



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Board Office Use: Legislative File Info.	
File Number	18-1451
Introduction Date	6-27-18
Enactment Number	18-1061
Enactment Date	6/27/18 er

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Curtiss Sarikey, Chief of Staff
Susan Beltz, Chief Technology Officer *SB*

Board Meeting Date June 27, 2018

Subject Ratification of Terms of Service between West Interactive Services Corporation d/b/a SchoolMessenger and Oakland Unified School District.

Action Requested Ratification of Terms of Service between West Interactive Services Corporation d/b/a SchoolMessenger and Oakland Unified School District. beginning July 1, 2017 through June 30, 2018 in the amount of \$64,291.80.

Background The Technology Services department has successfully used SchoolMessenger since the 2009-10 school year and is using this firm going forward for the same services as previously provided, with the exception that licenses are being added to provide School Messenger to OUSD Early Childhood Centers for a cost increase of \$2,822.00 over prior years.



The SchoolMessenger service provided by West Interactive Services Corporation provides a notification solution that delivers important messages to parents and staff for emergency and non-emergency notifications.

Discussion

SchoolMessenger is a hosted notification service that enables OUSD to quickly and easily deliver district-wide and campus-wide robo-call and email notifications to OUSD parents and staff. Parent and staff information is synchronized nightly to School Messenger from Aeries and IFAS to ensure that contact information is kept current in the system.

The service is currently used for both emergency and non-emergency notifications. Authorized school and district administrators access the service through standard web browsers, including text-to-speech functionality, and/or touch-tone telephones to send notifications to parent and staff groups. In addition to providing service to all OUSD TK-12 sites and central offices, the service is being broadened in 2017-18 to include OUSD Early Childhood Centers, who have requested access to the service to more efficiently communicate with parents.

The renewal includes hosting of the School Messenger application and related customer support.

Recommendation

Ratification of Terms of Service between West Interactive Services Corporation d/b/a SchoolMessenger and Oakland Unified School District, beginning July 1, 2017 through June 30, 2018 in the amount of \$64,291.80.

Fiscal Impact

\$64,291.80 from Funding Resource 9999994701: General Purpose (GP) Software Licensing

Attachments

Terms of Service between West Interactive Services Corporation d/b/a SchoolMessenger and Oakland Unified School District.

Renewal Quote

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OAKLAND UNIFIED SCHOOL DISTRICT
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PROCUREMENT CONTRACT 2017-2018

This Agreement is entered into between West Interactive Services Corporation (CONTRACTOR) and Oakland Unified School District (OUSD), collectively known as PARTIES to procure goods or products as detailed below. The PARTIES agree as follows:

- Product:** CONTRACTOR shall provide the products ("Products") as described in Exhibit "A," attached hereto and incorporated herein by reference.
- Terms & Conditions:** The PARTIES agree to the terms and conditions as described in Exhibit "B."
- 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: Susan Beltz, CTO _____
 Site /Dept.: Information Technology _____
 Address: 1000 Broadway, Suite 300 _____
 Oakland, CA 94607 _____
 Phone: 510.879.8873 _____
 Email: Susan.Beltz@ousd.org _____

CONTRACTOR: West Interactive Services Corp.

Name: Nate Brogan _____
 Title: Senior Vice President _____
 Address: 100 Enterprise Way, Ste. A300 _____
 Scotts Valley, CA 95066 _____
 Phone: 888-527-5225 _____
 Email: nkbrogan@west.com _____

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.

