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| Board Office Use: Legislative File Info. | |
| File ID Number | 11-2741 |
| Introduction Date | 10-17-11 |
| Enactment Number | 11-2269 |
| Enactment Date | 10-26-11 |



Memo

To The Board of Education
 From Tony Smith, Ph.D., Superintendent
 By: Maria Santos, Deputy Superintendent, Instruction, Leadership & Equity-in-Action
 Vernon Hal, Deputy Superintendent, Business & Operations

Board Meeting Date (To be completed by Procurement) 10-26-11

Subject Professional Services Contract -
Action Learning Systems, Inc. W Sacramento CA (contractor, City State)
Research, Assessment and Data (site/department)

Action Requested Ratification of a professional services contract between Oakland Unified School District and Action Learning Systems, Inc.. Services to be primarily provided to Research, Assessment and Data for the period of 10/03/2011 through 06/30/2012.

Background
A one paragraph explanation of why the consultant's services are needed.

To facilitate the attainment of the District and Strategic goals for higher student achievement, the Office of Research, Assessment and Data (RAD) has identified the need for regular progress and benchmark assessments that provide formative and summative test data to aid in the identification of gaps in student understanding and key programmatic areas. To serve the purposes outlined above, RAD recommends that the progress and benchmark assessments align to the district's standards-based pacing guides and be administered several times during the academic year.

Discussion
One paragraph summary of the scope of work.

Action Learning Systems, Inc. (ALS) has been identified as a company well poised to assist OUSD in attaining the assessment goals it has laid out for the 2011-12 academic year. ALS has a history of working with several large, urban schools districts within California, such as Garden Grove and Sacramento, which are similar to OUSD. Testimonials from these school districts suggest that the assessments developed by ALS are well-aligned to the state standards and are as rigorous in content as the CST. As a support provider to the OUSD assessment initiative, ALS will adapt elementary English Language Arts assessments used by Sacramento city to align with the district pacing guides.

Recommendation Ratification of professional services contract between Oakland Unified School District and Action Learning Systems, Inc.. Services to be primarily provided to Research, Assessment and Data for the period of 10/03/2011 through 06/30/2012.

Fiscal Impact Funding resource name (please spell out) GP
not to exceed \$ 52,068.80

- Attachments
- Professional Services Contract including scope of work
 - Fingerprint/Background Check Certification
 - Commercial General Liability Insurance Certification
 - TB screening documentation
 - Statement of qualifications

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OAKLAND UNIFIED
SCHOOL DISTRICT

PROFESSIONAL SERVICES CONTRACT 2011-2012

This Agreement is entered into between the Oakland Unified School District (OUSD) and Action Learning Systems, Inc. (CONTRACTOR). OUSD is authorized by Government Code Section 53060 to contract for the furnishing of special services and advice in financial, economic, accounting, engineering, legal, and administrative matters with persons specially trained, experienced, and competent to perform such services. CONTRACTOR warrants it is specially trained, experienced, and competent to provide such services. The parties agree as follows:

- Services:** CONTRACTOR shall provide the services described in **Exhibit "A,"** attached hereto and incorporated herein by reference ("Services" or "Work").
- Terms:** CONTRACTOR shall commence work on 10/03/2011, or the day immediately following approval by the Superintendent if the aggregate amount CONTRACTOR has contracted with the District is below \$78,500 in the current fiscal year; or, approval by the Board of Education if the total contract(s) exceed \$78,500, whichever is later. The work shall be completed no later than 06/30/2012.
- Compensation:** OUSD agrees to pay CONTRACTOR for services satisfactorily rendered pursuant to this Agreement, a total fee not to exceed fifty two and sixty-eight dollars and 80/100 Dollars (\$ 52,068.80). This sum shall be for full performance of this Agreement and includes all fees, costs, and expenses incurred by Contractor including, but not limited to, labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs, and other costs.

If CONTRACTOR will be compensated hourly for services provided under this Contract, CONTRACTOR shall describe in Exhibit "A," attached hereto, the specific scope of services to be delivered on an hourly basis to OUSD.

OUSD shall not be liable to CONTRACTOR for any costs or expenses paid or incurred by CONTRACTOR in performing services for OUSD, except as follows: _____

Payment for Work shall be made for all undisputed amounts in monthly installment payments within forty-five (45) days after the CONTRACTOR submits an invoice to OUSD for Work actually completed and after OUSD's written approval of the Work, or the portion of the Work for which payment is to be made.

The granting of any payment by OUSD, or the receipt thereof by CONTRACTOR, shall in no way lessen the liability of CONTRACTOR to correct unsatisfactory work, although the unsatisfactory character of that work may not have been apparent or detected at the time a payment was made. Work, which does not conform to the requirements of this Agreement, may be rejected by the District and in that case must be replaced by CONTRACTOR without delay.

- Submittal of Documents:** CONTRACTOR shall not commence the Work under this Contract until CONTRACTOR has submitted and OUSD has approved evidence of the following:
 - Individual consultants:
 - Tuberculosis Clearance – Documentation from health care provider showing negative TB status within the last four years.
 - Completion of Pre-Consultant Screening Process – Attach letter from Human Resources Support Services showing completion of Pre-Consultant Screening for this current fiscal year.
 - Insurance Certificates and Endorsements – General Liability insurance in compliance with section 9 herein.
 - Agencies or organizations:
 - Insurance Certificates and Endorsements – Workers' Compensation insurance in compliance with section 9 herein.
- Equipment and Materials:** CONTRACTOR shall provide all equipment, materials, and supplies necessary for the performance of this Agreement except: _____ which shall not exceed a total cost of \$ _____.
- CONTRACTOR Qualifications / Performance of Services.**

CONTRACTOR Qualifications. CONTRACTOR warrants it is specially trained, experienced, competent and fully licensed to provide the Services required by this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and/or regulations, as they may apply.

Standard of Care. CONTRACTOR warrants that CONTRACTOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of OUSD. CONTRACTOR's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.

- Notices:** All notices and invoices provided for under this Agreement shall be in writing and either personally delivered during normal business hours or sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other party at the address set forth below:

OUSD Representative:

Name: Juwen Lam
Site /Dept.: Research, Assessment and Data
Address: 1011 Union Street, Annex Building
Oakland, CA
Phone: (510) 451-4164

CONTRACTOR:

Name: David Marshall
Title: CFO
Address: 3940 Industrial Blvd, #100
W Sacramento CA 95691
Phone: (626) 744-5344

Notice shall be effective when received if personally served or, if mailed, three days after mailing. Either party must give written notice of a change of address. CONTRACTOR shall submit invoices in a form that includes the name of the person providing the service, the service performed, the date service was rendered, and the hours spent on the work.

