



OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

Board Office Use: Legislative File Info.	
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Enactment Number	18-1289
Enactment Date	8/8/18 lf

## Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Marcus Battle, Chief Business Officer  
Susan Beltz, Chief Technology Officer *SB*

**Board Meeting Date** August 8, 2018

**Subject** Ratification of End User License Agreement between Oakland Unified School District and Tableau, Inc.

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**Action Requested** Ratification of End User License Agreement between Oakland Unified School District and Tableau, Inc. beginning July 15, 2018 through July 14, 2019 in the amount of \$32,400.00.

**Background** The Technology Services and Research, Assessment and Data (RAD) departments have successfully used Tableau for data reporting and data dashboards for 2017-18 and are using this firm going forward for the same services as previously provided.

**Discussion** The Tableau suite of business intelligence tools enables analysts to create interactive visualizations which enable data-informed communications and decision making throughout the organization. The Oakland Unified School District uses Tableau to power both the student data dashboards located

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at <http://www.ousddata.org> and the Fiscal Transparency dashboards accessible at <https://www.ousd.org/fiscaltransparency>.

Tableau seamlessly integrates with a number of data sources, including the Microsoft SQL servers used to house data within OUSD, thereby making it possible to develop extensive data dashboards and reports without requiring an investment in a commercial data warehouse. Tableau also interfaces with the Active Directory authentication protocols in use at OUSD, thereby enabling OUSD to restrict access to sensitive and personally-identifiable information while still allowing broad access to aggregate data.

Ratification of this End User License Agreement will enable OUSD to continue using Tableau to support the student data dashboards developed by the RAD department along with the Fiscal Transparency website.

**Recommendation**

Ratification of End User License Agreement between Oakland Unified School District and Tableau, Inc. beginning July 15, 2018 through July 14, 2019 in the amount of \$32,400.00.

**Fiscal Impact**

\$32,400 from Funding Resource 9999994701: General Purpose (GP) Software Licensing

**Attachments**

End User License Agreement between Oakland Unified School District and Tableau, Inc.

Tableau Annual Renewal Invoice for July 15, 2018 through July 14, 2019

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## CONTRACT JUSTIFICATION FORM

### This Form Shall Be Submitted to the Board Office With *Every* Consent Agenda Contract.

**Legislative File ID No.** 18- 16A

**Department:** Technology Services

**Vendor Name:** Tableau, Inc.

**Contract Term:** Start Date: July 15, 2018 End Date: July 14, 2019

**Annual Cost:** \$ \$32,400

**Approved by:** Susan Beltz

**Is Vendor a local Oakland business?** Yes  No

**Why was this Vendor selected?**

Tableau is a leading provider of business intelligence tools who is recognized by Gartner as an industry leader in this area. The Technology Services and Research, Assessment and Data (RAD) teams have successfully used Tableau for 2017-18 and are using this firm going forward for the same services as previously provided. Tableau powers both the student data dashboards located at <http://www.ousddata.org> and the Fiscal Transparency dashboards accessible at <https://www.ousd.org/fiscaltransparency>.

**Summarize the services this Vendor will be providing.**

Tableau will provide desktop and server licenses and related customer support.

**Was this contract competitively bid?** Yes  No

If No, answer the following:

1) How did you determine the price is competitive?

Tableau is an industry leader and is priced significantly less than some competitors in the space. For example, MicroStrategy has many additional features to support scalability and model complexity but costs typically begin in the mid six figures. In addition, business intelligence tools typically incur a steep learning curve. Our RAD team has developed expert knowledge of Tableau, and we believe there would be a significant training and development investment required to switch tools. In addition, Tableau integrates seamlessly with our existing data sources and security protocols, thereby making it possible to develop extensive data dashboards and reports without requiring an investment in a commercial data warehouse.

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$87,800 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- Emergency** contracts [requires Board resolution declaring an emergency]
- Technology** contracts
  - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$87,800 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
  - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
  - Western States Contracting Alliance Contracts (WSCA)
  - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- "Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception**

**TABLEAU SOFTWARE**  
**END USER LICENSE AGREEMENT ("EULA")**

This End User License Agreement ("**Agreement**") is between Tableau Software, Inc. or the applicable Tableau affiliate ("**Tableau**") and Oakland Unified School District ("**you**" or "**OUSD**"). This Agreement covers all Software, Support and Maintenance Services, and Professional Services.

**1. Definitions.**

**Affiliate:** means each legal entity that is directly or indirectly controlled by you on or after the Effective Date and for so long as such entity remains directly or indirectly controlled by you (where "controlled" means the ownership of, or the power to vote, directly or indirectly, a majority of any class of voting securities of a corporation or limited liability company, or the ownership of any general partnership interest in any general or limited partnership).