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

OAKLAND UNIFIED SCHOOL DISTRICT

Aimee Long

- President, Board of Education
 Superintendent
 Chief or Deputy Chief

[Signature]

Secretary, Board of Education

6/28/18

Date

6/28/18

Date

CONTRACTOR

[Signature]
Contractor Signature

12-20-17

Date

Nate Brogan, Senior Vice President
Print Name, Title

Form approved by OUSD General Counsel for 2017-18 FY

OAKLAND UNIFIED SCHOOL DISTRICT
 Office of the General Counsel
 APPROVED FOR FORM & SUBSTANCE
 BY *[Signature]*
 Andrea Epps, Attorney at Law

WEST INTERACTIVE SERVICES CORPORATION

TERMS & CONDITIONS

These Web Terms for Services (as defined below) apply to sales made by West Interactive Services Corporation d/b/a SchoolMessenger ("Provider") to the customer issuing a purchase order or similar instrument to Provider ("Client"), as of the date of such purchase order ("Effective Date"). These terms consist of these terms and conditions and any order forms, purchase orders or statements of work referencing these terms or issued by Client to Provider, and any quotes from Provider to Client on which a purchase order is based (each, an "Order") describing the Provider Services that Provider agrees to provide to Client. The parties hereby agree as follows:

1. **Services and Orders.** The services are the automated services, business process services or other related services agreed to in the applicable Order) and provided by Provider (the "Services"). Orders may be executed by Client and Provider or by Client and a Provider Affiliate (as defined in Rule 405 of the Securities Act of 1933), must incorporate this Agreement by reference, shall govern and control in case of conflict with any other agreement, and in conjunction with this Agreement shall form a separate agreement between Client and Provider or between Client and the Provider Affiliate that executes the applicable Order. Client shall look only to the Provider Affiliate that executes the Order with respect to any right or obligation with respect to such Order. By executing an Order or using or accessing the Services, Client agrees to be bound by this Agreement.

Use of the Services by the United States Government or other governmental agencies shall be as "restricted computer software" or "limited rights data" as set forth in 48 CFR 52.227-14, or as "commercial computer software" or "commercial computer software documentation" under DFARS 252.227-7202, or under such other similar applicable terms and conditions to prevent the transfer of rights in and to the technology to the government or such agency other than under normal commercial licensing terms and conditions. Contractor/manufacture is West Interactive Services Corporation, 11808 Miracle Hills Dr., Omaha, NE 68154.

2. **Term and Termination.**

21. **Term.** This Agreement will continue from the Effective Date until the expiration or termination of the latest-ending Order. Each Order will specify its duration (each an "Order Term"). The termination of any Order shall not otherwise effect this Agreement or any other Order.

22. **Termination of an Order For Cause.** Any Order may be terminated as follows: (a) by either party upon the failure by the other party to perform any material obligation related to such Order that is not cured within thirty (30) days after receipt of written notice and demand for cure from the affected party; (b) by either party upon the violation by the other party of any applicable state or federal law, statute, rule or regulation in relation to its performance of the Order; provided that such right

to terminate shall only be available for 30 days from the time that the non violating party is aware or should have been aware of such breach; (c) by Provider, upon fourteen (14) days written notice if undisputed payments are in arrears; or by either Party with written notice at least 30 days prior to termination. In addition, Provider may take any or all of the following actions any time undisputed payments are more than fourteen (14) days in arrears:

(i) suspend the Services; or (ii) withhold data, materials or reports.

3. **Charges.** Client agrees to pay for the Services in accordance with the rates set forth in the applicable Order in addition to all applicable taxes, fees and surcharges set forth on Client's invoice. Any sum due Provider hereunder will be due and payable via electronic funds (ACH, EFT or wire) or check thirty (30) days from the date of invoice. Client will pay interest on all past due sums at a rate which is the lesser of one and a half percent (1.5%) per month, or the highest rate allowed by law. In the event part of an invoice is in dispute, Client agrees to pay the undisputed portion of the invoice and make a note on the invoice regarding the disputed portion within thirty (30) days from the date of invoice, otherwise Client will be deemed to agree to such charges and Provider will not be subject to making adjustments to charges or invoices. The fees due for each renewal term may be increased by the greater of (a) five percent (5%) or (b) the applicable increase in the U.S. Department of Labor's Consumer Price Index for all Urban Consumers U.S. City Average ("CPI-U"), measured as of January 1 of the contract renewal year.

