business. Contractor is free from the control and direction of District in connection with the manner in which it provides the Services to District. Contractor understands and agrees that Contractor and the Contractor Parties shall not be considered officers, employees, agents, partners, or joint venturers of District, and are not entitled to benefits of any kind or nature normally provided to employees of District and/or to which District's employees are normally entitled.

10. **Taxes.** All payments made by District to Contractor pursuant to this Agreement shall be reported to the applicable federal and state taxing authorities as required. District will not withhold any money from fees payable to Contractor, including FICA (social security), state or federal unemployment insurance contributions, or state or federal income tax or disability insurance. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor and the Contractor Parties and otherwise in connection with this Agreement.

11. **Fingerprinting/Criminal Background Investigation Certification.** Contractor and the Contractor Parties shall at all times comply with the fingerprinting and criminal background investigation requirements of the California Education Code ("Education Code") section 45125.1, and shall complete the Fingerprinting Notice and Acknowledgement Form and Student Contract Form.

12. **Tuberculosis Certification.** Contractor and the Contractor Parties shall at all times comply with the tuberculosis ("TB") certification requirements of Education Code section 49406. Accordingly, by checking the applicable boxes below, Contractor hereby represents and warrants to District the following:

A.  Contractor and Contractor Parties shall **only have limited or no contact** (as determined by District) with District students at all times during the Term of this Agreement.

B.  The following Contractor and Contractor Parties shall have **more than limited contact** (as determined by District) with District students during the Term of this Agreement and, at no cost to District, have received a TB test in full compliance with the requirements of Education Code section 49406:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_. [Attach and sign additional pages, as needed.]

Contractor shall maintain on file the certificates showing that the Contractor and Contractor Parties  
General Services – XEBEC Data Corporation – Utility O & M Operations Project - \$5,000.00  
{SR565566}

were examined and found free from active TB. These forms shall be regularly maintained and updated by Contractor and shall be available to District upon request or audit.

Contractor further agrees and acknowledges that all new personnel hired after the Effective Date of this Agreement by Contractor and Contractor Parties are subject to the TB certification requirements and shall be prohibited from having any contact with District students until the TB certification requirements have been satisfied and District determines whether any contact is permissible.

13. **Confidential Information.** Contractor shall maintain the confidentiality of, and protect from unauthorized disclosure, any and all individual student information received from the District, including but not limited to student names and other identifying information. Contractor shall not use such student information for any purpose other than carrying out the obligations under this Agreement. Upon termination of this Agreement, Contractor shall turn over to District all educational records related to the services provided to any District student pursuant to this Agreement.

14. **Assignment/Successors and Assigns.** Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of District. Subject to the foregoing, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

15. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

16. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by both parties and approved by the governing board.

17. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Alameda, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

18. **Written Notice.** Written notice shall be deemed to have been duly served if delivered in person to Contractor at the address located next to the party signatures below, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who sends the notice.

19. **Compliance with Law.** Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. Contractor shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances, including but not limited to fingerprinting under Education Code section 45125.1, confidentiality of records, Education Code section 49406 and others. Contractor agrees that it shall comply with all legal requirements for the performance of duties under this Agreement and that failure to do so shall constitute material breach.



20. **Non-Discrimination.** There shall be no unlawful discrimination in the contracting of persons under this Agreement because of race, color, national origin, age, ancestry, religion, sex, or sexual orientation of such persons.

21. **Attorneys' Fees.** If any legal action is taken to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other reasonable costs and expenses incurred in connection with that legal action.

22. **Liability of District.** Notwithstanding anything stated herein to the contrary, District shall not be liable for any special, consequential, indirect or incidental damages, including but not limited to lost profits in connection with this Agreement.

23. **Time.** Time is of the essence to this Agreement.

24. **Waiver.** No delay or omission by District in exercising any right under this Agreement shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude the District from any or further exercise of any right or remedy.

25. **Entire Agreement.** This Agreement is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms.

26. **Ambiguity.** The parties to this Agreement, and each of them, hereby represent that the language contained herein is to be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all parties shall be treated as equally responsible for such ambiguity.