**Authorized User:** means those uniquely identified individuals for whom the applicable license fees have been paid, as stated on the Ordering Document, who are authorized by you to install and/or use the functionality in the Software for any purpose regardless of whether those individuals are actively using the programs at any given time. Licenses granted on an Authorized User basis may be reassigned between uniquely identified individuals over time, but may not be reassigned so frequently as to enable the sharing of a single license between multiple users.

**Contractor:** means those independent third parties who perform services related to this Agreement for you.

**Customer Data:** means data generated by you or your Authorized User and used by or imported into the Software, but excludes data generated by a Client Sublicensee unless such data is combined with your data or is relevant to your provision of services to such Client Sublicensee.

**Documentation:** means any supporting product help and technical specifications documentation provided by Tableau with the Software to you.

**Effective Date:** means the date last signed below by authorized representatives of each party.

**License Term:** means the Software license term specified on the applicable Ordering Document. The License Term may be a fixed term, a limited term for Evaluation Versions, or perpetual.

**Ordering Document:** means any order on a Tableau order form which references this Agreement. Each Ordering Document which references this Agreement shall be deemed a part of this Agreement.

**Software:** means the proprietary Tableau software product(s) provided in connection with this Agreement in object code form (or as otherwise specified in any related Ordering Document). "Software" shall also include any Support and Maintenance Services releases provided to you under this Agreement. Unless otherwise noted, the Software and Documentation are referred to collectively herein as "Software".

**2. Tableau Software Products.**

**2.1 Tableau Software.** In order to use the Software under this Agreement, you must activate your copy of the Software with the valid license key or activation code provided to you ("**Product Key**") at the time of purchase and/or submit a uniquely identifiable user registration when prompted, in accordance with the scope of use and other terms specified for each type of Software, the Documentation, and as set forth in this Section 2 of this Agreement.

**2.2 Tableau Desktop (Professional and Personal) ("Desktop Software").** If you purchased a license to Desktop Software, the total count of Authorized Users enabled to use such Desktop Software must

not exceed the number of licenses purchased on the applicable Ordering Document(s). For each such license you may install, via the Product Key, one copy of the Desktop Software on one primary computer and a second copy on a secondary computer for each Authorized User.

**2.3 Tableau Server ("Server Software").** If you purchased a license to Server Software, your license will be subject to either Core-Based or User-Based restrictions, as identified on the applicable Ordering Document.

**2.3.1 User-Based Server License:** If your Server Software license is designated as User-Based, the total count of Authorized Users enabled to use such Server Software across all Production and Non-Production Environments must not exceed the number of licenses purchased on the applicable Ordering Document(s). For the avoidance of doubt, "User-Based" Server licenses are also referred to in the Ordering Document or Documentation as "Web Client" Server licenses or "Interactor" Server licenses.

**2.3.2 Core-Based Server License:** If your Server Software license is designated on the applicable Ordering Document as Core-Based, for each such license an unlimited number of Authorized Users may use the Server Software (until Core capacity is reached), provided that the total number of Cores made available to each installation of the Server Software does not exceed the permitted number of Cores identified on your Ordering Document. When the Server Software is installed and distributed across multiple computers, all Cores made available to the Server Software from each computer count toward the total number of Cores licensed by you and identified on your Ordering Document. "Core" means the processor or execution core within a computer's central processing unit, whether such Cores are virtual or physical. For purposes of Core-Based Server licenses, Authorized Users do not need to be uniquely identified.

**2.4 Evaluation Version ("Evaluation Version").** If you ordered a license to an Evaluation Version, you may install and use one copy of the Evaluation Version Software solely for the purpose of evaluating the Software to determine whether to purchase a non-Evaluation Version copy of the Software. You may not use the Evaluation Version for any other purposes, including but not limited to competitive analysis, commercial, professional, or for-profit purposes. Licenses provided under Tableau's student access program constitute Evaluation Versions and the aforementioned prohibition against commercial or professional use does not apply to such licenses. You may only use the Evaluation Version for fourteen (14) days from the date you activate and/or register via the Product Key or otherwise, unless otherwise specified by Tableau in the Documentation or a separate writing from Tableau ("**Evaluation Period**"). Unless you pay the applicable license fee for the Software (and Tableau issues you a Product Key in exchange), the Evaluation Version Software may become inoperable and, in any event, your right to use the Evaluation Version Software automatically expires at the end of the Evaluation Period. Notwithstanding any other provision of this Agreement, the Evaluation Version Software is provided "AS IS" without warranty or support of any kind, express or implied. Tableau may terminate your license to the Evaluation Version Software upon written notice at any time for any reason and without liability of any kind. **IF YOU SUBSEQUENTLY LICENSE A NON-EVALUATION VERSION OF THE SOFTWARE, YOUR LICENSE TO THE EVALUATION VERSION SOFTWARE SHALL IMMEDIATELY TERMINATE AND YOU EXPRESSLY AGREE THAT, UNLESS YOU HAVE A SEPARATE SIGNED LICENSE AGREEMENT GOVERNING YOUR USE OF THE SOFTWARE, THIS AGREEMENT, AND THE TERMS AND CONDITIONS HEREIN, SHALL GOVERN YOUR USE OF SUCH NON-EVALUATION VERSION.**