8. Invoicing

Invoices furnished by CONTRACTOR under this Agreement must be in a form acceptable to OUSD. All amounts paid by OUSD shall be subject to audit by OUSD.

1. Invoices shall include, but not be limited to: Consultant name, consultant address, invoice date, invoice sequence number, purchase order number, name of school or department service was provided to, period of service, number of hours of service, brief description of services provided, hourly rate, total payment requested.
2. Invoices from Agencies or Organizations must include evidence of compliance with section 19 herein:
 - i. Fingerprinting of Employees and Agents: Agency or organization must provide a current list of all employees, agents and volunteers working at an OUSD site when invoicing, and must include the Department of Justice ATI number for each person, and at statement that subsequent arrest records have been requested for each person listed.
 - ii. Tuberculosis Screening: The list must also include a statement that TB Clearance is on file for each person.

9. Status of Contractor: This is not an employment contract. CONTRACTOR, in the performance of this Agreement, shall be and act as an independent contractor. CONTRACTOR understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of OUSD, and are not entitled to benefits of any kind or nature normally provided employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. 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's employees. In the performance of the work herein contemplated, CONTRACTOR is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, OUSD being interested only in the results obtained.

10. Insurance:

1. Commercial General Liability Insurance: Unless specifically waived by OUSD, the following insurance is required:
 - i. If CONTRACTOR employs any person to perform work in connection with this Agreement, CONTRACTOR shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease.

Check one of the boxes below:

- CONTRACTOR is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the Work of this Contract.
- CONTRACTOR does not employ anyone in the manner subject to the workers' compensation laws of California.

- ii. CONTRACTOR shall maintain Commercial General Liability insurance, including automobile coverage with limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured. Evidence of insurance must be attached. Endorsement of OUSD as an additional insured shall not affect OUSD's rights to any claim, demand, suit or judgment made, brought or recovered against CONTRACTOR. The policy shall protect CONTRACTOR and OUSD in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.
- iii. If CONTRACTOR is offering OUSD professional advice under this Contract, CONTRACTOR shall maintain Errors and Omissions insurance or Professional Liability insurance with coverage limits of One Million Dollars (\$1,000,000) per claim.

OR

- iv. CONTRACTOR is not required to maintain any insurance under this agreement. (Completed and approved Waiver of Insurance Form is required.) Waiver of insurance does not release CONTRACTOR from responsibility for any claim or demand.

11. Licenses and Permits: CONTRACTOR shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this Agreement.

Professional Services Contract

12. **Assignment:** The obligations of CONTRACTOR under this Agreement shall not be assigned by CONTRACTOR without the express prior written consent of OUSD.
13. **Anti-Discrimination.** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the CONTRACTOR agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy. In addition, the CONTRACTOR agrees to require like compliance by all its subcontractor(s). Contractor shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex or sexual orientation.
14. **Drug-Free / Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, CONTRACTORS, or subcontractors are to use drugs on these sites.
15. **Indemnification:** CONTRACTOR agrees to hold harmless, indemnify, and defend OUSD and its officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement. CONTRACTOR also agrees to hold harmless, indemnify, and defend OUSD and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to CONTRACTOR in connection with the performance of this Agreement. This provision survives termination of this Agreement.
16. **Copyright/Trademark/Patent/Ownership.** CONTRACTOR understands and agrees that all matters produced under this Agreement shall become the property of OUSD and cannot be used without OUSD's express written permission. OUSD shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark, and/or patent of said matter in the name of OUSD. CONTRACTOR consents to use of CONTRACTOR's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium. These matters include, without limitation, drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, or other documents prepared by CONTRACTOR or its Sub-CONTRACTORS in connection with the Services performed under this Agreement. All works shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in those works are the property of OUSD.
17. **Waiver:** No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of the Agreement.
18. **Termination:** OUSD may at any time terminate this Agreement upon written notice to CONTRACTOR. OUSD shall compensate CONTRACTOR for services satisfactorily provided through the date of termination. In addition, OUSD may terminate this Agreement for cause should CONTRACTOR fail to perform any part of this Agreement. In the event of termination for cause, OUSD may secure the required services from another contractor. If the cost to OUSD exceeds the cost of providing the services pursuant to this Agreement, CONTRACTOR shall pay the additional cost.
19. **Conduct of Consultant.** CONSULTANT will adhere to the following staff requirements and provide OUSD with evidence of staff qualifications, consistent with invoicing requirements outlined in Section 8, which include:
 1. **Tuberculosis Screening**
 2. **Fingerprinting of Employees and Agents.** The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to CONTRACTOR's services under this Agreement and CONTRACTOR certifies its compliance with these provisions as follows: "CONTRACTOR certifies that CONTRACTOR has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all CONTRACTOR's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by OUSD, or acting as independent contractors of CONTRACTOR, who may have contact with OUSD pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. Contractor further certifies that it has received and reviewed fingerprint results for each of its Employees and Contractor has requested and reviews subsequent arrest records for all Employees who may come into contract with OUSD pupils in providing services to the District under this Agreement.

Contractor initial: BW

In the event that OUSD, in its sole discretion, at any time during the term of this contract, desires the removal of any CONSULTANT related persons, employee, representative or agent from an OUSD school site and, or property, CONSULTANT shall immediately upon receiving notice from OUSD of such desire, cause the removal of such person or persons.

20. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
21. **OUSD's Evaluation of CONTRACTOR and CONTRACTOR's Employees and/or Subcontractors.** OUSD may evaluate the CONTRACTOR's work in any way that OUSD is entitled to do so pursuant to applicable law. The OUSD's evaluation may include, without limitation:
 1. Requesting that OUSD employee(s) evaluate the CONTRACTOR and the CONTRACTOR's employees and subcontractors and each of their performance.
 2. Announced and unannounced observance of CONTRACTOR, CONTRACTOR's employee(s), and/or subcontractor(s).