27. **Execution of Other Documents.** The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

28. **Execution in Counterparts.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, facsimile, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

29. **Warranty of Authority.** The persons who have signed this Agreement warrant that they are legally authorized to do so on behalf of the respective parties, and by their signatures to bind the respective parties to this Agreement.

30. **Local Business.** Contractor shall comply with the requirements of the District's Local, Small Local, and Small Local Resident Business Enterprise Program, which may require a 50% minimum local participation requirement in the performance of this Agreement. A copy of this program may be obtained at [www.ousd.k12.ca.us](http://www.ousd.k12.ca.us), under the Facilities Planning & Management Department drop down menu, at "Bids and Requests for Proposals."

31. **Forms.** The following forms, attached to the proposal, are incorporated into the contract:

General Services – XEBEC Data Corporation – Utility O & M Operations Project - \$5,000.00  
{SR565566}

- ~~Roof project certification (if required; see Public Contract Code §3006).~~
- Fingerprinting Notice and Acknowledgement.
- ~~Iran Contracting Act Certification.~~
- Workers' Compensation Certification.
- Drug-Free Workplace Certification.
- Buy American Certification.
- ~~Local Business Participation Form.~~

Within ten (10) days after award and before commencement of the services, the signed agreement, insurance documentation, and Student Contract Form (see Exhibit B to the Fingerprinting Notice and Acknowledgement) shall be submitted to the District.

32. **Mediation.** A party to this Agreement shall, as a condition precedent to initiating any litigation against the other party, demand mediation of any dispute. The parties shall endeavor to include any third party claimant in the mediation. The parties shall select a mediator and schedule the mediation within thirty (30) days of the initial demand for mediation. If the parties cannot agree on a mediator, the mediator shall be appointed by JAMS. The parties to the mediation, including the parties to this Agreement, shall pay equal shares of the mediator's fees. Each party shall bear its own attorney's fees related to the mediation.

\*\*\*\*\*

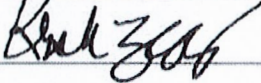
**DISTRICT:**

**CONTRACTOR:**

**OAKLAND UNIFIED SCHOOL DISTRICT**

**XEBEC Data Corporation**

  
 \_\_\_\_\_  
 9/9/2021  
 Date

By:   
 \_\_\_\_\_

Shanthi Gonzales, President,  
 Board of Education

  
 \_\_\_\_\_  
 9/9/2021  
 Date

Title: President Date: 7/6/2021

Kyla Johnson-Trammell, Superintendent  
 Secretary, Board of Education

  
 \_\_\_\_\_  
 8/11/21  
 Date

Tadashi Nakadegawa, Deputy Chief,  
 Facilities Planning & Management

Address for District Notices:

Address for Contractor Notices:

Oakland Unified School District  
 955 High Street  
 Oakland, CA 94601  
 510-535-2728

XEBEC Data Corporation  
 P.O. Box 862  
 Lafayette, CO 80026  
 720-261-4504

**Approved As To Form:**

  
 \_\_\_\_\_  
 OUSD Facilities Legal Counsel

8/9/21  
 Date

General Services – XEBEC Data Corporation – Utility O & M Operations Project - \$5,000.00  
 [SR565566]

**Exhibit A**  
**Proposal**

General Services – XEBEC Data Corporation – Utility O & M Operations Project - \$5,000.00  
{SR565566}

**ECLynx Web-EDI Service Agreement**

Xebec Data, hereinafter "Xebec", hereby grants to Subscriber upon the terms and subject to the conditions of this Agreement, a non-exclusive, non-assignable right to use the ECLynx Web EDI system, hereinafter "Services". Payment of the Subscription Fee is solely for the right to use the Services pursuant to the terms and conditions of this Agreement. It is understood that Xebec is the owner of the Services and all maps and programs running on our servers.

Xebec and Subscriber agree to the terms and conditions of this Agreement.

**1. CHARGES**

1.1 The prices for access to the Service, including mapping, testing, support and connectivity services, ordered by Subscriber are:

Monthly Subscription Fee	\$ 75
Energy Manager Bills - Per Document Fee	\$.79/doc *

\*Summary bills are unmerged and Subscriber will get one bill/doc per Premise. That Premise bill may have both electric and gas on it.