4. **Maintenance of Service.** Provider agrees to provide and maintain the Services in a workmanlike manner customary for service providers in the industry. Provider does not warrant or guarantee in any way the results from the Services. Client agrees to provide and maintain systems and materials reasonably required by Provider to perform the Services, including as applicable, but not limited to: Client or third party databases; Client or third party software, hardware, systems, routing and network addresses and configurations; and key contacts for problem escalation (collectively the "Client Systems and Materials"). Provider shall not be liable hereunder relating to the Client Systems and Materials including the failure by Client to timely provide the Client Systems and Materials.

5. **Representations And Warranties.**

51. Each party represents and warrants to the other that: (a) its execution and performance of this Agreement and the applicable Order will not violate any provision of law, rule, regulation to which such party is subject; and (b) such party will comply with all laws, rules and regulations pursuant to which such party conducts its business.

52. Each party represents and warrants to the other that: (a) it has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement and the applicable Order; (b) the execution, delivery and performance of

this Agreement and the applicable Order have been duly authorized by such party; (c) no approval, authorization or consent of any governmental or regulatory authority is required to be obtained by it in order for it to enter into and perform its obligations under this Agreement and the applicable Order; and (d) the signatory to this Agreement and the applicable Order possesses all necessary authority to enter into the Agreement and applicable Order.

53 Client represents and warrants that: (a) the Client Systems and Materials, all representations to be made by Provider as a part of Client's programs, and the content, timing, recipients and nature of all programs (including outbound communications and promotions and advertising to induce calls to Client's programs) will be in compliance with all laws, rules, regulations; and (b) Client is solely responsible for the content and rights to use the Client Systems and Materials and Provider's use of the Client Systems and Materials shall not violate the rights of any third party or any law, rule or regulation. Client specifically acknowledges and agrees that Provider has not and is not expected to provide Client with any analysis, interpretation or advice regarding the compliance of any aspect of Client's Materials or programs with any third party rights or laws, rules, or regulations. Upon request, Client shall provide reasonable proof of compliance with the provisions set forth in this section and Provider shall have no obligation to provide Services where Provider reasonably believes that Client has not so complied.

54 Provider represents and warrants that Provider can grant the licenses, and privileges granted by this Agreement ("Licensed Materials"). Provider expressly disclaims any warranty of merchantability or fitness of the Licensed Materials for a particular purpose and any other warranty, including that the Licensed Materials will not infringe any patent or other proprietary right. Provider further represents and warrants that Provider has no actual knowledge of any infringement claims filed against Provider for practicing the Licensed Materials anywhere in the world. Except as set forth in this section, Provider makes no representation, express or implied, with regard to infringement of any Licensed Materials. The Licensed Materials are provided "AS IS."

6. License and Content.

61 Subject to Client's compliance with the terms and conditions of this Agreement, Provider hereby grants Client a non-exclusive license during the applicable Order Term to use the Services set forth in the applicable Order. Except as specifically set forth herein, Provider or its suppliers retain all right, title, and interest, including all intellectual property rights, relating to or embodied in the Services, including without limitation all technology, telephone numbers, web addresses, software, or systems relating to the Services. Client agrees not to reverse engineer, decompile, disassemble, translate, or attempt to learn the source code of any software related to the Services. Other than using the Services for Client's internal business purposes, Client may not resell the Services or otherwise generate income from the Services.

62 Client is solely responsible for the information or content submitted, posted, transmitted or made available through its use

of the Services ("Content"). Client may use the Services to transmit Content or direct Provider to make contacts via any channel (in either case "Messages") to, or with, recipients (the "Recipients"). Client is responsible for maintaining the confidentiality of its accounts and owner numbers and necessary codes, passwords and personal identification numbers used in conjunction with the Services and for all uses of the Services in association with its accounts whether or not authorized by it including unintended usage due to holidays, daylight savings, computer clock errors or similar circumstances. Client acknowledges and agrees that Provider does not control nor monitor the Content nor guarantee the accuracy, integrity, security or quality of such Content. Use of recording or taping any use of the Services may subject Client to laws or regulations and Client is solely responsible for and obligated to provide any required notification to those being recorded or taped.