Professional Services Contract

- 22. **Limitation of OUSD Liability.** Other than as provided in this Agreement, OUSD's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the services performed in connection with this Agreement.
- 23. **Confidentiality.** The CONTRACTOR and all CONTRACTOR's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. CONTRACTOR understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement. Contractors will be permitted access to student data only where permissible under state and federal law and only after executing OUSD's Confidentiality Agreement Regarding Student Data.
- 24. **Conflict of Interest.** CONTRACTOR shall abide by and be subject to all applicable OUSD policies, regulations, statutes or other laws regarding conflict of interest. CONTRACTOR shall not hire any officer or employee of OUSD to perform any service by this Agreement.
 CONTRACTOR affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between CONTRACTOR's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing.
 Through its execution of this Agreement, CONTRACTOR acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event CONTRACTOR receives any information subsequent to execution of this Agreement, which might constitute a violation of said provisions, CONTRACTOR agrees it shall notify OUSD in writing.
- 25. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- 26. **Litigation:** This Agreement shall be performed in Oakland, California and is governed by the laws of the State of California. The Alameda County Superior Court shall have jurisdiction over any state court litigation initiated to enforce or interpret this Agreement. If litigation is initiated, the prevailing party shall be entitled to reasonable attorney's fees and costs.
- 27. **Contract Contingent on Governing Board Approval:** The District shall not be bound by the terms of this Agreement until it has been formally approved by the District's Governing Board, and no payment shall be owed or made to CONTRACTOR absent formal approval. This Agreement shall be deemed to be approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.
- 28. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been given the proper authority and empowered to enter into this Agreement.
- 29. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
- 30. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

Summary of terms and compensation:

Anticipated start date: 10/03/2011 Work shall be completed by: 06/30/2012 Total Fee: \$ 52,068.80

OAKLAND UNIFIED SCHOOL DISTRICT

President, Board of Education _____ Date

Superintendent or Designee _____ Date

Edgar Rakesstraw, Jr., Secretary
Secretary, Board of Education _____ Date 10/22/11
Certified

CONTRACTOR

[Signature] _____ 9/22/11 _____
Contractor Signature Date

David Marshall CFO
Print Name, Title
Data Services Manager

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE
By: [Signature]
Attorney at Law



Assessments by Design Benchmark Pricing Quote

| English-Language Arts | Student # | PDF Option @ \$0.65 |
|-----------------------|--------------|---------------------|
| Kindergarten | | \$ - |
| Grade 1 | | \$ - |
| Grade 2 | 3493 | \$ 2,270.45 |
| Grade 3 | 3444 | \$ 2,238.60 |
| Grade 4 | 3091 | \$ 2,009.15 |
| Grade 5 | 3136 | \$ 2,038.40 |
| Grade 6 | 2603 | \$ 1,691.95 |
| Grade 7 | 2574 | \$ 1,673.10 |
| Grade 8 | 2676 | \$ 1,739.40 |
| Grade 9 | 2895 | \$ 1,881.75 |
| Grade 10 | 2482 | \$ 1,613.30 |
| Grade 11 | 2000 | \$ 1,300.00 |
| Grade 12 | 2000 | \$ 1,300.00 |
| Subtotal ELA | 30394 | \$ 19,756.10 |

Quote #

1

Proposal Date

May 2, 2011

District

Oakland Unified School District

Year

2011-2012

Number of Benchmarks

2

Notes

Grade 2-5 - 3 BMKs

Grade 6-12 - 2 BMKs

NO MATH

Blueprints will remain the same as 2010-11. ALS will change a certain percentage of items and passages in the new exams.

| Mathematics | Student # | PDF Option @ \$0.65 |
|----------------------------|-----------|---------------------|
| Grade 2 | | \$ - |
| Grade 3 | | \$ - |
| Grade 4 | | \$ - |
| Grade 5 | | \$ - |
| Grade 6 | | \$ - |
| Pre-Algebra | | \$ - |
| Algebra I | | \$ - |
| Geometry | | \$ - |
| Algebra II | | \$ - |
| Trigonometry | | \$ - |
| Probability and Statistics | | \$ - |
| Precalculus | | \$ - |
| Subtotal Math | 0 | \$ - |

Subtotal All Subjects 30394 \$ 19,756.10

| | | |
|--|---|---------------------|
| Number of Benchmarks: | 2 | \$ 39,512.20 |
| Additional BMK3 for Grades 2-5 | | \$ 8,556.60 |
| Customization of Exams for grades 2-5 | | \$ 2,000.00 |
| Customization of Exams for grades 6-12 | | \$ 2,000.00 |
| Shipping: | | \$ - |
| Sales Tax: | | \$ - |
| Grand Total | | \$ 52,068.80 |

These assessments have been written to align directly to the ALS Focus Standards. Each course includes four multiple-choice Benchmark Exams to be given during the academic year. Additionally, performance assessments have been developed to reflect the CA Standards Test for Direct Writing and the CA High School Exit Exam.

****This quote expires 60 days from receipt. Prices are subject to change after the 60 days have expired.**





BENCHMARK TESTING AND SUPPORT AGREEMENT

This Agreement is made by and between Action Learning Systems, Inc., (“Vendor”) and Oakland Unified School District (“District”).

RECITALS

WHEREAS, the vision of District is to develop and implement a testing program; and

WHEREAS, Public Contract Code section 20128.2 authorizes District to negotiate and enter into this agreement; and

WHEREAS, District is desirous of obtaining Vendor’s Benchmark Testing Program; and

WHEREAS, Vendor is the owner of the Benchmark Testing Program and is specially skilled, trained, experienced and competent to render services and advice concerning academic testing, and District requires and seeks these services and advice from Vendor.

NOW, THEREFORE, Vendor and District mutually agree as follows:

1. Terms of Agreement. Vendor agrees to abide by terms of Agreement as follows:
 - (a) In the event a District has chosen a single-year term, the term of this Agreement is one year and the test booklets shall be used by District for District year 2011/2012 only. A new contract between District and Vendor is required for (1) new test booklets, and related documents or (2) subsequent use of a previous year’s test booklets and related documents. District agrees to destroy all PDF files and booklets by the end of the 2011/2012 District year. (See Exhibits “B,” “D” and “E” hereto).
 - (b) In the event that a district has chosen a multi-year term, the term of this Agreement is two years. A new contract is not required for the duration of this contract. District agrees to destroy all PDF files and booklets at the completion of the multi-year contract. A new contract between District and Vendor is required for (1) new test booklets, and related documents or (2) subsequent use of a previous year’s test booklets and related documents once the multi-year contract has ended.
2. License of Benchmark Test Program. Upon full and complete payment by District, Vendor hereby licenses its Benchmark Testing Program, including testing data, PDF files, and all other materials used in the Benchmark Testing Program to District. District may and agrees use the Program for each of the locations listed on **Exhibit “A”** attached to this Agreement for District year that is in progress only. License and contract will automatically renew for each year agreed to in this contract, but may only be used for the year in progress and not during a future year.
3. Non-Exclusivity. The license granted to District hereunder is non-exclusive.