**3. License.**

**3.1 Grant of License.** Subject to all of the terms and conditions of this Agreement, and except as set forth in Section 6 (Term and Termination), during the applicable License Term, Tableau grants you a limited, worldwide, non-transferable, non-sublicensable (except as permitted under Section 3.7), non-exclusive license to use the Software for which you have been issued a Product Key by Tableau, but only in accordance with: (a) the Documentation; (b) the restrictions in Section 2 (Tableau Software Products), Section 3.8 (License Restrictions) and any restrictions on the applicable Ordering

Document; and (c) the number of Authorized Users and/or permitted number of Cores (as applicable). You may allow your Contractors and Affiliates to use the Software in accordance with this Agreement, provided you shall remain liable for all acts and omissions of your Affiliates and Contractors as if their acts or omissions were your own.

**3.2 Sample Code.** Subject to the terms and conditions of this Agreement, during the applicable License Term, Tableau grants you a limited, worldwide, non-transferable, non-sublicensable, non-exclusive license to modify any sample source code from the Software provided by Tableau to you ("**Sample Code**") solely for internal use for the purposes of designing, developing, testing and otherwise facilitating your use of the Software under this Agreement.

**3.3 Production and Non-Production Environments:**

**3.3.1 Non-Production Environments:** You may use the Server Software in a technical environment and on the platforms and configurations specified in the Documentation, solely for internal development and testing in connection with your licensed Software, or for disaster recovery purposes ("**Non-Production Environment**"). Your installation, activation or use of a copy of the Software in a Non-Production Environment is limited to the same number of Authorized Users and/or permitted number of Cores and/or computers as provided under Section 3.1 above. Your use of the Server Software in a Non-Production Environment may be concurrent with your use of the licensed Software in a Production Environment and such use is conditioned on you having an authorized license for the Software. You are only entitled to two (2) Non-Production Environments under this Agreement. Any additional licenses for Non-Production Environments other than what is described in this Section 3.3 can be purchased by you and shall be subject to the additional terms and conditions contained in the applicable Ordering Document.

**3.3.2 Production Environments.** As it relates to the Server Software, your use of the Software for the purpose of creating, sharing, viewing and/or revising visualizations is considered use within a "Production Environment" and you are entitled to one (1) Production Environment for each Server Software license you purchase under this Agreement. Your use of the Server Software in a Production Environment allows for a single Production Environment regardless of the fact that single Production Environment may consume all the Cores identified on your Ordering Document.

**3.4 Archive Copies.** You are entitled to make a reasonable number of copies of the Software for archival purposes.

**3.5 Third-Party Code.** The Software may contain or be provided with components which are licensed from third parties ("**Third Party Code**"), including components subject to the terms and conditions of "open source" software licenses ("**Open Source Software**"). Open Source Software may be identified in the Documentation, or in a list of the Open Source Software provided to you upon your written request. To the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of this Agreement with respect to such Open Source Software, including, without limitation, any provisions governing access to source code, modification or reverse engineering.

**3.6 Electronic Delivery.** All Software and Documentation shall be delivered by electronic means unless otherwise specified on the applicable Ordering Document. Software shall be deemed delivered when it is made available for download by you ("**Delivery**").

**3.7 Client Sublicensees.** You may permit third parties ("**Client Sublicensees**") to access the Server Software as Authorized Users on your servers but only so the Client Sublicensees may: (a) interact with visualizations generated by you through your use of the Software and based on Customer Data, or (b) themselves create visualizations using Customer Data, provided that in each case such Customer Data is relevant to your provision of services to that particular Client Sublicensee ("**Visualization Access**") and further provided that you, in providing your Client Sublicensees Visualization Access, are not acting as "Marketing Service Provider", "Service Bureau" or other entity with a similar business model. Client Sublicensees may not publish their own data to your Server Software, use any data other than Customer Data with your Server Software or access your Server Software for any other purposes except as expressly permitted in this Section 3.7. For the avoidance of doubt, Client Sublicensees may not access your Desktop Software for any purpose. You shall ensure that all Client Sublicensees' use of Server Software is limited as described in this Section 3.7 by designating the appropriate access levels for Client Sublicensees within Server Software. You shall be solely responsible for your relationships with Client Sublicensees and must notify Client Sublicensees that Tableau

shall have no warranty, support or other obligation or liability to any Client Sublicensee. You shall be liable for all acts and omissions of your Client Sublicensees as if their acts or omissions were your own.