Xebec expressly reserves the right to adjust its services and may from time to time add, withdraw, or modify Services. Prices are considered lock in for 1 year after which they are subject to change upon thirty (30) days prior written notice to Subscriber. Upon receipt of such notice, Subscriber may terminate this agreement effective on the date of the price change.

1.2 Invoices are due and payable 60 (sixty) days upon receipt by Subscriber and a late fee can be assessed if payment is received more than 60 (sixty) days after the date of the Invoice. Xebec shall, in its sole discretion, have the right to immediately terminate Subscriber's access to the EDI system if payment is not remitted within 60 (sixty) days.

**2. CONFIDENTIALITY**

Each party hereto agrees not to disclose, copy or use for any purpose other than the performance of this Agreement, and to treat as confidential and as proprietary to each other, all information which relates to the other party's technology, research and development, business affairs, pricing or the terms of this Agreement (collectively, the "Confidential Information"). Xebec and Subscriber each further agrees to protect that Confidential Information with the same degree of care it exercises to protect its own Confidential Information and to prevent its unauthorized disclosure. As used herein, Confidential Information does not include information which: (i) is publicly available; (ii) rightfully obtained from a third party; or (iii) required to be disclosed by a regulatory or governmental authority or action, provided that the recipient of the information promptly provides advance notice to the other party of any such disclosure requirement. The terms of this Section shall survive termination of the Agreement for three (3) years.

**3. INDEMNIFICATION**

Subscriber agrees to indemnify Xebec and its affiliated companies and its or their respective officers, directors, agents or subcontractors from all costs, expenses, liabilities, losses, damages, suits, fines, penalties, claims, and demands of every kind or nature, including reasonable attorney's fees, asserted by or on behalf of any person or entity arising out of, or related to, the manner of use of the Services by Subscriber, its agents, accounts, clients, partners or any other third party using the Services through Subscriber.

XEBEC DATA CORP  
P.O. Box 862, Lafayette, CO 80026  
Phone: 303.368.1252 Fax: 303.317.6293  
admin@xebecdata.com

#### 4. CUSTOMER RESPONSIBILITIES

4.1 Subscriber shall be solely responsible for protection of all data entered on the ECLynx System, and its ID(s), password(s), user names and the like, from all unauthorized access or use. All Subscriber requests for Xebec to assign additional ID(s) or password(s), or to make changes to, or delete any of Subscriber's assigned ID(s) or password(s) must be in writing. Subscriber understands and agrees that Xebec does not guarantee the Services against compromise and that Xebec will not be liable, either in contract, in tort or under any other theory, for any loss resulting therefrom, including without limitation any loss resulting from unauthorized access to or alteration, theft, or destruction of data files, programs and/or information of Subscriber.

4.2 Should Subscriber undertake to modify files or programs on our system or compromise our Services in any way and Xebec suffers harm, then Subscriber agrees that it shall be solely responsible and shall indemnify Xebec for all charges and damages suffered by Xebec. Notwithstanding the foregoing, Xebec may suspend Subscriber's access to and/or use of the Services and the EDI System at any time with 24 hours notice if, in Xebec's sole discretion, the integrity or security of the Services or the EDI System is in danger of being compromised.

4.3 In the event that Subscriber's own equipment, applications, or other obtained services are not available or in working order, Subscriber shall remain liable for charges to Services and Services ordered from Xebec whether or not Subscriber is accessing and making use of such services.

4.4 Subscriber is expressly prohibited from using the Services or any portions thereof for distribution of the Services to others, regardless of whether such distribution is for profit. Subscriber is expressly prohibited from using the Services to provide Electronic Data Interchange service bureau, clearing house, web-based e-commerce hosting services, or for any other purpose where the trading partner relationship is many-to-many. Any violation of these provisions will constitute an automatic revocation of Subscriber's license to use the Services and will result in prosecution under any applicable state, provincial, or federal laws.

