



Board Office Use: Legislative File Info.	
File ID Number	22-1665
Introduction Date	8/24/22
Enactment Number	22-1440
Enactment Date	8/24/2022 os

Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Preston Thomas, Chief Systems and Services Officer
Susan Beltz, Chief Information Technology Officer

Meeting Date August 24, 2022

Subject Amendment No. 2 to Hosted Software License Agreement
with Be a Mentor, Inc.

Ask of the Board Approve Amendment
 Ratify Amendment

Background and Recommendation The Oakland Unified School District has successfully used Be A Mentor for 2021-22 and several prior school years and is using this firm going forward for the same services as previously provided.

The 2020-21 term of the original agreement (Enactment Number 20-1411) was for July 1, 2020 through June 30, 2021 at a cost not to exceed \$9900 and the first amendment extended the agreement through June 30, 2022 at an additional cost not to exceed \$9900 for a total of \$19,800 (Enactment Number 21-1337). The amendment extends the term of the agreement through June 30, 2023 at an additional cost not to exceed \$9900, for a total amended contract amount of \$29,700.

Be A Mentor ensures safety at all school sites by ensuring that professional services contractors are fingerprinted and cleared by the Department of Justice (DOJ) and Federal Bureau of Investigation (FBI). Vendors are automatically transferred to the Vendor Management System (VMS) hosted by Be A Mentor. VMS is an online application residing on Be a Mentor's servers which supports application processing, background screening and clearances, and the tracking of subsequent arrest records. Vendor clearances are automatically transferred back to the Oakland Unified School District (OUSD) so that contract processing may proceed. Be A Mentor conducts background clearances and subsequent arrest notification processing of District professional services contractors who are transferred to the VMS database automatically via a web services integration with the ContractsOnline system hosted by the District.

Term	July 1, 2020	End Date: July 1, 2023
Not-To-Exceed Amount	\$29,7800, including \$9900 for 2020-21 (Original Contract, Enactment Number 20-1411) and \$9900 for 2021-22 (2021-22 Amendment, Enactment Number 21-1337) and \$9900 for 2022-23 (Additional amount of this Amendment)	
Competitively Bid	No, Professional Services Agreement of less than \$99,100	
In-Kind Contributions	No in-kind contributions beyond basic oversight and support of the vendor relationship.	
Funding Source(s)	\$9,900 from 2022-23 Funding Resource 010-0000-0-0000-7700-5846-999-9860-9994-9999-99999: General Purpose (GP), Data Processing, License Agreements, Districtwide	
Attachment(s)	<ul style="list-style-type: none"> ● Amendment No. 2 ● Schedule A for 2022-23 ● Prior contract, Enactment No. 21-1337 	

AMENDMENT NO. 2

This Amendment amends the attached legal agreement ("Original Agreement") and any prior amendments ("Prior Amendments," together with Original Agreement, "(Amended) Agreement"), incorporated herein by reference, which includes the following information:

- The (Amended) Agreement is between the Oakland Unified School District ("OUSD") and the below named entity or individual ("VENDOR," together with OUSD, "PARTIES"):
Be a Mentor, Inc.
- The Parties entered into the Original Agreement on the below date:
July 1, 2020
- The Enactment Number of the Original Agreement is below:
20-141

The PARTIES hereby agree to amend the (Amended) Agreement as stated herein.

1. **Services:** The scope of work of the (Amended) Agreement is unchanged.

IXI The scope of work of the (Amended) Agreement has changed. If the scope of work has changed: Provide brief description of revised scope of work including measurable description of expected final results, such as services, materials, products, and/or reports; select the appropriate option below:

Revised scope of work attached

X VENDOR agrees to provide the following amended services:

See attached Schedule A for 2022-23

2. **Term (duration):** The term of the (Amended) Agreement is unchanged

IXI The term of the (Amended) Agreement has changed. If the term has changed: The parties agree to amend the below original End Date of the (Amended) Agreement to the below new End Date:

Original End Date: June 30, 2021

New End Date: June 30, 2023 (extended from

Amendment 1 which ended June 30, 2022 to June 30, 2023)

3. **Compensation:** The not-to-exceed amount in the (Amended) Agreement is unchanged
 The not-to-exceed amount in the (Amended) Agreement has changed. If the not-to-exceed amount has changed: The not-to-exceed amount in the (Amended) Agreement is amended as follows:
 Increase not-to-exceed amount by:
\$9900
 Decrease not-to-exceed amount by:
\$N/A
The new not-to-exceed amount under the (Amended) Agreement, as herein amended, is \$29,700
4. **COVID-19:** To the extent that the Amendment did not contain the following guarantees, by signing this Amendment, VENDOR agrees that:
- a. Through its execution of this Amendment, VENDOR declares that it is able to meet its obligations and perform the Services required pursuant to this Amendment in accordance with any shelter-in-place (or similar) order or curfew (or similar) order ("Orders") issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.
 - b. VENDOR agrees to notify OUSD within twelve (12) hours if VENDOR or any employee, subcontractor, agent, or representative of VENDOR (i) tests positive for COVID-19 or shows or reports symptoms consistent with COVID-19 and (ii) has been on OUSD property or has been in prolonged close contact with any OUSD student or student's family member, staff, agents, representatives, officers, consultants, trustees, and volunteers within 48 hours of testing positive for COVID-19 or the development of symptoms consistent with COVID-19.
 - c. In addition to the requirements of subparagraph (b), VENDOR agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD student or student's family member, staff, agents, representatives, officers, consultants, trustees, and volunteers to VENDOR or any employee, subcontractor, agent, or representative of VENDOR and information

necessary to perform contact tracing, as well as complying with any OUSD testing and vaccination requirements.

d. **VENDOR** shall bear all costs of compliance with this Paragraph.