**3.8 License Restrictions.** As a condition of your license, you shall not (and shall not allow any third party to): (a) decompile, disassemble, or otherwise reverse engineer the Software or Third Party Code or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the Software or Third Party Code by any means whatsoever (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions, or as permitted by an applicable Open Source Software license); (b) distribute, sell, sublicense, rent, lease or use the Software, Third Party Code or Sample Code (or any portion thereof) for time sharing, hosting, service provider or like purposes, except as expressly permitted under Section 3.7 of this Agreement; (c) remove any product identification, proprietary, copyright trademark, service mark, or other notices contained in the Software, Third Party Code or Sample Code; (d) except as permitted in Section 3.2, modify any part of the Software, Third Party Code or Sample Code, create a derivative work of any part of the Software, Third Party Code, or Sample Code, or incorporate the Software, Third Party Code or Sample Code into or with other software, except to the extent expressly authorized in writing by Tableau or as permitted by an applicable Open Source Software license; (e) publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Software; (f) utilize any equipment, device, software, or other means designed to circumvent or remove any form of Product Key or copy protection used by Tableau in connection with the Software, or use the Software together with any authorization code, Product Key, serial number, or other copy protection device not supplied by Tableau; (g) use the Software to develop a product which is competitive with any Tableau product offerings; (h) use unauthorized Product Keys or keycode(s) or distribute or publish keycode(s) except as may be expressly permitted by Tableau in writing; (i) as applicable to Desktop or User-Based Server licenses, enable access to the Software for a greater number of Authorized Users than the sum quantity of licenses purchased on the applicable Ordering Document(s); (j) as applicable to Desktop or User-Based Server licenses, reassign license rights between Authorized Users so frequently as to enable a single license to be shared between multiple users; or (k) assert, nor will you authorize, assist or encourage any third-party to assert, against Tableau or any of its affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any Software or Support and Maintenance or Professional Services you have purchased or used hereunder.

**4. Ownership.** Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly provided herein, Tableau and its licensors have and will retain all rights, title and interest (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Software, Sample Code, Third Party Code, and all copies, modifications and derivative works thereof (including any changes which incorporate any of your ideas, feedback or suggestions). You acknowledge that you are obtaining only a limited license right to the Software, Sample Code, Third Party Code and that irrespective of any use of the words "purchase", "sale" or like terms hereunder no ownership rights are being conveyed to you under this Agreement or otherwise.

**5. Payment.** You shall pay all fees associated with the Software licensed and any services purchased hereunder as set forth in the applicable Ordering Document. All payments shall be made in the currency noted on the applicable Ordering Document within thirty (30) days of the date of the applicable electronic invoice. Except as expressly set forth herein, all fees are non-refundable once paid. Unless timely provided with a valid certificate of exemption or other evidence that items are not taxable, Tableau will invoice you for all applicable taxes including, but not limited to, VAT, GST, sales tax, consumption tax and service tax. If any withholding tax is required by applicable law to be paid by you in relation to payments due to Tableau hereunder, you will provide Tableau with official receipts and/or certificates from the appropriate taxing authorities to establish that any applicable taxes have been paid.

**6. Term and Termination.**

**6.1 Term of License.** Unless sooner terminated as provided herein, your license to Software expires at the end of the applicable License Term. License Terms may be renewed if mutually agreed by the parties in a renewal Ordering Document.

6.2 **Term of Agreement.** This Agreement commences on the Effective Date and expires at such time as all License Terms and service subscriptions hereunder have expired in accordance with their own terms (the "Term"). Either party may terminate this Agreement (including all related Ordering Documents) if the other party: (a) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach including without limitation your failure to pay, provided that Tableau may terminate this Agreement and the Software license(s) (including termination of the Software license(s) if this Agreement has already expired or has been terminated) immediately upon any breach of Section 3.8 (License Restrictions)); (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party (and not dismissed within sixty (60) days). Unless otherwise specified herein, termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise. You may terminate this Agreement for your convenience in whole, but not in part, at any time by providing thirty (30) days written notice to Tableau. In such case you shall promptly pay all fees and other amounts due to Tableau, and shall not be entitled to any refund of any fees previously paid.

6.3 **Termination.** Upon any expiration or termination of this Agreement, you shall cease any and all use of any Software, destroy all copies thereof and so certify to Tableau in writing.