63 Client represents and warrants that: (a) it has the legal right to use all Content and send all Messages to the Recipients (including obtaining any required consents from the Recipients) and the content, timing and purpose of all Messages, campaigns and programs are in compliance with all applicable laws, rules and regulations; (b) it is the transmitter of all Content and Messages and Provider is merely acting at Client's direction as a technology conduit for the transmission of the Content and the Messages; (c) Provider's use of the Content shall not violate the rights of any third party or any law, rule or regulation and (d) it will not transmit or allow to be transmitted any Content or Messages that: (i) it does not have a right to make available under any law or under contractual or fiduciary relationship; (ii) are false, inaccurate, misleading, unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically, or otherwise objectionable; harmful to minors in any way; (iii) infringe any patent, trademark, trade secret, copyright, or other proprietary rights or rights of publicity or privacy of any party; (iv) utilize any unsolicited or unauthorized advertising, promotional materials, "junk mail", "spam", or any other forms of solicitation; or (v) interfere with or disrupts the Services or servers or network operator networks. Client and Provider will comply with the Family Educational Rights and Privacy Act ("FERPA") and Client will indemnify Provider in the event that it is not found to be a "School Official" (as that term is used in FERPA and its implementing regulations).

64 Client further represents and warrants that: (a) it has prior express consent to contact each wireless phone number delivered by Client to Provider in connection with the provision of any Services delivering a prerecorded message or text, ("Notification Services") and that the intended contact recipient is the current subscriber to, or the non-subscriber customary user of, the wireless phone number. Upon request by Provider, Client shall promptly provide, in writing, proof of prior express consent and Client's processes for consent management; (b) it (1) has incorporated an interactive opt-out mechanism as part of any program relating to any Notification Services or (2) the contacts that are the subject of such Notification Services are not initiated to induce the purchase of goods or services or to solicit a charitable contribution ("Solicitations"), and (c) it has obtained from the recipient of any Solicitation an express written agreement that meets the requirements set forth in Section

310.4(b)(1)(v)(A) of the FTC's Telemarketing Sales Rule.

65 Client acknowledges and agrees that where Provider reasonably believes that Client may not have complied with all laws, rules and regulations applicable to the performance of Notification Services, Provider may, at its option: (i) scrub all numbers against any appropriate data base deemed necessary to remove all wireless phone numbers; (ii) insert an interactive opt-out mechanism and pass the resulting data to client, or (iii) not provide any Notification Services.

66 Client shall indemnify, defend and hold Provider, its affiliates and their officers, directors, employees and agents harmless from and against any and all claims of loss, damages, liability, costs, and expenses (including reasonable attorneys' fees and expenses) arising out of or resulting from Provider following Client's instructions in sending the Messages or Client's breach of any representation and warranty set forth in Sections 6.2 - 6.6.

7. Confidentiality and Proprietary Information.

71 Each party may disclose (the "Discloser") confidential and proprietary information ("Confidential Information") to the other party (the "Recipient"). In each such case, the Recipient shall hold such Confidential Information in confidence and shall not disclose such Confidential Information except to a party's Affiliates, employees or agents who have a need to know such Confidential Information in order to perform such party's obligations under this Agreement. Client's Confidential Information shall include of all information relating to the trade secrets or business affairs of Client including consumer data, merchandising plans, marketing plans and product design and information. Provider's Confidential Information shall include the computers, systems and software operating the Service and all documentation, development tools, phone numbers, know-how and data related thereto, and any derivative works thereof as well as physical property, analytical procedures, techniques, skills, ideas, models, research, development, trade secrets or business affairs of Provider, its Affiliates or their employees, suppliers or agents. Neither party shall have any rights in the other party's Confidential Information and shall return or destroy all such Confidential Information upon the termination of the applicable Order or the request of the Discloser. Notwithstanding the foregoing, the parties acknowledge that Recipient shall not be required to return to Discloser or destroy those copies of Confidential Information residing on Recipient's backup, disaster recovery, or business continuity systems and the obligations hereunder with respect to such Confidential Information shall survive until such Confidential Information is destroyed.