4. Independent Contractor. Vendor represents and warrants that it is experienced in its profession. In performing its obligations and services under this Agreement, Vendor is acting an independent contractor and is not acting as an agent or employee of District. Nothing contained in this Agreement shall be deemed, construed or represented by the District or Vendor by any third person to create the relationship of principal or agent, or of a partnership, or of a joint venture, or of any other association of any kind or nature between the District or Vendor.

5. Training Services. Vendor shall provide the following training services to District:
 - (a) Training. Upon written request and authorization by District, Vendor shall conduct training services to District at \$2,000 per day per ALS trainer. Training will teach District how to use and/or interpret the data produced by the Benchmark Testing Program.
 - (b) Ownership of Data. District shall retain ownership of all data created and developed under this Agreement, however, District shall provide access to Vendor to the District's data by either providing a copy to Vendor within thirty (30) days after the administration of each Benchmark Test or via Data Director.

6. Responsibilities.
 - (a) Responsibilities of District. Upon request by Vendor and pursuant to Exhibits "B," "D," and "E" hereto, District shall prepare and furnish to Vendor upon request such information reasonably requested by Vendor in order for Vendor to perform its work under this Agreement per Exhibit "B."
 - (b) Responsibilities of Vendor. Vendor shall perform work as agreed to herein and as set forth in Exhibit "B" hereto.

7. Fees and Payment. District shall pay license fees to Vendor in the amount set forth in the Purchase Order at least fifteen (15) days before the first scheduled Benchmark Test. Test dates are determined by the parties and shall be set forth in Exhibit "C" hereto and/or the Purchase Order. District understands and agrees that Vendor may commence work for District immediately after entering this Agreement and in the event of termination, District will owe Vendor for all work done prior to receipt of the notice of termination which may be the entire amount due under this Agreement

Training services shall be invoiced to District separately and are due and payable within thirty (30) days of invoice date.

Late payment shall incur interest at two percent (2%) per month or the maximum amount allowed under the law.

8. Benchmark Program Support.
 - (a) Vendor shall provide maintenance and support to District for its use of the Benchmark Testing Program. Such maintenance and support provides coverage in the form of corrections to remove deficiencies in the testing, as reported to Vendor, and ongoing telephone and e-mail support for questions regarding customization or itemization.
 - (b) At a minimum, Vendor shall provide at no cost to the District, one yearly telephone conference with District to address future growth or modifications to the Benchmark Testing Program.

9. Mutual Indemnification. The District agrees to hold harmless, defend, and indemnify Vendor against all actions, claims, or demands for injury, death, loss, or damages, regardless of fault or cause, by anyone whomsoever, including, but not limited to:
- (1) where such injury, death, loss, or damage is due to the acts or omissions of the District, its agents, servants, or employees; and (2) where such injury, death, loss, damage, or claim is a consequence of, or arises in connection with the services provided hereunder except to the extent that such injury, death, loss, damage or claim is the result of the willful and malicious acts or omissions of Vendor or its agents, servants, employees.
- Vendor agrees to hold harmless, defend, and indemnify the District against all actions, claims, or demands for injury, death, loss, or damages, regardless of fault or cause, by anyone whomsoever, including but not limited to: (i) where such injury, death, loss, or damage is due to the willful and malicious acts or omissions of Vendor, its agents, servants, or employees; and (ii) where such injury, death, loss, damage, or claim is a consequence of, or arises in connection with the services provided hereunder except to the extent that such injury, death, loss, damage or claim is the result of the acts or omissions of the District or its agents, servants, or employees.
10. Continued Performance During Dispute. In the event that a dispute arises between District and Vendor, Vendor expressly agrees to continue to perform its obligations under this Agreement during the pendency of the dispute. Each party agrees to the other that it shall diligently attempt to resolve any disputes which may arise.
11. Default. The failure of either party to comply with any term or condition or fulfillment of any obligation of this Agreement within 15 days after written notice, which specifies the nature of the failure with reasonable particularity, shall constitute a default. If the default is of such a nature that it cannot be completely remedied within the 15-day period, the "defaulting party" shall be deemed to have cured the default if it begins correction of the default or failure within the 15-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.
12. Force Majeure. If either party is affected by force majeure it shall immediately notify the other party of the nature and extent thereof. Force majeure means, in relation to either party, any circumstances beyond the reasonable control of that party (including, without limitation, fire, floods, acts of God, terrorism, national emergency, governmental acts or omissions, beyond the control of either party). Neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other by reason of any delay in performance, or non-performance, of any of its obligations hereunder to the extent that such delay or non-performance is due to any force majeure of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly. If the force majeure in question prevails for a continuous period in excess of 30 calendar days, the parties shall enter into good faith discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements, including termination of this Agreement.
13. Termination. Both District and Vendor retain the right to terminate this Agreement for any reason prior to expiration of the term of the Agreement. Termination of this Agreement shall be effective by delivering written notice of election to terminate to the other party at least sixty (60) days prior to the termination date. The parties hereby agree that in the event of the termination of this Agreement, any and all funds due to Vendor by District shall be paid by District within ninety (90) days of the date of termination and any tests or other documents provided by Vendor to District, regardless of form (hard copy or PDF) shall be destroyed. District understands and agrees that Vendor generally commences work for District immediately after entering this Agreement and in the event of termination, District will owe for all work done prior to receipt of notice of termination, which may be the entire amount due under this Agreement. In the event of an early termination under a multi-year contract, District will be

responsible for the difference in price due to multi-year discount for the year(s) not completed.