6.4 **Survival.** Sections 3.8 (License Restrictions), 4 (Ownership), 5 (Payment), 6 (Term and Termination), 7.3 (Disclaimer of Warranties), 10.1, 10.2, 10.3 and 10.5 (Limitation of Remedies; Indemnification and Damages), 11 (Confidential Information), 12 (Export Compliance) and 13 (General) shall survive any termination or expiration of this Agreement.

## 7. Limited Warranty and Disclaimer.

7.1 **Limited Warranty.** Tableau warrants to you that for a period of thirty (30) days from Delivery (the "Warranty Period") the Software shall operate in substantial conformity with the Documentation. Tableau does not warrant that your use of the Software will be uninterrupted or error-free or that any security mechanisms implemented by the Software will not have inherent limitations. Tableau's sole liability (and your exclusive remedy) for any breach of this warranty shall be, in Tableau's sole discretion, to use commercially reasonable efforts to provide you with an error-correction or work-around which corrects the reported non-conformity, or if Tableau determines such remedies to be impracticable within a reasonable period of time, to refund the license fee paid for the applicable Software. Tableau shall have no obligation with respect to a warranty claim unless notified of such claim within the Warranty Period. For the avoidance of doubt, this warranty applies only to the initial Delivery of Software under an Ordering Document and does not renew or reset, for example, with renewal License Terms or the delivery of Software updates or maintenance releases or Product Keys.

7.2 **Exclusions.** The above warranty shall not apply: (a) if the Software is used with hardware or software not authorized in the Documentation; (b) if any modifications are made to the Software by you or any third party; (c) to defects in the Software due to accident, abuse or improper use by you; (d) to any Evaluation Version or other Software provided on a no charge or evaluation basis; or (e) to any maps created using the Software ("Maps"), such functionality is provided purely for reference purposes. Tableau makes every effort to ensure the Maps are free of errors but does not warrant the Maps or Map features are accurate. The boundaries and names shown and the designations used in the Maps do not imply official endorsement or acceptance by Tableau.

7.3 **Disclaimer of Warranties.** THIS SECTION 7 IS A LIMITED WARRANTY AND, EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 7, THE SOFTWARE, INCLUDING WITHOUT LIMITATION THE MAPS AND THE THIRD-PARTY CODE, AND ALL SERVICES ARE PROVIDED "AS IS". NEITHER TABLEAU NOR ITS LICENSORS MAKES ANY OTHER WARRANTIES, CONDITIONS OR UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. YOU MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE WARRANTY PERIOD.

8. **Support & Maintenance.** Subject to the terms and conditions of this Agreement, during the License Term, you may purchase support and maintenance services for the Software as set forth in Tableau's then-current [Support and Maintenance Policies](#) ("Support and Maintenance Services") and as specified in your Ordering Document. All Support and Maintenance Services renewals will be subject to the terms and conditions of this Agreement including Tableau's then-current Support and Maintenance Policies.

9. **Professional Services.** Tableau shall provide the number of person-days of professional consulting or training services ("Professional Services") purchased in the applicable Ordering Document or online ordering process. The parties acknowledge that the scope of the Professional Services provided hereunder consists solely of either or both of: (a) assistance with Software installation, deployment, and usage; and (b) training in use of the Software. You shall have a license right to use any deliverables (including any documentation, code, Software, training materials or other work product) delivered as part of the Professional Services ("Deliverables") solely in connection with your permitted use of the Software, subject to all the same terms and conditions as apply to your Software license (including in Section 3.8 (License Restrictions)), and subject to any additional terms and conditions provided with the Deliverables. You may order Professional Services under a Statement of Work ("SOW") describing the work to be performed, fees and any applicable milestones, dependencies and other technical specifications or related information. Each SOW must be signed by both parties before Tableau shall commence work under such SOW. If the parties do not execute a separate SOW, the Services shall be provided as stated on the Ordering Document. You will reimburse Tableau for reasonable travel and lodging expenses as incurred.

## 10. Limitation of Remedies; Indemnification and Damages.

10.1 BUT FOR: (A), EITHER PARTY'S BREACH OF SECTION 11 (CONFIDENTIAL INFORMATION), (B) YOUR BREACH OF SECTION 3.7 (CLIENT SUBLICENSEES), SECTION 3.8 (LICENSE RESTRICTIONS) OR SECTION 12 (EXPORT COMPLIANCE), OR (C) DAMAGES ARISING OUT OF CLIENT SUBLICENSEE'S USE OF THE SOFTWARE, INCLUDING YOUR OBLIGATIONS UNDER SECTION 10.5, NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS OR COSTS OF COVER), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

10.2 BUT FOR: (A) EITHER PARTY'S BREACH OF SECTION 11 (CONFIDENTIAL INFORMATION), (B) YOUR BREACH OF SECTION 3.7 (CLIENT SUBLICENSEES), SECTION 3.8 (LICENSE RESTRICTIONS), OR SECTION 12 (EXPORT COMPLIANCE), OR (C) DAMAGES ARISING OUT OF CLIENT SUBLICENSEE'S USE OF THE SOFTWARE, INCLUDING YOUR INDEMNIFICATION OBLIGATIONS UNDER SECTION 10.5, EACH PARTY'S ENTIRE LIABILITY TO THE OTHER UNDER THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID OR OWED BY YOU UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRECEDING THE CLAIM.