#### 5. XEBEC SERVICES

5.1 Xebec shall map and test documents with Subscriber's Partners to ensure that the Services are configured to communicate with them correctly. Upon completion of successful testing, Xebec shall provide Subscriber with the usernames, ID(s) and password(s) required to access the ECLynx Web-EDI system for the purpose of sending and receiving data transmissions in accordance with the terms of this Agreement. The ECLynx Web-EDI System will be connecting to a mailbox setup exclusively for the Subscriber on the nuBridges Value Added Network, hereinafter "EDI System".

5.2 In the event data sent or received on the EDI System by Subscriber is lost, destroyed or impaired ("Loss") through the sole negligence of Xebec or the EDI System, then Subscriber's sole remedy shall be that Xebec shall, to the extent reasonably possible, attempt to restore Subscriber's data from the EDI System's archives, if Xebec is notified of such Loss within thirty (30) days of the Loss.

5.3 Except to the extent expressly set forth in this Section, Xebec makes no warranties of any kind, express or implied, and specifically disclaims any implied warranties or non-infringement of third party rights, merchantability or of fitness for a particular purpose.

#### 6. LIMITATION OF LIABILITY

XEBEC DATA CORP  
P.O. Box 862, Lafayette, CO 80026  
Phone: 303.368.1252 Fax: 303.317.6293  
admin@xebecdata.com

6.1 In no event shall any damages which may be assessed against Xebec for any reason exceed the price paid to Xebec by Subscriber for the specific services rendered under this agreement which are the basis for the claim.

7. TERM

The term of this Agreement shall terminate upon completion of the Services, but no later than June 30, 2022, as set forth in Paragraph 3 of this Agreement.

Xebec Data Corp.

Oakland Unified School District

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

XEBEC DATA CORP  
P.O. Box 862, Lafayette, CO 80026  
Phone: 303.368.1252 Fax: 303.317.6293  
admin@xebecdata.com

# XEBEC Scope of Services

Date of Service: 5/1/21 – 6/30/22

## 1. Provide data transfers from PG&E on a weekly basis

- Xebec shall map and test documents with Subscriber's Partner (PG&E) to ensure that the services are configured to communicate them correctly.
- Upon completion of successful testing, Xebec shall provide subscriber with the usernames, ID(s) and password(s) required to access the ECLynx Web-EDI system for the purpose of sending and receiving data transmissions.
- The ECLynx Web-EDI system will be connecting to a mailbox setup exclusively for the Subscriber on the nuBridges Added Value Network.

Total cost NTE \$5000

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**Exhibit B**  
**Hourly Rates**

General Services – XEBEC Data Corporation – Utility O & M Project - \$5,000.00  
{SR565566}



XEBEC Data Corporation

Rates:

We bill monthly around the 12<sup>th</sup> of each month for the services provided the previous month (i.e. June 1-30 service is billed on/around July 12).

Monthly Subscription: \$75/month

Per Document Fee: \$.79/bill



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
07/09/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> SECURE AMERICAN INSURANCE INC 34345579 PO BOX 350999 WESTMINSTER CO 80035	<b>CONTACT NAME:</b>	
	<b>PHONE</b> (303) 500-3386 (A/C, No, Ext):	<b>FAX</b> (888) 480-7521 (A/C, No):
	<b>E-MAIL ADDRESS:</b>	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A :</b> Hartford Fire Insurance Company	19682
	<b>INSURER B :</b> Property and Casualty Insurance Company of Hartford	34690
<b>INSURED</b> XEBEC DATA CORP PO BOX 862 LAFAYETTE CO 80026-0862	<b>INSURER C :</b>	
	<b>INSURER D :</b>	
	<b>INSURER E :</b>	
	<b>INSURER F :</b>	
	<b>INSURER G :</b>	
	<b>INSURER H :</b>	

