

| Board Office Use: Legislative File Info. | |
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| File ID Number | 21-1005 |
| Introduction Date | 05/12/2021 |
| Enactment Number | 21-0723 |
| Enactment Date | 05/12/2021 |



**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent

Board Meeting Date May 12, 2021

Subject Professional Service Agreement 2020-2021

Contractor: Restroom Alert, LLC, Fleming Island, FL

Services for: 913-Office of the Chief of Systems and Services

Action Requested and Recommendation Ratification by the Board of Education of a Professional Services Agreement 2020-2021 between the District and Restroom Alert, LLC, Fleming Island, FL, for the latter to provide: restroom Alert is a text feedback system that helps keep restrooms clean and well-stocked. It works by allowing the faculty, visitors and students to send a short text message, the system then replies that the message has been received and notifies cleaning staff instantly. It tracks when restrooms are scheduled to be serviced, and logs all staff activity for reporting to management to hold staff accountable. This system replaces handwritten log sheets that are affixed to the back of restroom doors for the period of March 30, 2021 through June 30, 2021 in an amount not to exceed \$5,000.00.

Background
(Why do we need these services. Why have you selected this vendor?) Custodial Services has assessed the existing restroom management system and identified a new interactive application that has the ability to enhance and sustain a high level of customer satisfaction through service responsiveness in real time. The Restroom Alert management system allows the custodial services management team to analyze recurring problem locations, shifts, inventory utilization, employee activities and restrooms activities in order to help determine areas of improvement. The Restroom Alert management system provides a convenient tool for monitoring restroom cleanliness and improving restroom service. The interactive system enables staff, students, parents and the community to submit a text request for service. After a request is submitted, the system transmits an email/SMS alert to the electronic device of the designee, who then initiates the appropriate corrective action the custodial management team also receives the alert. Custodians are required to

Competitively Bid Was this contract competitively bid? ____ Yes ☒ No

If No, List Bid Exception: Professional Services Agreement under \$90.2K

Fiscal Impact Funding Resource name(s) (detailed below) not to exceed \$5,000.00.

Resource Name(s) \$5,000.00 Elem&Scdry Schl EmgncyRelief

Attachments: Professional Services Agreement including Scope of Work

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**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

PROFESSIONAL SERVICES AGREEMENT 2020-2021

This Professional Services Agreement (“Agreement”) is a legally binding contract entered into between the Oakland Unified School District (“OUSD”) and the below named entity or individual (“VENDOR,” together with OUSD, “PARTIES”):

Restroom Alert, LLC, Fleming Island, FL

The PARTIES hereby agree as follows:

1. **Term.**

- a. This Agreement shall start on the below date (“Start Date”):

March 30, 2021

If no Start Date is entered, then the Start Date shall be the latest of the dates on which each of the PARTIES signed this Agreement.

- b. The work shall be completed no later than the below date (“End Date”):

June 30, 2021

If no End Date is entered, then the End Date shall be the first June 30 after the Start Date.

2. **Services.** VENDOR shall provide the services (“Services”) as described in #1A and #1B of **Exhibit A**, attached hereto and incorporated herein by reference. To the extent that there may be a school closure (e.g., due to poor air quality, planned loss of power, COVID-19) or similar event in which school sites and/or District offices may be closed or otherwise inaccessible, VENDOR shall describe in #1B of **Exhibit A** whether and how its services would be able to continue.

3. **Alignment and Evaluation.**

- a. VENDOR agrees to work and communicate with OUSD staff, both formally and informally, to ensure that the Services are aligned with OUSD's mission and are meeting the needs of students as determined by OUSD.
- b. OUSD may evaluate VENDOR in any manner which is permissible under the law. OUSD's evaluation may include, without limitation: (i) requesting that OUSD employee(s) evaluate the performance of VENDOR, each of VENDOR's employees, and each of VENDOR's subcontractors, and (ii) announced and unannounced observance of VENDOR, VENDOR's employee(s), and VENDOR's subcontractor(s).

4. **Inspection and Approval.** VENDOR agrees that OUSD has the right and agrees to provide OUSD with the opportunity to inspect any and all aspects of the Services performed including, but not limited to, any materials (physical or electronic) produced, created, edited, modified, reviewed, or otherwise used in the preparation, performance, or evaluation of the Services. In accordance with Paragraph 8 (Compensation), the Services performed by VENDOR must meet the approval of OUSD, and OUSD reserves the right to direct VENDOR to redo the Services, in whole or in part, if OUSD, in its sole discretion, determines that the Services were not performed in accordance with this Agreement.

5. **Data and Information Requests.** VENDOR shall timely provide OUSD with any data and information OUSD reasonably requests regarding students to whom the Services are provided. Unless OUSD communicates to VENDOR in writing otherwise, VENDOR shall register with and maintain current information within OUSD's Enrichment Provider database. If and when VENDOR's programs and school site(s) change (either midyear or in subsequent years), VENDOR shall promptly update the information in the database.