10.3 The parties agree that the limitations specified in this Section 10 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

10.4 **Tableau Indemnification:** Tableau shall defend you from and against any claim by a third party alleging that the Software when used as authorized under this Agreement infringes a U.S. patent, U.S. copyright, or U.S. trademark and shall indemnify and hold you harmless from and against any damages and costs awarded against you or agreed in settlement by Tableau (including reasonable attorneys' fees and costs) resulting from such claim, provided that Tableau shall have received from you: (a) prompt written notice of such claim (but in any event notice in sufficient time for Tableau to respond without prejudice); (b) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (c) all reasonably necessary cooperation from you. If your use of the Software is (or in Tableau's opinion is likely to be) enjoined, if required by settlement or if Tableau determines such actions are reasonably necessary to avoid material liability, Tableau may, in its sole discretion: (i) substitute for the Software substantially functionally similar programs and documentation; (ii) procure for you the right to continue using the Software; or if (i) and (ii) are not

commercially reasonable, (iii) terminate this Agreement and refund to you any prepaid, unused license fees for the duration of the then-current License Term (or, if your License Term is perpetual, your refund will equal the license fee paid by you as reduced to reflect a five year straight-line depreciation from the applicable license purchase date). The foregoing obligations of Tableau shall not apply: (1) if the Software is modified by any party other than Tableau, but solely to the extent the alleged infringement is caused by such modification; (2) if the Software is combined with products or processes not provided or authorized by Tableau, but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of the Software; (4) to any unsupported release of the Software; (5) to any Third-Party Code contained within the Software; or (6) if you settle or make any admissions with respect to a claim without Tableau's prior written consent. THIS SECTION 10.4 SETS FORTH TABLEAU'S AND ITS LICENSORS' SOLE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

**10.5 Indemnification by You.** Subject to this Section 10, you shall defend Tableau from and against all claims, arising out of any claim by third parties (including any Client Sublicensees and Contractors) resulting from or relating to: (a) any breach by you of Section 3.7 (Client Sublicensees), or (b) Client Sublicensees' use of the Software, and shall indemnify and hold Tableau harmless from and against any damages and costs awarded against Tableau or agreed in settlement by you (including reasonable attorney's fees) resulting from such claims, provided that you shall have received from Tableau: (i) prompt written notice of such claim (but in any event notice in sufficient time for you to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (iii) all reasonably necessary cooperation from Tableau. You may not settle any such claim relating to the Software without Tableau's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

**11. Confidential Information.** Each party agrees that all code, inventions, know-how, business, technical and financial information it obtains ("**Receiving Party**") from the disclosing party ("**Disclosing Party**") constitute the confidential property of the Disclosing Party ("**Confidential Information**"). provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any software, pricing, documentation or technical information provided by Tableau (or its agents), performance information relating to the Software shall be deemed Confidential Information of Tableau without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Receiving Party who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party, the Disclosing Party shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

**12. Export Compliance.** You acknowledge that the Software is subject to United States export control and economic sanctions laws, regulations and requirements and to import laws, regulations and requirements of certain foreign governments. You shall not, and shall not allow any third party to, export from the United States or allow the re-export or re-transfer of any part of the Software: (a) to any country subject to export control embargo or economic sanctions implemented by any agency of the U.S. Government; (b) to any person or entity on any of the U.S. Government's Lists of Parties of Concern (<http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>); (c) to any known end-user or for any known end-use related to the proliferation of nuclear, chemical or biological weapons or missiles, without first obtaining any export license or other approval that may be required by any U.S. Government agency having jurisdiction with respect to the transaction; or (d) otherwise in violation of any export or import laws, regulations or requirements of any United States or foreign agency or authority.

### 13. General.

**13.1 Assignment.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Tableau may assign this Agreement to any affiliate or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of Tableau's assets or voting securities. You may not assign or transfer this Agreement, in whole or in part, without Tableau's written consent except that you may assign your rights and obligations under this Agreement, in whole but not in part, without Tableau's written consent in connection with any merger, consolidation, sale of all or substantially all of your assets, or any other similar transaction provided that: (a) the assignee is not a direct competitor of Tableau; (b) you provide prompt written notice of such assignment to Tableau; (c) the assignee is capable of fully performing your obligations under this Agreement; and (d) the assignee agrees to be bound by the terms and conditions of this Agreement. Any attempt to transfer or assign this Agreement without such written consent will be null and void.