### COVERAGES

### CERTIFICATE NUMBER:

### REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/Y YYY)	LIMITS	
A	COMMERCIAL GENERAL LIABILITY	X		34 SBA AA4936	10/20/2020	10/20/2021	EACH OCCURRENCE	\$1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$300,000
	<input checked="" type="checkbox"/> General Liability						MED EXP (Any one person)	\$10,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY	\$1,000,000
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC						GENERAL AGGREGATE	\$2,000,000
	OTHER:						PRODUCTS - COM/OP AGG	\$2,000,000
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	
	<input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per accident)	
	<input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	
	UMBRELLA LIAB EXCESS LIAB						EACH OCCURRENCE	
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE						AGGREGATE	
	DED <input type="checkbox"/> RETENTION \$							
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	N/A		34 WEC AD7R0B	08/07/2021	08/07/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)							
	If yes, describe under DESCRIPTION OF OPERATIONS below							
							E.L. EACH ACCIDENT	\$1,000,000
		E.L. DISEASE -EA EMPLOYEE	\$1,000,000					
		E.L. DISEASE - POLICY LIMIT	\$1,000,000					
A	FAILSAFE TECHNOLOGY E OR O			34 SBA AA4936	10/20/2020	10/20/2021	Each Glitch Aggregate	\$1,000,000 \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Those usual to the Insured's Operations. Certificate holder is an additional insured per the Business Liability Coverage Form SS0008 attached to this policy.

### CERTIFICATE HOLDER

Oakland Unified School District  
Juanita Hunter, Specialist, Facilities  
955 HIGH ST  
OAKLAND CA 94601-4404

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Susan S. Castaneda*

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THE HARTFORD  
BUSINESS SERVICE CENTER  
3600 WISEMAN BLVD  
SAN ANTONIO TX 78251

July 9, 2021

Oakland Unified School District  
Juanita Hunter, Specialist, Facilities  
955 HIGH ST  
OAKLAND CA 94601-4404

**Account Information:**

<b>Policy Holder Details :</b>	XEBEC DATA CORP
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**Contact Us**

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Business Service Center

**Business Hours:** Monday - Friday  
(7AM - 7PM Central Standard Time)

**Phone:** (866) 467-8730

**Fax:** (888) 443-6112

**Email:** [agency.services@thehartford.com](mailto:agency.services@thehartford.com)

**Website:** <https://business.thehartford.com>

Enclosed please find a Certificate Of Insurance for the above referenced Policyholder. Please contact us if you have any questions or concerns.

Sincerely,

Your Hartford Service Team



### DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

#### Project Information

<b>Project Name</b>	Utility O & M Operations Project	<b>Site</b>	918
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#### Basic Directions

<b>Services cannot be provided until the contract is awarded by the Board or is entered by the Superintendent pursuant to authority delegated by the Board.</b>	
Attachment Checklist	<input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider

#### Contractor Information

Contractor Name	Xebec Data Corporation	Agency's Contact	Christopher Koayen		
OUSD Vendor ID #	006605	Title	President		
Street Address	PO Box 862	City	Lafayette	State	CO Zip 80026
Telephone	720-261-4504	Policy Expires			
Contractor History	Previously been an OUSD contractor? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
OUSD Project #	16117				

#### Term of Original/Amended Contract

Date Work Will Begin (i.e., effective date of contract)	7-1-2021	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	6-30-2022
		New Date of Contract End (If Any)	

#### Compensation/Revised Compensation

If New Contract, Total Contract Price (Lump Sum)	\$	If New Contract, Total Contract Price (Not To Exceed)	\$5,000.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Change in Price	\$
Other Expenses		Requisition Number	

#### Budget Information

*If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.*

Resource #	Funding Source	Org Key	Object Code	Amount
9650/9855	Fund 21, Measure J	210-9650-0-9855-8200-5826-918-9180-9905-9999-99999	5826	\$5,000.00

#### Approval and Routing (in order of approval steps)

Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.

	<b>Division Head</b>	Phone	510-535-7038	Fax	510-535-7082
1.	<b>Acting Director, Facilities Planning and Management</b>				
	Signature <i>K. Chatman</i>	Date Approved	8/11/2021		
2.	<b>General Counsel, Department of Facilities Planning and Management</b>				
	Signature <i>[Signature]</i> Lozano Smith, as to form only	Date Approved	8/9/21		
3.	<b>Deputy Chief, Facilities Planning and Management</b>				
	Signature <i>[Signature]</i>	Date Approved	8/11/21		
4.	<b>Chief Financial Officer</b>				
	Signature	Date Approved			
5.	<b>President, Board of Education</b>				
	Signature	Date Approved			