5. **Insurance.** To the extent that the Agreement did not contain the following insurance coverage amounts, by signing this Amendment, **VENDOR** agrees that it shall maintain, unless waived under the terms of the Agreement, Commercial General Liability Insurance with limits of at least one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) aggregate. All other terms regarding Commercial General Liability Insurance remain the same.

6. **Termination and Suspension.** To the extent that the Agreement did not contain the following provisions, by signing this Amendment, **VENDOR** agrees that:

- a. Notwithstanding any other language of the Agreement, if there is an unforeseen emergency or an Act of God during the term of this Agreement that would prohibit or limit, at the sole discretion of OUSD, the ability of **VENDOR** to perform the Services, OUSD may terminate this Agreement upon seven (7) days prior written notice to **VENDOR**. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or seven (7) days after the notice was provided, whichever is later.
- b. If OUSD, at its sole discretion, develops health and safety concerns related to the **VENDOR**'s provision of Services, then the OUSD Superintendent or an OUSD Chief or Deputy may, upon approval by OUSD legal counsel, issue a notice to **VENDOR** to suspend the Agreement, in which case **VENDOR** shall stop providing Services under the Agreement until further notice from OUSD. OUSD shall compensate **VENDOR** for Services satisfactorily provided through the date of suspension.

7. **Legal Notices.** To the extent the Agreement did not contain the following provisions, legal notices may be sent either (i) via email, (ii) personally delivered during normal business hours, or (iii) sent by U.S. Mail (certified, return receipt requested), to the contact identified in the Agreement.

VENDOR agrees that the address for legal notice to OUSD is 1000 Broadway, Suite 440, Oakland, CA 94607. All other terms regarding Legal Notices remain the same.

8. **Remaining Provisions:** All other provisions of the (Amended) Agreement remain unchanged and in full force and effect as originally stated.
9. **Amendment Publicly Posted.** This Amendment, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
10. **Signature Authority.**
 - a. Each PARTY has the full power and authority to enter into and perform this Amendment, and the person(s) signing this Amendment on behalf of each PARTY has been given the proper authority and empowered to enter into this Amendment.
 - b. Notwithstanding subparagraph (a), only the Superintendent, Chiefs, Deputy Chiefs, and the General Counsel has authority to sign contracts for OUSD and only under limited circumstances, which required ratification by the OUSD Governing Board. VENDOR agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this Amendment or as legally binding in any way.
11. **Amendment Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Amendment unless and until it has been (i) formally approved by OUSD's Governing Board or (ii) validly and properly executed by the OUSD Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code or Board Policy, and no payment shall be owed or made to VENDOR absent such formal approval or valid and proper execution.

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

VENDOR

Name: Robert Goetsch

Signature: _____



Position: President

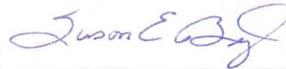
Date: 06/24/2022

VENDOR acknowledges and agrees not to expect or demand payment for any Services performed prior to the PARTIES, particularly OUSD, validly and properly executing this Agreement until this Agreement is validly and properly executed and shall not rely on verbal or written communication from any individual, other than the President of the OUSD Governing Board, the OUSD Superintendent, or the OUSD General Counsel, stating that OUSD has validly and properly executed this Agreement. VENDOR specifically acknowledges and agrees to this term/condition on the above date.

OUSD

Name: Susan Beltz

Signature: _____



Position: Chief Technology Officer

Date: 06/24/2022

Board President

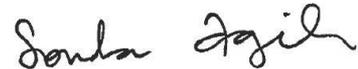
Superintendent

Chief/Deputy Chief/Executive Director

Sondra Aguilera, Acting Superintendent & Secretary, BOE

Name: ~~Kyla Johnson-Trammell~~

Signature: _____



Position: Secretary, Board of Education

Date: Enter date of signature

Template approved as to form by OUSD Office of the General Counsel.