14. Proprietary Rights. District acknowledges that the Benchmark Testing Program, including software, source code, algorithms, or equations, licensed hereunder, and any designs, inventions, training techniques, ideas and documents provided by Vendor under this Agreement contain and or constitute valuable trade secrets, proprietary and confidential information and are the sole unrestricted proprietary rights of Vendor ("Confidential Information"). District agrees that it shall take whatever steps are necessary to secure Vendor's Confidential Information and agrees that (1) it will not use any Confidential Information in any way not allowed by this Agreement, (2) it will not disclose this Confidential Information to anyone other than its own employees who require access, (3) it will maintain and protect the confidentiality of this Confidential Information, and (4) it will take all necessary and proper precautions to prevent any unauthorized use or disclosure of this Confidential Information, including making sure that its employees, teachers, and agents are aware of the confidentiality provisions set forth herein and that the tests shall not be reused. District further agrees that it will not decompile, disassemble or in any manner attempt to reverse engineer any part of the Benchmark Testing Program or permit others to do so. Notwithstanding the foregoing, District shall not be liable for use or disclosure of any such Confidential Information if the disclosed information:
- (a) is or becomes a part of the public knowledge or literature without breach of this Agreement by District;
 - (b) is known to District without restriction prior to receipt;
 - (c) is independently developed by District as demonstrated by written records;
 - (d) becomes known to District from a third party who had a lawful right to disclose it and without breach of any Agreement;
 - (e) is disclosed to a third party as allowed under this Agreement; or
 - (f) is required to be disclosed pursuant to any applicable legal requirement or legal process issued by any court or any competent governmental authority or rules or regulations of any relevant regulatory body, including, but not limited to, disclosure under the California Public Records Act.

District bears the burden of proof with respect to 14 (a), (b), (c), (d), (e), and (f) in the case of disclosure of information.

15. Confidentiality and Security of Student Data. Vendor shall protect the confidentiality of student data. Vendor will take all measures necessary using industry standards to protect data from any and all unauthorized access. Vendor represents and warrants that it is familiar the provisions of the Federal Education Privacy Rights Act (FERPA) and California Education Code sections 49073 through 49078, inclusive, and that Vendor will take all measures necessary using industry standards to protect data from any and all unauthorized access to student data and/or unauthorized release of student data. In the event that any unauthorized access or release of student data occurs, Vendor shall take whatever steps are necessary to immediately secure the student data, and advise the District immediately of such unauthorized access.
16. Confidentiality. All communications and information obtained from District relating to this Agreement are deemed confidential. The Agreement itself, however, is not confidential. Except as provided in this Agreement, without the prior written consent of an authorized representative of District, Vendor shall neither divulge to, nor discuss with, any third party either the data provided by District except as

required by law. Prior to any disclosure of such matters, whether as required by law or otherwise, Vendor shall inform District, in writing, of the nature and reasons for such disclosure. Vendor shall not use any communications or information obtained from District for any purpose other than the performance of this Agreement, without District's written prior consent. Upon termination of the Agreement, Vendor shall return all confidential information received from the District within 30 days and shall destroy any and all backup copies of said confidential information.

17. Waiver. Any waiver of any of the provisions of this Agreement shall not be construed as a waiver of any other provision of this Agreement. Any waiver by either District or Vendor must be in writing signed by the waiving party. Delay or failure to exercise a remedy or right shall not be construed as a waiver of any of the provisions of this Agreement. Any waiver of any provision of this Agreement shall not preclude a party from using any other right or remedy available under this Agreement as cure of any default or for any later default.
18. Time is of the Essence. Time is of the essence of all terms, covenants and conditions of this Agreement and except as otherwise provided herein, all of the terms, covenants and conditions of this Agreement shall apply to, benefit and bind the successors and/or assigns of the respective parties, jointly and individually.
19. Assignment. Neither party shall sell or assign its rights under this Agreement without the prior written consent of the other party. Consent in one instance shall not prevent this provision from applying to a subsequent instance.
20. Attorney Fees. In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of, any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, from the losing party.
21. Notices. All notices, requests, demands and consents to be made hereunder to the parties hereto shall be in writing and shall be (i) delivered by hand, or (ii) sent by registered mail or certified mail, postage prepaid, return receipt requested, through the United States Postal Service, or (iii) by United Parcel Service or Federal Express overnight delivery, to the addresses shown below or such other address which the parties may provide to one another in accordance herewith.

To District: Oakland Unified School District
1025 Second Avenue,
Oakland, CA 94606-2212

To Vendor: Kelly Smith
Vice President
Action Learning Systems
3940 Industrial Blvd., #100
W. Sacramento, CA 95691

Either party shall have the right to change the place of giving notices to it by notice given as indicated above.

22. Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

23. Good Faith Negotiations and Independent Representation. The parties hereto acknowledge and agree that they have negotiated the terms of this Agreement in good faith and had the opportunity to be represented by independent counsel throughout all negotiations, which preceded the execution of this Agreement.
24. Interpretation: Governing Law. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement.
25. Warranty. EVERYTHING PROVIDED UNDER THIS AGREEMENT (WHETHER PRODUCT, SERVICE, OR OTHERWISE) IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR RESULTS FROM USING THE BENCHMARK TESTING PROGRAM.
26. Entire Agreement, Waivers and Amendments. This Agreement is fully integrated and incorporates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations, oral or written, and contemporaneous agreements and understandings in connection with this Agreement. Any amendments, waivers of any provisions of this Agreement and any amendment or modification to this Agreement must be in writing and executed by both parties.
27. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.
28. Approval. The terms and conditions of this Agreement are expressly conditioned upon and subject to approval by District's Board of Education.
29. State Audit. Pursuant to and in accordance with the provisions of California Government Code Section 8546.7 or any amendments thereto, all books, records and files of District and Vendor shall be subject to the examination and audit of the State Auditor of the State of California, at the request of District of as part of any audit of District, for a period of three (3) years after final payment is made under the Agreement. Vendor shall preserve and cause to be preserved such books, records and files for the audit period.
30. Vendor Audit. In order that the licenses may be verified, District agrees to ensure that for a period of three (3) years full, complete, and accurate books and records will be kept covering use of Benchmark Tests licensed under this Agreement. District agrees that its books and records of may be audited from time to time, but not more than once in each calendar year, for three years subsequent to this Agreement by an auditor appointed by Vendor or by Vendor to the extent necessary to verify the Benchmark Tests licensed under this Agreement are not being subsequently used. The auditor will be obligated by virtue of this Agreement and pledges not to disclose information other than the number of tests subsequently used, if any. Such audit will be completed at Vendor's own expense, unless, however, there is any error or discrepancy or error representing failure to enter into an agreement to subsequently use the tests, in which case the cost of the audit will be borne by District. All information requested by the auditor for a full and complete audit will be made available only to the extent the information relates to use of the tests. This information will include, but is not limited to names and contact information of teachers, substitute teachers or other agents or employees administering the tests or other requested relevant information. In the instance the Auditor determines that tests are being used in a subsequent year and no license has been purchased by District, District agrees to pay twice the current list price of Option 3 for

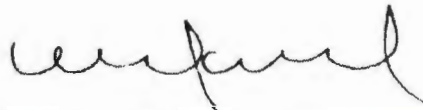
each test used. The amount is due and District agrees to pay this amount within 30 days of invoice.