**13.2 Severability.** If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

**13.3 Governing Law, Jurisdiction and Venue.** Excluding conflict of laws rules, this Agreement shall be governed by and construed under the laws of the State of California. All disputes arising out of or in relation to this Agreement shall be submitted to the exclusive jurisdiction of the courts of Oakland, California. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act, as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction, do not apply to this Agreement.

**13.4 Attorneys' Fees and Costs.** The prevailing party in any action to enforce this Agreement will be entitled to recover its reasonable attorneys' fees and costs in connection with such action.

**13.5 Notices and Reports.** Any notice or report hereunder shall be in writing. If to Tableau, such notice or report shall be sent to Tableau at 1621 N. 34<sup>th</sup> Street, Seattle, WA 98103 to the attention of "Legal Department". If to you, such notice or report shall be sent to the address you provided upon placing your order. Notices and reports shall be deemed given: (a) upon receipt if by personal delivery; (b) upon receipt if sent by certified or registered mail (return receipt requested); or (c) one day after it is sent if by next day delivery by a major commercial delivery service.

**13.6 Amendments; Waivers.** No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. Nothing in this Agreement obligates you to submit or Tableau to accept orders for Software. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form, including any electronic invoicing portals and vendor registration processes, employed by you will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

**13.7 Entire Agreement.** This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. In the event of any inconsistent, incompatible or conflicting provisions, this signed Agreement (including any amendments) shall take precedence, followed by the provisions of any applicable Ordering Document.

**13.8 Independent Contractors.** The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

**13.9 Audit Rights.** Upon Tableau's written request, you shall certify in a signed writing that your use of the Software is in full compliance with the terms of this Agreement (including any Core and user limitations) and provide a current list of Authorized Users for Desktop and User-Based Server licenses. With reasonable prior notice, Tableau may audit your use of the Software, software



monitoring system and records, provided such audit is during regular business hours. If such inspections or audits disclose that you have installed, accessed or permitted access to the Software in a manner that is not permitted under this Agreement, then Tableau may terminate this Agreement pursuant to Section 6 and you are liable for the reasonable costs of the audit in addition to any other fees, damages and penalties Tableau may be entitled to under this Agreement and applicable law.

13.10 Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events, which occur after the signing of this Agreement and which are beyond the reasonable control of the parties, such as strikes, blockade, war, terrorism, riots, natural disasters, refusal of license by the government or other governmental agencies, in so far as such an event prevents or delays the affected party from fulfilling its obligations and such party is not able to prevent or remove the force majeure at reasonable cost.

13.11 Government End-Users. The Software is commercial computer software. If the user or licensee of the Software is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Software, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Software was developed fully at private expense. All other use is prohibited.

13.12 Authorized Partner. If you purchase licenses through an authorized reseller, partner or OEM, then Tableau's then-current End-

User License Agreement, as may be viewed at [www.tableau.com/eula](http://www.tableau.com/eula) will apply.

13.13 Third-Party Beneficiary. Tableau Software, Inc., its affiliates and its licensors may be third party beneficiaries of this Agreement. No other third party, including without limitation your Client Sublicensees or Contractors under Section 3.7, is intended to be a beneficiary of this Agreement entitled to enforce its terms directly.

13.14 Language. Regardless of any language into which this Agreement may be translated, the official, controlling and governing version of this Agreement shall be exclusively the English language version.

13.15 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion. Tableau certifies to the best of his/her/its knowledge and belief, that it and its principals 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 agreement, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov>).

13.16 As may be required by applicable law or regulation, this Agreement may be made available for review by the public at: <https://ousd.legistar.com/Legislation.aspx>.

13.17. Tableau acknowledges that you have advised it that certain clauses set forth in this Agreement may not be enforceable pursuant to California state law or that such law may preempt certain of the terms set forth in this Agreement. Nothing contained in this Agreement shall prohibit you from asserting all rights you have under California state law.