SCHEDULE A

School Year 2022- 2023

Schedule A is an integral part of the Hosted Software Agreement between Be A Mentor, Inc, (BAM) and Oakland Unified School District (Customer) signed and dated on July 1, 2020 and includes services related to the use of the hosted software

<u>Hosted Software License Agreement</u>	<u>Cost</u>
Use of VMS as an online application residing on a Be A Mentor, Inc servers for the purposes of application processing, conducting background screening and clearances, and tracking ongoing arrest records.	\$ 3,000 Annual

B. Services for Vendor Contracting

<u>Background Clearance Services</u>	
Be A Mentor conducts background clearances on your Vendor applicants who are transferred to BAM database via web services. \$ 50 per vendor application up to 120 applicants	\$50 * 120 = \$ 6,000
Subsequent Arrest Notification Processing	Included
Customer support regarding applicant clearance matters – 10 hrs @ \$90 / hr.	\$90 * 10 = \$ 900

<u>Optional Services</u>	
Ongoing technical support to trained licensee/Customer Site Coordinator(s)	Included in license fee
Custom Queries and reports	\$ 300 - \$ 600
Custom Application Programming	\$ 150 per hour

SCHEDULE A

School Year 2022- 2023

Summary of Charges

1. Hosted Software Agreement Annual License Fee	\$ 3,000
2. Background Clearance for up to 120 vendors (invoiced monthly)	Not to exceed \$ 6,000
3. Customer support regarding applicant clearance matters	\$ 900
Total	Not to exceed \$ 9,900
Due Now	\$3,900.00 =====

Indemnification

BAM, acting on behalf of Customer agrees to implement the Services for Vendor Contracting described above with the intent of conducting a background clearance investigation on vendor applicants. BAM relies on key information provided by applicants to be correct and accurate for conducting such background investigations.

BAM and Customer each indemnify, and hold harmless the other, including their respective officers, agents, and employees, from and against any actions, losses, costs, penalties, obligations, claims, judgments, attorneys' fees, attachments errors, omissions, or liabilities, including legal costs, attorney fees, and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered against either, arising from or growing out of the Services for Vendor Contracting described above under this agreement or in any way connected with the performance of responsibilities under this Schedule A.

This document replaces the Schedule A for period of 2021 – 2022 School year and is agreed upon for the period of July 1, 2022 through June 30, 2023

Be A Mentor, Inc.

Oakland Unified School District




Robert Goetsch
President

Susan Beltz
Chief Technology Officer

Date: June 21, 2022

Date: 6/24/2022



Board Office Use: Legislative File Info.	
File ID Number	21-1761
Introduction Date	8/25/21
Enactment Number	21-1337
Enactment Date	8/25/2021 CJH

Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Preston Thomas, Chief Systems and Services Officer
Susan Beltz, Chief Information Technology Officer

Meeting Date August 25, 2021

Subject Amendment to Hosted Software License Agreement Agreement with Be A Mentor, Inc.

Ask of the Board Ratify Amendment to Hosted Software License Agreement with Be A Mentor, Inc.

Background and Recommendation The Oakland Unified School District has successfully used Be A Mentor for 2020-21 and several prior school years and is using this firm going forward for the same services as previously provided.

The 2020-21 term of the original agreement (Enactment Number 20-1411) was for July 1, 2020 through June 30, 2021 at a cost not to exceed \$9900. The amendment extends the term of the agreement through June 30, 2022 at an additional cost not to exceed \$9900, for a total amended contract amount of \$19,800.

Be A Mentor ensures safety at all school sites by ensuring that professional services contractors are fingerprinted and cleared by the Department of Justice (DOJ) and Federal Bureau of Investigation (FBI). Vendors are automatically transferred to the Vendor Management System (VMS) hosted by Be A Mentor. VMS is an online application residing on Be a Mentor's servers which supports application processing, background screening and clearances, and the tracking of subsequent arrest records. Vendor clearances are automatically transferred back to the Oakland Unified School District (OUSD) so that contract processing may proceed. Be A Mentor conducts background clearances and subsequent arrest notification processing of District professional services contractors who are transferred to the VMS database automatically via a web services integration with the ContractsOnline system hosted by the District.

Term	Start Date: July 1, 2020	End Date: June 30, 2022
Not-To-Exceed Amount	\$19,800, including \$9900 for 2020-21 (Original Contract, Enactment Number 20-1411) and \$9900 for 2021-22 (Additional amount of this Amendment)	
Competitively Bid	No. Professional Services Agreement of less than \$96,700.	
In-Kind Contributions	No in-kind contributions beyond basic oversight and support of the vendor relationship.	
Funding Source(s)	\$9,900 from 2021-22 Funding Resource 010-1100-0-0000-7700-5846-999-9860-1605-9999-99999: State Lottery, Data Processing, License Agreements, Districtwide	
Attachment(s)	<ul style="list-style-type: none">● Amendment● Schedule A for 2021-22● Original Contract, Enactment No. 20-1741	

AMENDMENT NO. 1

to

Title of Original Contract/Agreement **(Hosted Software License Agreement)**

This Amendment amends the attached legal agreement ("Original Agreement") and any prior amendments ("Prior Amendments," together with Original Agreement, "(Amended) Agreement"), incorporated herein by reference, which includes the following information:

- The (Amended) Agreement is between the Oakland Unified School District ("OUSD") and the below named entity or individual ("VENDOR," together with OUSD, "PARTIES"):

Full Name of Vendor **(Be a Mentor, Inc.)**

- The Parties entered into the Original Agreement on the below date:

Enactment Date **(July 1, 2020)**

- The Enactment Number of the Original Agreement is below:

Enactment No. **(20-1411)**

The PARTIES hereby agree to amend the (Amended) Agreement as stated herein.