72 Notwithstanding any other term hereof, the term "Confidential Information" shall not include information that: (a) was already in the lawful possession of the Recipient prior to receipt thereof, directly or indirectly, from the Discloser; (b) lawfully becomes available to Recipient on a non-confidential basis from a source other than Discloser that is not under an obligation to keep such information confidential; (c) is generally available to the public other than as a result of a breach of this Agreement by Recipient or its representative(s); or (d) is subsequently and independently developed by employees,

consultants or agents of the Recipient without reference to the Confidential Information disclosed hereunder. In addition, a party shall not be considered to have breached its obligations by disclosing Confidential Information of the other party as required to satisfy any request of a competent governmental body provided that, promptly upon receiving any such request and to the extent that it may legally do so, such party advises the other party of the request prior to making such disclosure in order that the other party may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.

8. Indemnification.

81 **General Indemnity.** Client shall indemnify, defend and hold Provider, its Affiliates and their officers, directors, employees and agents harmless from and against any and all third party claims of loss, damages, liability, costs, and expenses (including reasonable attorneys' fees and expenses) arising out of or resulting from: (a) a breach by Client of any term of this Agreement or an Order; (b) the Client Systems and Materials; (c) a claim relating to any defect in any product or service offered by Client, its Affiliates or any of their agents or customers; or (d) all liabilities, demands, damages, expenses, or losses arising out of or resulting from any usage of the Licensed Materials. Provider shall indemnify, defend and hold Client, its Affiliates and their officers, directors, employees and agents harmless from and against any and all third party claims of loss, damages, liability, costs, and expenses (including reasonable attorneys' fees and expenses) arising out of or resulting from a breach by Provider of any term of this Agreement or an Order. Each Party shall indemnify the other Party for any claim or any portion of any claim that arises from the first Party's reckless, wanton, wrongful, or otherwise negligent acts.

82 **Provider Intellectual Property Indemnity.** Provider will have the obligation and right at the entire expense of Provider to defend any claim, suit or proceeding brought against Client its Affiliates or their officers, directors, employees or agents so far as it is based on a third party claim that the Services supplied by Provider infringe a United States copyright or a United States patent issued as of the effective date of the applicable Order, provided that Provider will have no indemnity obligation or other liability hereunder arising from: (1) Client's willful, reckless, wanton, wrongful, or otherwise negligent acts; (2) breach of the Agreement or an Order or alteration of the Services as provided by Provider; (3) the Client Systems and Materials or Services that are based upon the Client Systems and Materials, or information, design, specifications, directions, instruction, software, data, or material not furnished by Provider; (4) combination of the Services with the Client Systems and Materials or any materials, products or services not provided by Provider; or any (5) third party products or services. Notwithstanding the foregoing, in order to be indemnified to the extent stated, the Client must operate the Licensed Materials within the instructions and technical limits provided or approved by the Provider. If such a claim is or is likely to be made, Provider will, at its own expense and sole discretion, exercise one or the following remedies: (1) obtain for Client the right to continue to use, the Services consistent with this Agreement; (2)

modify the Services so they are non-infringing and in compliance with this Agreement; (3) terminate the applicable Services without liability for such termination other than the ongoing indemnity obligation hereunder. The foregoing states the entire obligation of Provider and its suppliers, and the exclusive remedy of Client, with respect to infringement of proprietary rights.

83. Indemnification Procedure. The party claiming indemnification shall: (a) provide prompt written notice to the indemnifying party of any claim in respect of which the indemnity may apply; (b) relinquish control of the defense of the claim to the indemnifying party; and (c) provide the indemnifying party with all assistance reasonably requested in defense of the claim. The indemnifying party shall be entitled to settle any claim without the written consent of the indemnified party so long as such settlement only involves the payment of money by the indemnifying party and in no way affects any rights of the indemnified party. The indemnities set forth herein shall not apply to the willfulness on the part of the indemnified party or negligence of the indemnified party.