31. **Insurance.** During the entire term of this Agreement, Vendor shall procure, pay for and keep in full force and effect commercial general liability insurance with respect to the services provided by or on behalf of, Vendor under this Agreement in the amount of no less than One Million Dollars (\$1,000,000) per occurrence. The policies of insurance shall be carried with responsible and solvent insurance companies authorized to do business in the State of California. True and correct copies of all certificates of insurance reflecting the coverage required above are attached hereto. Vendor agrees that it shall not cancel or change the coverage provided by the policies of insurance described above without first giving the District's Assistant Superintendent of Business Services, thirty (30) days prior written notice. Should any such policy of insurance be canceled or changed, Vendor agrees to immediately provide District true and correct copies of all new or revised certificates of insurance.

IN WITNESS WHEREOF, the District and Action Learning Systems, Inc., state and agree that they have each have read and understand the terms of this Agreement and agree to them fully and as a result hereby enter into this Agreement as of the date of execution.

DATED: August 31, 2011

ACTION LEARNING SYSTEMS, INC.

By: 
Kelly Smith, Vice President

DATED: August 31, 2011

Oakland Unified School District

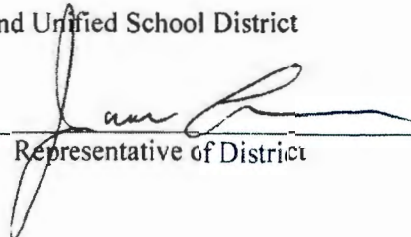
By: 
Representative of District

EXHIBIT "A"

LOCATIONS OF DISTRICT WHERE LICENSE APPLIES
(Provide to ALS by date of first Benchmark Test)

1. All Schools within Oakland Unified School District
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

EXHIBIT "B"

Roles and Responsibilities

VENDOR DUTIES:

1. Vendor shall meet with District designated personnel and jointly agree on the dates each Benchmark Test will be given (Benchmark Blueprint) in the District for the District year. (See Exhibit "C").
2. Vendor shall customize exams, at the Districts request, for a fee to be determined by the scope of the work to be performed. This fee applies to blueprint changes, rearrangement of items on a current exam, and replacement of items on a current exam. Upon District request, a Change Order will be issued by the Vendor detailing the fee before the work begins.
3. Vendor will adequately review tests so that the Benchmark Tests meet the agreed upon standards as outlined in the Benchmark Blueprint.
4. Vendor will deliver Benchmark Tests to the Districts 5 days prior the agreed upon testing date, except that if District changes date to make the date earlier than initially agreed, Vendor may not be able to and does not agree to meet Districts new date, though it will use reasonable efforts to do so.
5. Vendor will provide support to District as requested during the testing window to resolve issues with tests, scan sheets, or instructions.
6. District is to deliver the testing results to Vendor as a PDF within 10 days of test administration.
7. Vendor shall support the District and site personnel in interpreting results of the testing.

DISTRICT DUTIES AND RESPONSIBILITIES:

1. On a mutually agreed timetable, District shall meet with ALS representative(s) to plan and agree upon a Benchmark Blueprint for the District year. (See Exhibit "C")
2. Identify a District contact person at each site location to act as a liaison with Vendor in the case of questions or problems from either party.
3. Identify, fill out, and provide a copy of Exhibit "A" and "C" to Vendor as soon as possible, but not later than prior to the administration of the first Benchmark Test.
4. District will identify a District contact person at each site location to act as a liaison with Vendor in the case of questions or problems from either party.
5. If District makes a change upon the agreed upon Benchmark Blueprint timetable, District must notify Vendor via e-mail thirty (30) days prior to the new desired test date to allow for processing; otherwise, District agrees and understands that Vendor may not be able to deliver for the new test date.
6. If District has purchased Data Director, then thirty (30) days prior to the date of the first Benchmark Test, District agrees to provide Vendor, with a log in and password to Data Director website via email to bwilson@actionlearningsystems.com.

7. If District has purchased Data Director, District agrees to update its class roster data and give the updated roster to Vendor thirty (30) days prior to the test date so that Vendor can pre-slug scan sheets.
8. District agrees to provide to each and every teacher, substitute teacher, or other employee or agent administering a Benchmark Test with the Notice of Confidentiality, or one which is substantially similar, set forth in Exhibit "D" to the Agreement at the time it delivers to that person the set of tests for that person's classroom.
9. District agrees that if it receives the Benchmark Test Program via a PDF file(s), it will inform each and every each and every teacher, substitute teacher, or other employee or agent receiving such PDF file(s), that it is not to reuse the files unless a subsequent contract is entered between District and Vendor, and that doing so would violate the Agreement and cause damages to Vendor for which District will be responsible.
10. District agrees to take all actions to protect the confidentiality of the Benchmark Test Program documents, including, but not limited to keeping them in a safe protected location prior to administering the tests and answers and gathering them or destroying them after the test so as to protect their integrity.
11. Thirty (30) days after the administration of the last Benchmark Test, District agrees to sign and return to Vendor the Declaration Certifying Destruction of Benchmark Materials attached to the Agreement as Exhibit "E."

EXHIBIT "C"

Scheduled Test Dates
(Provide to ALS by date of first Benchmark Test)

Scheduled date received by ALS
2-5 Sept 6th
6-12 Sept 27th
Scheduled Date of Benchmark 1: _____, 2011

Scheduled date received by ALS
Scheduled Date of Benchmark 2: _____, 2011

2-5 December 13th
2-5 February 13th
Scheduled Date of Benchmark 3: _____, 2012

6-12 January 3rd
Scheduled Date of Benchmark 4: _____, 2012

EXHIBIT "D"

(Provide with each set of Benchmark Tests to each test administrator)

Notice of Confidentiality

Dear Test Administrator:

This Notice of Confidentiality is to inform you that the Benchmark Test you are about to give constitutes copyrighted, proprietary, and legally protected property. It and all other Benchmark Testing Program Documents are subject to a confidentiality agreement between the District and Action Learning Systems. At this time, District has entered into a contract to use this test for the current school year **only**. In order to protect your District from legal liability, please do **not** keep any version of the test, whether it was given to you in hard copy or via a PDF file. You are prohibited from keeping or copying it and are currently on notice to give back all copies to the designated District head or to destroy them. As an employee, representative or agent of the District you may not give, sell, or otherwise provide any of the Benchmark Testing Program documents to any third party.