1. Services:

The scope of work of the (Amended) Agreement is unchanged.

The scope of work of the (Amended) Agreement has changed. If the scope of work has changed: Provide brief description of revised scope of work including measurable description of expected final results, such as services, materials, products, and/or reports; select the appropriate option below:

Revised scope of work attached

VENDOR agrees to provide the following amended services:

Description of revision(s) to scope of w **(See attached Schedule A for 2021-22)**

2. Term (duration): The term of the (Amended) Agreement is unchanged

The term of the (Amended) Agreement has changed.

If the term has changed: The parties agree to amend the

below original End Date of the (Amended) Agreement to the below new End Date:

Original End Date: **June 30, 2021**

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

3. **Compensation:** The not-to-exceed amount in the (Amended) Agreement is unchanged
 The not-to-exceed amount in the (Amended) Agreement has changed. If the not-to-exceed amount has changed: The not-to-exceed amount in the (Amended) Agreement is amended as follows:

Increase not-to-exceed amount by:

\$ **9900**.

Decrease not-to-exceed amount by:

\$

The new not-to-exceed amount under the (Amended) Agreement, as herein amended, is

\$ **19,800**.

4. **COVID-19:** To the extent that the Amendment did not contain the following guarantees, by signing this Amendment, VENDOR agrees that:
- Through its execution of this Amendment, VENDOR declares that it is able to meet its obligations and perform the Services required pursuant to this Amendment in accordance with any shelter-in-place (or similar) order or curfew (or similar) order ("Orders") issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.
 - VENDOR agrees to notify OUSD within twelve (12) hours if VENDOR or any employee, subcontractor, agent, or representative of VENDOR tests positive for COVID-19, shows or reports symptoms consistent with COVID-19, or reports to VENDOR possible COVID-19 exposure.
 - VENDOR agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD employees to VENDOR or any employee, subcontractor, agent, or representative of VENDOR and information necessary to perform contact tracing, as well as complying with any OUSD testing and vaccination requirements.

- d. **VENDOR** shall bear all costs of compliance with this Paragraph.
5. **Remaining Provisions:** All other provisions of the (Amended) Agreement remain unchanged and in full force and effect as originally stated.
6. **Amendment Publicly Posted.** This Amendment, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
7. **Signature Authority.**
- a. Each PARTY has the full power and authority to enter into and perform this Amendment, and the person(s) signing this Amendment on behalf of each PARTY has been given the proper authority and empowered to enter into this Amendment.
 - b. Notwithstanding subparagraph (a), only the Superintendent, Chiefs, Deputy Chiefs, and the General Counsel has authority to sign contracts for OUSD and only under limited circumstances, which required ratification by the OUSD Governing Board. **VENDOR** agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this Amendment or as legally binding in any way.
8. **Amendment Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Amendment unless and until it has been (i) formally approved by OUSD's Governing Board or (ii) validly and properly executed by the OUSD Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code or Board Policy, and no payment shall be owed or made to **VENDOR** absent such formal approval or valid and proper execution.

REST OF PAGE IS INTENTIONALLY LEFT BLANK

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

VENDOR

Name: Robert Goetsch Signature: 
Position: President Date: 6-25-21

By its signature, VENDOR acknowledges and agrees not to expect or demand compensation pursuant to this Amendment prior to the PARTIES, particularly OUSD, validly and properly executing this Amendment until this Amendment is validly and properly executed and shall not rely on verbal or written communication from any individual, other than the President of the OUSD Governing Board, the OUSD Superintendent, or the OUSD General Counsel, stating that OUSD has validly and properly executed this Amendment. VENDOR specifically acknowledges and agrees to this term/condition on the above date.

OUSD

Name: Susan Beltz Signature: 
Position: Chief Technology Officer Date: 6/25/21
 Board President
 Superintendent
 Chief/Deputy Chief

Name: Kyla Johnson-Trammell Signature: 
Position: Secretary, Board of Education Date: 8/26/2021

Template approved as to form by OUSD Office of the General Counsel.