9. Miscellaneous.

91. Entire Agreement and Integration. This Agreement, in conjunction with the applicable Order and the Privacy Policy found at <http://www.schoolmessenger.com/privacy-policy>, constitutes the entire agreement between the parties to such Order with respect to the subject matter of this Agreement and the applicable Order and supersede all prior agreements, discussions, proposals, representations or warranties, whether written or oral. The Agreement and Orders may be executed by fax, and/or in any number of counterparts, all of which shall together be considered an original and may be evidenced by a fax or scanned electronic (e.g., pdf, .tif) copy.

92. Notices. Any notice to be provided shall be in writing and shall be deemed given: (a) if by hand delivery, upon receipt thereof, (b) if mailed, three (3) days after deposit in the United States mail, postage prepaid, certified mail return receipt requested, or (c) if by next day delivery service, upon such delivery, or (d) if by facsimile transmission, upon receipt of such transmission, to the addresses or facsimile numbers set forth below the signature block or to such other addresses or facsimile numbers as either party may designate from time to time by written notice to the other party hereto.

93. Assignment. This Agreement and Orders may not be assigned or transferred by a party thereto without the prior written consent of the other party thereto, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Provider may freely assign this Agreement and Orders to an Affiliate or to an acquirer of all or part of Provider's business or assets, whether by merger or acquisition.

94. Waiver. No course of dealing or failure of a party to enforce strictly any term or provision or to exercise any right, obligation, or option provided, will waive such term, provision, right, obligation or option.

95. Independent Contractors. The Agreement and Orders are not a joint venture or partnership, and each party is entering the relationship as a principal and not as an agent of the other. The parties hereto agree that Provider is an independent

contractor in performing the Services.

96. Choice of Law. This Agreement and Orders shall be governed under the laws of California without regard for its choice of law principles. Client agrees that any legal action involving this Agreement or Orders in any way will be instituted in a court of competent jurisdiction located in Alameda County, California, and Client consents to jurisdiction of the state or Federal courts in the State of California over Client's person for purpose of such legal action.

97. Enforcement. All users of the Services must adhere to the terms of this Agreement. Provider has the right, but is not obligated, to strictly enforce this Agreement through self-help, active investigation, litigation and prosecution. Provider may also access and disclose any information (including transactional information) related to Client's access and use of our website or network for any lawful reason, including but not limited to: (1) responding to emergencies; (2) complying with law, rule or regulation (e.g., a lawful subpoena); (3) protecting our rights or property and those of our customers; or (4) protecting users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services.

98. Recording. Client agrees that all calls may be recorded or monitored by Provider at Provider's option. Such recording or monitoring shall not violate any state or federal law.

99. Taxes. Provider shall add to each invoice and Client shall pay any sales, use, excise, value-added, gross receipts, services, labor related, consumption and other similar taxes or surcharges, however designated, that are levied by any taxing authority in connection with the provision or use of Services under this Agreement or any Order. If at any time during the Term of this Agreement or any Order, Provider believes that it is required by law to collect any new or additional taxes for which Client would be responsible for paying, Provider shall notify Client of such taxes, collect such taxes directly from Client and remit such taxes to the appropriate governmental authority. If any taxing authority determines at any time that Provider has incorrectly determined any tax liability regarding taxes for which Client is responsible pursuant to this Agreement or any Order, Provider shall have the right to invoice Client for such taxes determined by such taxing authority to be due and owing. If Client is exempt from taxes, Client shall provide a copy of any documentation evidencing such exemption before it begins to receive any of the Services.

910. Severability. If any provision of this Agreement or the applicable Order is held invalid or unenforceable at law, such provision shall be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable and the remainder of this Agreement and the applicable Order will continue in effect and be valid and enforceable to the fullest extent.