<p><b>TABLEAU</b></p> <p><i>KHC</i></p> <p>By (Signature) <small>Jun 20, 2018</small></p> <p>Keenan Conder</p> <p>Name (Print)</p> <p>Vice President, AGC</p> <p>Title</p> <p><small>Jun 20, 2018</small></p> <p>Date</p> <p>Address for Notice: 1621 N. 34<sup>th</sup> St., Seattle, WA 98103</p> <p>Phone: 206-633-3400 Fax: 206-237-8550 (Attn: Legal) <a href="mailto:legal@tableau.com">legal@tableau.com</a></p>	<p><b>OAKLAND UNIFIED SCHOOL DISTRICT</b></p> <p><i>Susan E Beltz</i></p> <p>By (Signature)</p> <p><i>Susan Beltz</i></p> <p>Name (Print)</p> <p><i>Chief Technology Officer</i></p> <p>Title</p> <p><i>6/25/18</i></p> <p>Date</p> <p><i>94-6000385</i></p> <p>Taxpayer ID No.</p> <p>Address: <i>1000 Broadway Ste 300 Oakland CA 94607</i></p> <p>Phone: <i>510-879-8873</i></p> <p>Fax: <i>N/A</i></p> <p>Email: <i>Susan.beltz@ousd.org</i></p>
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OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the General Counsel  
APPROVED FOR FORM AND SUBSTANCE

By: *[Signature]* 6/27/18  
Michael L. Smith, Attorney at Law

*(Rec'd 6/26/18)*

*Aimee Eng*  
Aimee Eng, President, Board of Education

*[Signature]*  
Kyla Johnson Trammell, Secretary, Board of Education



**Tableau Software, Inc.**

1621 N 34th St  
Seattle, WA 98103  
Phone: (206) 633-3400  
Fax: (206) 260-2883  
FEIN: 47-0945740  
DUNS: 60-386-5093

Invoice: #MR-3712061

**Due Date:** 14-Jul-2018

Sales Contact: Cole Glover  
Phone: 12064102358  
Email: cglover@tableausoftware.com

We recommend renewing 30 days prior to maintenance expiration to ensure no interruption to service.

**Bill To:**  
**Oakland Unified School District**  
Accounts Payable  
1000 Broadway Suite 450  
Oakland, CA 94607  
US  
Phone:  
Email: [renee.bell@ousd.org](mailto:renee.bell@ousd.org)

**Ship To:**  
**Oakland Unified School District**  
Technology Services  
1000 Broadway Suite 300  
Oakland, CA 94607  
US  
Phone:  
Email: [robin.sasada@ousd.org](mailto:robin.sasada@ousd.org)

Product Name	Quantity	Unit Price	Adjusted Unit Price	Total
Server - Core Commercial Maintenance Renewal <i>Period: 15-Jul-2018 - 14-Jul-2019</i>	8	USD 3,750.00	USD 3,750.00	USD 30,000.00
Desktop - Professional User - Maintenance Renewal <i>Period: 15-Jul-2018 - 14-Jul-2019</i>	8	USD 300.00	USD 300.00	USD 2,400.00
			<b>Total</b>	USD 32,400.00

**Memo:** The most recent Purchase Order associated with these keys is: P1800152.

**Please Note:**

- **Payment Terms are Net 30.**
- Orders can be submitted via secure fax to (206) 260-2883 or by email to customerservice@tableausoftware.com.
- All products are delivered electronically through a secure e-fulfillment site; no physical materials will be shipped.
- Tableau Delivery Instructions Form: <http://www.tableausoftware.com/dif>.
- All orders are subject to the terms and conditions outlined: <http://www.tableau.com/eula.pdf>.
- For details about Tableau maintenance and support: <http://www.tableausoftware.com/mrpolicy>.
- Purchase orders must include each product line item separately with quantity, unit price and total.
- No product purchases are contingent on any professional services.
- Maintenance in year one is not optional; optional subsequent second year fees will be the same as in year one.
- Maintenance Renewals not remitted by expiration date are subject to a 25% reinstatement fee.
- Upon invoicing, actual sales tax may change based on ship-to location.
- VAT/GST shall apply as appropriate for Tableau Conference events.

**Payment Instructions:**

**Wire Transfer and ACH Instructions**

Currency: US Dollar (USD)  
Beneficiary Bank: Silicon Valley Bank  
3003 Tasman  
Santa Clara, California 95054  
Beneficiary Name: Tableau Software, Inc.  
Beneficiary Account: Domestic: 3300681455 (ACH/EFT Routing: #121140399)  
International: 3300681455 (SWIFT: SVBKUS6S)

All transaction fees must be covered by sender and should be specified upon initiation of the wire transfer. Please include your Company Name and Invoice Number(s) with your wire transfer to ensure timely and accurate application of your payment. This invoice is computer generated and no signature is required.

**Other Payment Options**

**Credit Card Payment Form:** <http://www.tableau.com/ccform>

**Purchase Order:**

Remit to Tableau Software via email to [customerservice@tableau.com](mailto:customerservice@tableau.com).

**To Pay By Check:**

Include invoice number on check and remit to:

Tableau Software, Inc.  
PO Box 204021  
Dallas, TX 75320-4021