SCHEDULE A

School Year 2021- 2022

Schedule A is an integral part of the Hosted Software Agreement between Be A Mentor, Inc, (BAM) and Oakland Unified School District (Customer) signed and dated on July 1, 2020 and includes services related to the use of the hosted software

<u>Hosted Software License Agreement</u>	<u>Cost</u>
Use of VMS as an online application residing on a Be A Mentor, Inc servers for the purposes of application processing, conducting background screening and clearances, and tracking ongoing arrest records.	\$ 3,000 Annual

B. Services for Vendor Contracting

<u>Background Clearance Services</u>	
Be A Mentor conducts background clearances on your Vendor applicants who are transferred to BAM database via web services. \$ 50 per vendor application up to 120 applicants	\$50 * 120 = \$ 6,000
Subsequent Arrest Notification Processing	Included
Customer support regarding applicant clearance matters – 10 hrs @ \$90 / hr.	\$90 * 10 = \$ 900

<u>Optional Services</u>	
Ongoing technical support to trained licensee/Customer Site Coordinator(s)	Included in license fee
Custom Queries and reports	\$ 300 - \$ 600
Custom Application Programming	\$ 150 per hour

SCHEDULE A

School Year 2021- 2022

Summary of Charges

1. Hosted Software Agreement Annual License Fee	\$ 3,000
2. Background Clearance for up to 120 vendors (invoiced monthly)	Not to exceed \$ 6,000
3. Customer support regarding applicant clearance matters	\$ 900
Total	Not to exceed \$ 9,900
Due Now	\$3,900.00 =====

Indemnification

BAM, acting on behalf of Customer agrees to implement the Services for Vendor Contracting described above with the intent of conducting a background clearance investigation on vendor applicants. BAM relies on key information provided by applicants to be correct and accurate for conducting such background investigations.

BAM and Customer each indemnify, and hold harmless the other, including their respective officers, agents, and employees, from and against any actions, losses, costs, penalties, obligations, claims, judgments, attorneys' fees, attachments errors, omissions, or liabilities, including legal costs, attorney fees, and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered against either, arising from or growing out of the Services for Vendor Contracting described above under this agreement or in any way connected with the performance of responsibilities under this Schedule A.

This document replaces the Schedule A for period of 2020 – 2021 School year and is agreed upon for the period of July 1, 2021 through June 30, 2022

Be A Mentor, Inc.

Oakland Unified School District



Robert Goetsch
President



Susan Beltz
Chief Technology Officer

Date: June 17, 2021

Date: 6/25/21

Board Office Use: Legislative File Info.	
File ID Number	20-1741
Introduction Date	09/23/2020
Enactment Number	20-1411
Enactment Date	9/23/2020 os



Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Preston Thomas, Chief Systems and Services Officer
Susan Beltz, Chief Technology Officer

Board Meeting Date September 23, 2020

Subject Ratification by the Board of Education of Hosted Software License Agreement and Schedule A between Be A Mentor and Oakland Unified School District
Contractor: Be A Mentor, Inc.
Services For: July 1, 2020 - June 30, 2021

Action Requested and Recommendation Ratification by the Board of Education of Hosted Software License Agreement and Schedule A between Oakland Unified School District and Be a Mentor, Inc., Hayward, CA for the latter to provide hosting of the Vendor Management System (VMS), along with background clearances and subsequent arrest notifications for up to 120 vendors, for the period July 1, 2020 to June 30, 2021 for an amount not to exceed \$9,900.

Background *(Why do we need these services? Why have you selected this vendor)* The Oakland Unified School District has successfully used Be A Mentor for 2019-20 and is using this firm going forward for the same services as previously provided.

Be A Mentor ensures safety at all school sites by ensuring that professional services contractors are fingerprinted and cleared by the Department of Justice (DOJ) and Federal Bureau of Investigation (FBI). Vendors are automatically transferred to the Vendor Management System (VMS) hosted by Be A Mentor. VMS is an online application residing on Be a Mentor’s servers which supports application processing, background screening and clearances, and the tracking of subsequent arrest records. Vendor clearances are automatically transferred back to the Oakland Unified School District (OUSD) so that contract processing may proceed. Be A Mentor conducts background clearances and subsequent arrest notification processing of District professional services contractors who are transferred to the VMS database automatically via a web services integration with the ContractsOnline system hosted by the District.

Schedule A includes hosting of the VMS application, background clearances and subsequent arrest notification processing for up to 120 vendors, and related customer support.

Competitively Bid

No. Professional Services Agreement of less than \$92,600.

Fiscal Impact

\$9,900 from 2020-21 Funding Resource 010-1100-0-0000-7700-5846-999-9860-1605-9999-99999: State Lottery, Data Processing, License Agreements, Districtwide

Attachments

- Hosted Software License Agreement
 - Schedule A to Hosted Software License Agreement
-

Hosted Software License Agreement

THIS HOSTED SOFTWARE LICENSE AGREEMENT is between BE A MENTOR, INC., a California corporation (the "Licensor"), located at 22693 Hesperian Blvd and Oakland Unified School District at 1000 Broadway, Oakland CA 94607 (Licensee). As used in this Agreement, "Software" means, collectively, any and all applications and modules of Licensor, including without limitation the Volunteer Management System (VMS) software, with any and all enhancements, upgrades, and updates thereto that may be provided to Licensee in the future by Licensor. The Agreement effective date is

July 1, 2020

1. OWNERSHIP

In this Agreement, Licensor is licensing its web-based software application products on a non-exclusive basis for use only on a web server hosted and controlled by Licensor. Licensor is at all times the owner of the Software and, except as specifically licensed hereby and to third parties pursuant to non-exclusive license agreements, Licensor retains all rights to the Software. Rights not specifically granted in this Agreement, including without limitation Federal and International Copyrights, are expressly reserved by Licensor.