911. No Third party Beneficiaries. This Agreement and Orders are for the sole benefit of the parties to such Order and are not intended to, nor shall it be construed to, create any right or confer any benefit on or against any third party.

912. Identification, Advertising & Publicity. Client agrees that it will not identify Provider as the provider of the Services to the media or any governmental, regulatory, or other official

without prior notice to Provider and Provider's prior consent, unless required by legal process, law, rule or regulation, in which case Client shall still notify Provider of such requirement. Except for materials already made public, neither party will distribute any news releases, articles, brochures, speeches, or advertisements concerning this Agreement or Order Forms, nor use the other party's name or trademarks (or any variation thereof), without the other party's prior written consent. Customer agrees that after execution of this Agreement, subject to Customer's review and written consent, such consent not to be unreasonably withheld, conditioned or delayed, Provider shall have the right to place advertisements in financial and other newspapers and journals and in marketing materials at its own expense describing its services to Customer hereunder. Notwithstanding the foregoing, upon such public announcement, Provider shall, without the Customer's further consent, have the right to include a "tombstone" with respect to such transaction on its Web site or in any "pitch-book" or similar marketing materials to the extent such tombstone does not include any information not previously publicly disclosed by Customer (or by Provider pursuant to this provision).

9.13. Interpretation. "Including" means "including, without limitation", and "days" refers to calendar days. This Agreement and each Order is the joint work product of the parties thereto, and no inference may be drawn or rules of construction applied against either party to interpret ambiguities. If any terms of this Agreement and an Order conflict, the terms of the Order will govern for that Order only. No preprinted or form terms, including on any purchase order, will apply.

9.14. Force Majeure. Neither party shall be liable for delays and/or defaults in its performance (other than Client's obligation to pay fees for Services performed) due to causes beyond its reasonable control, including, but without limiting the generality of the foregoing: acts of god or of the public enemy; fire or explosion; flood; stability or availability of the Internet; the elements; telecommunication system failure; war; technology attacks, epidemic; acts of terrorism; riots; embargoes; quarantine; viruses; strikes; lockouts; disputes with workmen or other labor disturbances; total or partial failure of transportation, utilities, delivery facilities, or supplies; acts or requests of any governmental authority; or any other cause beyond its reasonable control, whether or not similar to the foregoing.

9.15. Amendments. Each amendment, change, waiver, or discharge shall only be valid if made in writing by authorized representatives of all applicable parties.

9.16. Survival. All provisions of this Agreement or any Orders which by their nature should survive termination shall survive termination including Sections 2, 3, 5, 6, 7, 8 and 9 of this Agreement.

9.17. Each party will comply with all applicable personal data protection and privacy laws where such party is located (the "Data Protection Laws"). The parties acknowledge and agree that: (i) WISC may have access to personal data under the Data Protection Laws and will: (a) use it solely for the purpose of providing the Services; (b) process it only in accordance with Client's instructions; and (c) take appropriate technical and organizational measures to prevent unauthorized or unlawful processing, accidental loss, destruction or damage to it; (ii)

personal data may be processed by WISC and its affiliates in the United States, Canada and throughout the world; and (iii) Client is the data controller and retains full responsibility for the data processed on its behalf by WISC acting as data processor.

10. Limited Warranty and Limitation of Liability.

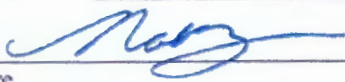
10.1. EXCEPT AS EXPRESSLY PROVIDED HEREIN, PROVIDER MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES, AND PROVIDER EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. PROVIDER EXPRESSLY DENIES ANY REPRESENTATION OR WARRANTY ABOUT THE ACCURACY OR CONDITION OF DATA OR THAT THE SERVICES OR RELATED SYSTEMS WILL OPERATE UNINTERRUPTED OR ERROR-FREE.

10.2. NO CAUSE OR ACTION WHICH ACCRUED MORE THAN TWO (2) YEARS PRIOR TO THE FILING OF A SUIT ALLEGING SUCH CAUSE OF ACTION MAY BE ASSERTED UNDER THIS AGREEMENT BY EITHER PARTY.