Abiding by the terms of the Agreement between District and Action Learning Systems by not keeping stray tests or answer sheets in any location allows accurate results and accurate interpretation of data; ultimately improving your District's academics and helping your students. Both your District and Action Learning Systems seek to develop and implement an accurate testing program which can only be done by ensuring no test data is revealed prior to any test.

Thank you for graciously abiding by this Notice, protecting the confidentiality of the Agreement between the District and Action Learning Systems, and facilitating us to help give your students a better education.

Sincerely,

Your School District
and
Action Learning Systems

EXHIBIT "E"

(Provide to ALS 30 days after administration of final Benchmark Test)



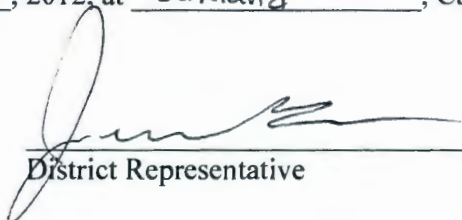
Action Learning Systems, Inc.

DECLARATION CERTIFYING DESTRUCTION OF BENCHMARK MATERIALS

I, Junen Lam, [name] Coordinator, [title] hereby declare to the best of my knowledge that in accordance with the terms and conditions of the Benchmark Agreement between OSD [name of district] and Action Learning Systems effective Sept 20, 2012, that said district has a defined process to destroy, delete, or return the Action Learning System copyrighted testing materials items, Benchmark Tests, formative assessments, and answer keys, and that none of these materials, either in whole or in part, will be used by the individuals or the district in the future unless otherwise agreed to in writing by the District and Action Learning Systems.

The signing of this Certificate means that none of the above testing materials have been given, sold, or provided to any public entity, private entity, or to any third party.

I declare to the best of my knowledge that the foregoing is true and correct.
Executed this 20th day of September, 2012, at Oakland, California.



District Representative

CERTIFICATE OF LIABILITY INSURANCE

| |
|--|
| DATE (MM/DD/YYYY) 10/11/2010 |
|--|

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).

| | | | |
|---|--|-------------------------------|--------|
| PRODUCER Walter R. Reinhardt Ins. Agency 499 West Shaw Avenue, Ste. 130 Fresno, CA 93704-2516 | CONTACT NAME: PHONE (A/C, No, Ext): (559)226-4700 FAX (A/C, No): (559)226-2345 E-MAIL ADDRESS: PRODUCER CUSTOMER ID #: <table style="width: 100%; border: none;"> <tr> <td style="text-align: center; border: none;">INSURER(S) AFFORDING COVERAGE</td> <td style="text-align: right; border: none;">NAIC #</td> </tr> </table> | INSURER(S) AFFORDING COVERAGE | NAIC # |
| INSURER(S) AFFORDING COVERAGE | NAIC # | | |

| | | | | | | | | | | | | | |
|---|--|------------|-------------------------------------|------------|--|------------|------------------------------|------------|--|------------|--|------------|--|
| INSURED Action Learning Systems, Inc 135 S Rosemead Blvd Pasadena, Ca 91107 | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">INSURER A:</td> <td>Hartford Casualty Insurance Company</td> </tr> <tr> <td>INSURER B:</td> <td>Property & Casualty Inc Co of Hartford</td> </tr> <tr> <td>INSURER C:</td> <td>Scottsdale Insurance Company</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table> | INSURER A: | Hartford Casualty Insurance Company | INSURER B: | Property & Casualty Inc Co of Hartford | INSURER C: | Scottsdale Insurance Company | INSURER D: | | INSURER E: | | INSURER F: | |
| INSURER A: | Hartford Casualty Insurance Company | | | | | | | | | | | | |
| INSURER B: | Property & Casualty Inc Co of Hartford | | | | | | | | | | | | |
| INSURER C: | Scottsdale Insurance Company | | | | | | | | | | | | |
| INSURER D: | | | | | | | | | | | | | |
| INSURER E: | | | | | | | | | | | | | |
| INSURER F: | | | | | | | | | | | | | |

COVERAGES CERTIFICATE NUMBER: GL/E & O 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/YYYY) | LIMITS |
|--|--|-----------|----------|---------------|-------------------------|-----------------------------------|---|
| A | GENERAL LIABILITY | | | 51SBAI06329 | 10/27/2009 | 10/27/2010 | EACH OCCURRENCE \$ 2,000,000 |
| | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY | | | 51SBAI06329 | 10/27/2010 | 10/27/2011 | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 |
| | <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR | | | | | | MED EXP (Any one person) \$ 10,000 |
| | GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | | | | | | |
| B | AUTOMOBILE LIABILITY | | | | | | GENERAL AGGREGATE \$ 4,000,000 |
| | <input checked="" type="checkbox"/> ANY AUTO | | | 51UECKM1151 | 12/11/2009 | 10/27/2010 | PRODUCTS - COM/PO/ AGG \$ 4,000,000 |
| | <input type="checkbox"/> ALL OWNED AUTOS | | | 51UECKM1151 | 10/27/2010 | 10/27/2011 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 |
| | <input type="checkbox"/> SCHEDULED AUTOS | | | | | | BODILY INJURY (Per person) \$ |
| | <input type="checkbox"/> HIRED AUTOS | | | | | | BODILY INJURY (Per accident) \$ |
| <input type="checkbox"/> NON-OWNED AUTOS | | | | | | PROPERTY DAMAGE (Per accident) \$ | |
| C | UMBRELLA LIAB | | | | | | \$ |
| | <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE | | | | | | \$ |
| | <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$ | | | | | | \$ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | | | | |
| | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below | | | | | | WC STATU-TORY LIMITS OTH-ER |
| | | | | | | | E.L. EACH ACCIDENT \$ |
| | | | | | | | E.L. DISEASE - EA EMPLOYEE \$ |
| | | | | | | | E.L. DISEASE - POLICY LIMIT \$ |
| | Misc Professional Liability | | | EKS3010593 | 10/27/2009 | 10/27/2010 | \$1,000,000 Each Wrongful Act |
| | | | | EKS3025872 | 10/27/2010 | 10/27/2011 | \$1,000,000 Annual Aggregate |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER CANCELLATION


| | |
|--|---|
| Oakland Unified School District 1025 Second Avenue Oakland, CA 94606 | 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 <div style="text-align: right;"> </div> Walt Reinhardt/BLS |
|--|---|