Licensee will not receive a copy of the Software. Licensee will not receive or have access to the software code. The license granted herein is entirely contingent upon Licensor hosting the Software and not releasing any copies of the Software; Licensee will not host the Software itself and may not install the Software on any of its computers. Licensee, however, owns and has exclusive rights to all data entered into the program's database via the Software by the licensee and/or on behalf of the licensee, and to all graphics and web page content given to Licensor to place into the Software, on behalf of Licensee. In no event does the License or this Agreement entitle Licensee to any rights of ownership in any of the work flow design, process flow design, or the code in the underlying page, program, database, software, or any other code used to draw or render the elements on the web page, all of which is owned by Licensor. Licensor will automate a SQL backup of Licensee's data each weekday, Monday through Friday.

If this license agreement is not renewed, or is terminated for any reason, Licensee will not receive a copy of the Software. In such circumstances, so long as Licensee is not in default of its obligations under this Agreement, Licensor, upon request, will provide a copy of all data within 30 days, in a standard machine readable format, owned by Licensee that has been entered into the database.

2. GRANT OF LICENSE; LICENSOR SERVICES

Licensor grants to Licensee, pursuant and subject to the terms and conditions of this Agreement, a limited, nonexclusive, non-transferable, non-assignable, revocable right to use the Software ("License"), solely and strictly in accordance with the terms, conditions and restrictions applicable to the License, as described herein.

During the term of the License, Licensor shall host the dedicated servers needed for Licensee's use of the Software. This Agreement includes all future bug fixes, error corrections, new releases, updates and program improvements to the Software during the

term of the License. Any other services to be provided by Licensor, such as customizations or program modifications and additions, shall be pursuant to separate written agreement of the parties, but otherwise on the terms of this Agreement.

3. ACCESS TO SITE

Licensor will use commercially reasonable efforts to make the Site and the Licensed Programs accessible by Licensee 24-hours per day, seven (7) days per week, excluding down time for maintenance and repair, Licensor will provide advance notice to Licensee for scheduled down time for repair or maintenance and Licensor will use commercially reasonable efforts to timely provide notice to Licensee for unplanned down time for repair or maintenance.

4. CONFIDENTIAL INFORMATION

Licensor shall not disclose any Confidential Information (defined below) of Licensee that Licensor has been or hereafter becomes privy to by hosting data that is the property of the Licensee. Licensee shall take all reasonable steps to protect the Software and related documentation from unauthorized copying or use. The Software source code represents and embodies the trade secrets of Licensor and/or its licensors. The Software source code, pricing, interfaces, data mappings, and embodied trade secrets are not licensed to Licensee, and Licensee shall take all reasonable measures to avoid any unauthorized disclosure of the same.

Licensee and Licensor each agree (a) that it will not disclose to any third party or use any Confidential Information disclosed to it by the other except as necessary to perform its obligations under written agreement with the disclosing party or otherwise as expressly permitted in this Agreement, and (b) that it will take all reasonable measures to maintain the confidentiality of all Confidential Information of the other party in its possession or control. For the purposes of this Agreement, "Confidential Information" means information about the disclosing party's business or activities that is proprietary and confidential, which shall include all business, financial, technical and other information of a party (I) disclosed in writing and either (a) is marked or designated by such party as "confidential" or "proprietary" or (b) by the nature of the circumstances surrounding the disclosure, shall in good faith be treated as confidential. Upon expiration or termination of this Agreement, each party will immediately cease all use of the other party's Confidential Information.

5. INDEMNIFICATION

a. Infringement

Licensor warrants that it owns or has obtained all proprietary and intellectual property rights necessary to grant the License herein and shall indemnify and hold harmless Licensee from any and all claims, demands, and causes of action asserted by third parties alleging that Licensee's use of the Software as contemplated herein violates such third party's proprietary or intellectual property rights.

b. Security

All online data systems have a certain amount of vulnerability to intrusion attacks. Licensor uses reasonable methods to protect the privacy of data. Methods employed are: 1) 256-bit layered encryption is employed on all user input pages.; 2) Internet Information Services (IIS) encrypts all URL addresses that move variables from page-to-page within the hosted system; 3) all user pages accessible via a browser have trap fields, not visible to the user, to identify potential computer generated access, and traps and discards any such unauthorized entry; Continuous running of commercial grade anti-virus software for detection and destruction of malware, spyware and other data attacking viruses; and 5) financial information and tax identification are not requested of users and are not stored in the hosted system.

Licensee accepts any and all liability for Licensee's loss due to a data breach, and agrees to indemnify and hold harmless Licensor and the Licensor Parties from and against, any and all costs, expenses, liabilities, damages and other obligations in connection with any Licensee loss caused by a data breach, except in the case of licensor's negligence.