10.3. EXCEPT FOR THE PARTIES' PAYMENT OBLIGATIONS, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES OR LOSS OF GOODWILL, DATA OR PROFITS, OR COST OF COVER. THE TOTAL LIABILITY OF PROVIDER FOR ANY REASON, SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO PROVIDER BY CLIENT UNDER THE Order APPLICABLE TO THE EVENT GIVING RISE TO SUCH ACTION DURING THE SIX (6) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THE LIMITS ON LIABILITY IN THIS SECTION SHALL APPLY IN ALL CASES INCLUDING IF THE APPLICABLE CLAIM ARISES OUT OF BREACH OF EXPRESS OR IMPLIED WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR STRICT PRODUCT LIABILITY, AND EVEN IF THE PARTY HAS BEEN ADVISED THAT SUCH DAMAGES ARE POSSIBLE OR FORESEEABLE.

Agreed to as of the date below:

For Provider: West Interactive Services Corporation

 8-20-17
Signature Date

Nate Bogan, Senior Vice President
Name and title

For Client
Insert Client name: _____

Signature

Date

Name and title



CONTRACT JUSTIFICATION FORM

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

Legislative File ID No. 18-1451

Department: Technology Services

Vendor Name: West Interactive Services Corporation d/b/a SchoolMessenger

Contract Term: Start Date: July 1, 2017 End Date: June 30, 2018

Annual Cost: \$ 64,291.80

Approved by: Susan Beltz

Is Vendor a local Oakland business? Yes No

Why was this Vendor selected?

The Technology Services department has successfully used West Interactive Services Corporation d/b/a SchoolMessenger since the 2009-10 school year and is using this firm going forward for the same services as previously provided, with the exception that licenses are being added to provide School Messenger to OUSD Early Childhood Centers for a cost increase of \$2822.00 over prior years. The SchoolMessenger service provided by West Interactive Services Corporation provides a notification solution that delivers important messages to parents and staff for emergency and non-emergency notifications.

Summarize the services this Vendor will be providing.

West Interactive Services Corporation d/b/a SchoolMessenger will provide hosting of the School Messenger application 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?

This solution has been in place for several years at OUSD and is used to deliver emergency and non-emergency notifications to parents and staff. SchoolMessenger is a leader in the K-12 space and is used by other local districts, including Berkeley USD and San Mateo-Foster City USD, as well as other large urban districts nationwide, including St. Louis USD and Albuquerque USD. Over many years of usage, OUSD has experienced a very high degree of call reliability and quality. The cost is competitive when compared to other full-featured online applications and includes unlimited usage of the platform for robo-calls and e-mail messages. In addition, switching to another provider would incur significant professional services costs to support setup and integration of contact information, as well as additional training costs.

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**



Quote

West Interactive Services Corporation
PO Box 561484
Denver CO 80256-1484
Phone: 888-527-5225 | Fax: 800-360-7732

Date 9/18/2017
Quote # 105773
Expires 10/18/2017
Quote Type
Representative AM Heather Wilson
Agent

Prepared for:
Technology Services
Oakland Unified School District
1011 Union Street
Oakland CA 94607
United States

Item	Quantity	Description	Rate	Amount
R-SM Complete	1	Renewal SchoolMessenger Complete -- 12-month Unlimited Notification Service	61,469.80	61,469.80
R-SM Complete	1	Renewal SchoolMessenger Complete -- 12-month Unlimited Notification Service. Adding ECE students.	2,822.00	2,822.00
Description 1	1	Upgrade. Adding students	0.00	0.00

Thank you for your order!

Total \$64,291.80

The terms and conditions available at <https://www.west.com/legal-privacy/webterms/> apply to this quote, unless the parties have entered into a separate mutually executed agreement.
Sales tax may be applied on invoice. Tax exemption certificates can be sent to accounting@schoolmessenger.com.



105773