Consultant Fingerprint/Criminal Background Check Waiver Request

Directions

The District requires that all contractors who will have contact with students complete a Fingerprint/Criminal Background Check through OUSD. The OUSD Administrator can request that this requirement is waived for consultants who will never interact with students. Fingerprint waivers require Cabinet level approval (Deputy Superintendent/Superintendent). To request this waiver complete this form and submit it with the contract packet. If your request is denied you will be required to resubmit the packet with documentation verifying that the consultant has completed this requirement.

| | | | |
|--|---|--|-----------------------------|
| Contractor Name | Action Learning Systems, Inc. | | |
| Originator Name | Juwen Lam | Site or Department | Research, Assessment & Data |
| Which sites or locations will the contractor be working at? | Department of Research, Assessment and Data | | |
| TB Clearance Requirement | | | |
| <i>Proof of negative TB status is required for all consultants who will be working with OUSD students <u>or</u> staff. TB clearance waivers are only granted if the contractor will be working remotely or the contractor is a one time speaker with less than 6 hours of contact with OUSD employees.</i> | | | |
| How is this contractor going to meet the TB clearance requirement? | | | |
| TB Waiver requested <input checked="" type="checkbox"/> | | Proof of TB clearance is in the contract packet <input type="checkbox"/> | |

| | | |
|--|---|-------------------|
| [TO BE COMPLETED BY AUTHORIZED OUSD EMPLOYEE ONLY.] | | |
| <p>CONTRACTOR's employees will have only limited contact, if any, with OUSD pupils and OUSD will take appropriate steps to protect the safety of any pupils that may come in contact with CONTRACTOR's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to CONTRACTOR for the services under this Agreement. As an authorized OUSD official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of OUSD. (Education Code § 45125.1 (c))</p> | | |
| OUSD Representative's Name | Juwen Lam | Title Coordinator |
| OUSD Representative's Signature |  | Date 9/23/2011 |

| | |
|--|----------------------|
| Approval Cabinet Level approval required (Deputy Superintendent/Superintendent) | |
| Approver Name Toni Smith, Ph.D. | Title Superintendent |
| Approver Signature | Date |
| Reason for Approval: No contacts with students | |

PROFESSIONAL SERVICES CONTRACT ROUTING FORM 2011-2012

Basic Directions

Additional directions and related documents are in the School Operations Library (<http://intranet.ousd.k12.ca.us>)

Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.

- Contractor and OUSD contract originator (principal or manager) reach agreement about scope of work and compensation.
- Ensure contractor has OUSD Vendor Number and meets the consultant requirements (including insurance and background check)
- Contractor and OUSD contract originator complete the contract packet together and attach required attachments.
- OUSD contract originator creates the requisition.
- Within 2 weeks of creating the requisition the OUSD contract originator submits complete contract packet for approval.

Attachment Checklist

- For individual consultants: HRSS Pre-Consultant Screening Letter for current fiscal year
- For individual consultants: Proof of negative tuberculosis status within past 4 years
- For All Consultants: Statement of qualifications (organization); or resume (individual consultant)
- For All Consultants: Proof of Commercial General Liability insurance naming OUSD as an Additional Insured
- For All Consultants with employees: Proof of workers compensation insurance

OUSD Staff Contact *Emails about this contract should be sent to:*

Contractor Information

| | | | | | | |
|--------------------|---|------------------|---|-------|----|-----------|
| Contractor Name | Action Learning Systems, Inc. | Agency's Contact | David Marshall | | | |
| OUSD Vendor ID # | V055350 | Title | COO, CFO | | | |
| Street Address | 3940 Industrial Blvd, #100 | City | W Sacramento | State | CA | Zip 95691 |
| Telephone | (626) 744-5344 | Email | ksmith@actionlearningsystems.com | | | |
| Contractor History | Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | | |

Compensation and Terms – Must be within the OUSD Billing Guidelines

| | | | | | |
|------------------------------|------------|--------------------|------------|------------------------------|---------------------|
| Anticipated start date | 10/03/2011 | Date work will end | 06/30/2012 | Other Expenses | |
| Pay Rate Per Hour (required) | \$ 110.00 | Number of Hours | 474.00 | Total Contract Amount | \$ 52,068.80 |

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 # | Resource Name | Org Key | Object Code | Amount |
|------------------------|---------------|------------|------------------------------|---------------------|
| 0000 | GP | 9481110201 | 5825 | \$ 52,068.80 |
| | | | 5825 | \$ |
| | | | 5825 | \$ |
| Requisition No. | R0201540 | | Total Contract Amount | \$ 52,068.80 |

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.

OUSD Administrator verifies that this vendor does not appear on the Excluded Parties List (<https://www.epls.gov/epls/search.do>)

| | | | | | |
|--|---|-------------------------------|-----------|-----------------|----------------|
| 1. | Administrator / Manager (Originator) | Name | Juwen Lam | Phone | (510) 451-4164 |
| | Site / Department | Research, Assessment and Data | | Fax | (510) 451-1718 |
| | Signature | | | Date Approved | 9/20/11 |
| 2. | Resource Manager , if using funds managed by: <input type="checkbox"/> State and Federal <input type="checkbox"/> Quality, Community, School Development <input type="checkbox"/> Complementary Learning / After School Programs | | | | |
| | <input type="checkbox"/> Scope of work indicates compliant use of restricted resource and is in alignment with school site plan (SPSA) | | | | |
| | Signature | | | Date Approved | |
| 3. | Regional Executive Officer | | | | |
| | <input type="checkbox"/> Services described in the scope of work align with needs of department or school site | | | | |
| | <input type="checkbox"/> Consultant is qualified to provide services described in the scope of work | | | | |
| 4. | Signature | | | | Date Approved |
| | Deputy Superintendent Instructional Leadership / Deputy Superintendent Business Operations <input type="checkbox"/> Consultant Aggregate Under \$50,000 | | | | |
| | Signature | | | | Date Approved |
| 5. | Superintendent, Board of Education <i>Signature on the legal contract</i> | | | | |
| Legal Required if not using standard contract | | Approved | | Denied - Reason | Date |
| Procurement | Date Received | | PO Number | P1202612 | |

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