For instances of Licensor negligence, Licensee is named as additional insured on Licensor's liability insurance policy

6. COMPLIANCE WITH APPLICABLE LAW

Licensee shall comply with all applicable laws, rules and regulations in its use of the Software, including without limitation the federal "CANSPAM ACT OF 2003". Licensee agrees to indemnify Licensor and its owners, officers, directors, employees, representatives, agents, licensors, successors and assigns (collectively, the "Licensor Parties"), and hold Licensor and each of the Licensor Parties harmless, from and against any and all claims, damages, charges, costs, expenses, causes of action, liabilities and other obligations resulting from Licensee's failure to so comply.

7. STANDARDS FOR ACCEPTING CLIENT EMAIL LISTS

Licensee shall send emails on an "Opt-In" basis only; no email sends shall be made unless they are "Opt-In" and are in compliance with all applicable laws. In no event shall any Software be used to send SPAM. As used herein, "Spam" shall mean (a) unsolicited commercial email sent to a recipient who has not provided his/her/its email address directly to the sender or sent to a recipient who would not have a reasonable expectation of receiving email from the sender, or (b) any email advertising illicit or illegal activities, or (c) any electronic message sent to email addresses provided by a third party. Licensee agrees that its data and lists loaded into the Software will not be used to send Spam, or otherwise constitute Spam, and that all emails sent by or on behalf of Licensee will comply with the CANSPAM Act of 2003 and other applicable laws, and the Acceptable Use Policies of Licensor's hosting and bandwidth providers. Licensee accepts any and all liability for, and agrees to indemnify and hold harmless Licensor and the Licensor Parties

from and against, any and all costs, expenses, liabilities, damages and other obligations in connection with any and all complaints, fines, and/or other services required as a result of supplying Licensor with addresses and/or sending electronic mail that do not comply with the foregoing.

8. LICENSE FEES

The fees to be paid by Licensee to Licensor for the Hosted Software License and other services shall be as described in Schedule A, and billed annually unless special arrangements are made, and noted on Schedule A, for billing monthly, quarterly or other regular invoices. Invoices are payable on or before the first day of the month of the respective billing cycle, or such other due date as agreed upon. Schedule A are an integral part of this agreement.

9. SERVICE FEES

This Agreement does not include program customizations or integrations. Any programming services requested by Licensee are subject to prior agreement of Licensor; fees for programming services will be billed at the rates described in Schedule A unless agreed otherwise by Licensor in writing. Hours will be approved by Licensee in advance. On-site and/or web-based training of Licensee's employees will be available at the rate(s) described in Schedule A. Additional services shall be available by Licensor upon mutual agreement between Licensor and Licensee.

10. ARBITRATION

Any controversy or claim arising out of or relating to this Agreement or the use of the Software shall be settled by arbitration before a single arbitrator in Northern California in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The provisions of California Code of Civil Procedure Sections 1282.6, 1283 and 1283.05 shall apply to the arbitration. If any arbitration is commenced between the parties to this Agreement, the substantially prevailing party shall be entitled to reimbursement of its costs and expenses, including without limitation attorney's fees, as determined by the arbitrator.

11. DEFAULT; CURE; SUSPENSION; TERM; TERMINATION

In the event Licensee fails to make any payment when due hereunder, Licensor shall give Licensee written notice of such failure. If such payment is not received by Licensor within five (5) days after such written notice is sent by Licensor, Licensor may immediately either (a) terminate the License and this Agreement without further notice, or (b) suspend the License and performance of services under this Agreement. In the event of a suspension, the License and this Agreement and any agreed upon services will be restored upon Licensor's receipt of payment in full hereunder plus a late fee of ten percent (10%) of the amount of the late payment.

Other than Licensee's payment default, in the event that either party believes the other has failed to substantially perform in accordance with the terms of the Agreement, the complaining/non-defaulting party shall submit written notice to the defaulting party describing in detail the alleged deficiencies. The defaulting party shall have 15 days from the date notice was received to cure such deficiencies. If the deficiencies remain uncured after such 15 day period, the non-defaulting party may terminate this Agreement. In the event of disagreement regarding the alleged deficiencies, arbitration will be enacted as described in section 10 above.

In the event of any suspension or termination, Licensor shall have no liability whatsoever to the Licensee for delay or damage caused the Licensee due to such suspension or termination. Any notices to be delivered to Licensor hereunder shall be sent to the address of Licensor and/or the electronic email address of record. Any notices to be delivered to Licensee hereunder shall be sent to the last known address of Licensee and/or the electronic email address of record. Upon termination of this Agreement, the terms, rights and obligations under this Agreement, which by their nature should survive termination, shall survive.

Unless otherwise stated in Schedule A, the term of this agreement is one year.

Either party may terminate this Agreement without cause and for its convenience upon providing to the other thirty (30) calendar days prior written notice thereof. Upon such termination Licensee shall immediately pay any and all fees owing to Licensor that have not been paid as of the time of termination. Upon license termination, Licensor will refund unused full months to the Licensee. Unused partial months will not be refunded.

12. GOVERNING LAW

This Agreement shall be governed by the laws of the State of California.

13. ASSIGNMENT AND TRANSFER

Licensee shall have no right whatsoever to transfer or assign this Agreement or the License. Licensor shall not assign this Agreement without the written consent of Licensee. Subject to the foregoing, this Agreement shall be binding on the heirs, executors, administrator's successors and assigns of the respective parties.

14. PERSONNEL HIRING POLICY; HIRING FEES

Licensee acknowledges and agrees that Licensor has invested substantial time, money and other resources in building its professional staff. This staff constitutes a substantial company resource and valuable asset of Licensor. During the term of this Agreement or within one year after termination of this Agreement, Licensee agrees to and shall pay to Licensor a fee if Licensee hires or contracts the services of an employee of Licensor, whose employment is in good standing and whose job description entails Volunteer Management System (VMS) support. The fee will be an amount equal to 30% of the first annual compensation paid by licensee to licensor's former employee.

15. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between Licensee and Licensor, and supersedes all prior negotiations and/or representations.. This Agreement may be amended or superseded only by written instrument signed by both the Licensee and the Licensor.

16. SEVERABILITY

In the event that any part of this agreement becomes void or unenforceable under applicable law, the remaining parts of the agreement shall remain intact.

17. LIMITATIONS ON DAMAGES

In no event will Licensor or any of the Licensor Parties be liable to Licensee for any consequential, indirect, special, incidental or consequential damages (including damages for loss of business profits, business interruption, loss of business information, and the like) arising out of the use or inability to use the Software, or based on breach of contract, tort (including negligence), product liability or otherwise, even if Licensor or any of the Licensor Parties have been advised of the possibility of such damages and even if a remedy set forth herein is found to have failed of its essential purpose.

Except with respect to its obligations pursuant to Section 5 above, the liability of Licensor, or any Licensor Party, to Licensee for actual damages from any cause whatsoever, and regardless of the form of the action (whether in contract, tort including negligence, product liability or otherwise), shall in no event exceed \$100.

Licensor makes no representations or warranties, express or implied, including without limitation the fitness for a particular purpose, regarding the Software or any services provided by Licensor. Risk as to the results and performance of the Software is assumed by Licensee.

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Licensee or Licensor.

BE A MENTOR, INC.

**OAKLAND
UNIFIED SCHOOL DISTRICT**


By: _____
Robert Goetsch, President
(510) 342-7171
goetsch@beamentor.org


By: _____

Date: _____

Date: 8/26/2020

Approved as to form by OUSD Staff Attorney Joanna Powell on 7/30/2020.



SCHEDULE A

School Year 2020 - 2021

Schedule A is an integral part of the Hosted Software Agreement between Be A Mentor, Inc, (BAM) and Oakland Unified School District (Customer) signed and dated on July 1, 2020 and includes services related to the use of the hosted software

<u>Hosted Software License Agreement</u>	<u>Cost</u>
Use of VMS as an online application residing on a Be A Mentor, Inc servers for the purposes of application processing, conducting background screening and clearances, and tracking ongoing arrest records.	\$ 3,000 Annual

B. Services for Vendor Contracting

<u>Background Clearance Services</u>	
Be A Mentor conducts background clearances on your Vendor applicants who are transferred to BAM database via web services. \$ 50 per vendor application up to 120 applicants	\$50 * 120 = \$ 6,000
Subsequent Arrest Notification Processing	Included
Customer support regarding applicant clearance matters – 10 hrs @ \$90 / hr.	\$90 * 10 = \$ 900

<u>Optional Services</u>	
Ongoing technical support to trained licensee/Customer Site Coordinator(s)	Included in license fee
Custom Queries and reports	\$ 300 - \$ 600
Custom Application Programming	\$ 150 per hour

SCHEDULE A

School Year 2020 - 2021

Summary of Charges

1. Hosted Software Agreement Annual License Fee	\$ 3,000
2. Background Clearance for up to 120 vendors (invoiced monthly)	Not to exceed \$ 6,000
	\$ 900
3. Customer support regarding applicant clearance matters	
Total	Not to exceed \$ 9,900 =====

Indemnification

BAM, acting on behalf of Customer agrees to implement the Services for Vendor Contracting described above with the intent of conducting a background clearance investigation on vendor applicants. BAM relies on key information provided by applicants to be correct and accurate for conducting such background investigations.

BAM and Customer each indemnify, and hold harmless the other, including their respective officers, agents, and employees, from and against any actions, losses, costs, penalties, obligations, claims, judgments, attorneys' fees, attachments errors, omissions, or liabilities, including legal costs, attorney fees, and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered against either, arising from or growing out of the Services for Vendor Contracting described above under this agreement or in any way connected with the performance of responsibilities under this Schedule A.

This document replaces the Schedule A for period of 2019 – 2020 School year and is agreed upon for the period of July 1, 2020 through June 30, 2021

Be A Mentor, Inc.

Oakland Unified School District



Robert Goetsch
President



Jody London, President,
BOE



Susan Beltz
Chief Technology Officer

Date: July 1, 2020

Kyla Johnson-Trammell,
Secretary, BOE

Date: 8/26/2020

Approved as to form by OUSD Staff Attorney Joanna Powell on 7/30/2020.