6. **Confidentiality and Data Privacy.**

- a. OUSD may share information with VENDOR pursuant to this Agreement in order to further the purposes thereof. VENDOR and all VENDOR's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services,

provided such information is (i) marked or identified as “confidential” or “privileged,” or (ii) reasonably understood to be confidential or privileged.

- b. VENDOR understands that student data is confidential. If VENDOR will access or receive student data in connection with this Agreement, it agrees to do so only after executing the [California Student Data Privacy Agreement](#) (“CSDPA”), which shall be incorporated by reference into this Agreement upon execution. All confidentiality requirements, including in the CSDPA, extend beyond the termination of this Agreement.

- 7. **Copyright/Trademark/Patent/Ownership.** VENDOR understands and agrees that all matters produced under this Agreement, excluding any intellectual property that existed prior to execution of this Agreement, 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. 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 VENDOR, its employees, or its subcontractors in connection with the Services performed under this Agreement. VENDOR cannot use, reproduce, distribute, publicly display, perform, alter, remix, or build upon matters produced under this Agreement without OUSD’s express written permission. OUSD shall have all right, title and interest in said matters, including the right to register the copyright, trademark, and/or patent of said matter in the name of OUSD. OUSD may, with VENDOR’s prior written consent, use VENDOR’s name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

- 8. **Compensation.** OUSD agrees to pay VENDOR for satisfactorily rendering Services in accordance with this Paragraph, Paragraph 10 (Invoicing), and #1C in **Exhibit A**.

- a. The compensation under this Agreement shall not exceed:

Five Thousand Dollars and 00/100

\$5,000.00

This sum shall be for full performance of this Agreement and includes all fees, costs, and expenses incurred by VENDOR including, but not limited to, labor, materials, taxes, profit, overhead, travel, insurance, permitted subcontractor costs, and other costs.

- b. OUSD shall not pay and shall not be liable to VENDOR for any costs or expenses paid or incurred by VENDOR not described in **Exhibit A**.
 - c. Payment for Services shall be made for all undisputed amounts no more frequently than in monthly installment payments within sixty (60) days after VENDOR submits an invoice to OUSD, in accordance with Paragraph 10 (Invoicing), for Services actually performed and after OUSD's written approval that Services were actually performed. The granting of any payment by OUSD, or the receipt thereof by VENDOR, shall in no way lessen the liability of VENDOR to correct unsatisfactory performance of Services, even if the unsatisfactory character of the performance was not apparent or detected at the time a payment was made. If OUSD determines that VENDOR's performance does not conform to the requirements of this Agreement, VENDOR agrees to correct its performance without delay.
 - d. Compensation for any Services performed prior to the Start Date or after the End Date shall be at OUSD's sole discretion and in an amount solely determined by OUSD. VENDOR agrees that it shall not expect or demand payment for the performance of such services.
 - e. 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.
9. **Equipment and Materials.** VENDOR shall provide all equipment, materials, and supplies necessary for the performance of this Agreement.

10. **Invoicing.** Invoices furnished by VENDOR under this Agreement must be in a form acceptable to OUSD.

- a. All amounts paid by OUSD shall be subject to audit by OUSD. Invoices shall include, without limitation: VENDOR name, VENDOR address, invoice date, invoice number, purchase order number, name of school or department to which Services were provided, name(s) of the person(s) performing Services, date(s) Services were rendered, brief description of Services provided on each date, the total invoice amount, and the basis for the total invoice amount (e.g., if hour rate, the number of hours on each date and the rate for those hours).
- b. If OUSD, at its sole discretion, determines an invoice fails to include the required elements, OUSD will not pay the invoice and will inform VENDOR of the missing items; VENDOR shall resubmit an invoice that includes the required elements before OUSD will pay the invoice.
- c. OUSD reserves the right to add or change invoicing requirements. If OUSD does add or change invoicing requirements, it shall notify VENDOR in writing and the new or modified requirements shall be mandatory under receipt by VENDOR of such notice.
- d. To the extent that VENDOR has described how the Services may be provided both in-person and not in-person, VENDOR's invoices shall—in addition to any invoice requirement added or changed under subparagraph (c)—indicate whether the Services are provided in-person or not.
- e. All invoices furnished by VENDOR under this Agreement shall be delivered to OUSD via email unless OUSD requests, in writing, a different method of delivery.

11. **Termination.**

- a. For Convenience by OUSD. OUSD may at any time terminate this Agreement upon thirty (30) days prior written notice to VENDOR. OUSD shall compensate VENDOR for services satisfactorily provided through the date of termination. 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 thirty (30) days

- after the notice was provided, whichever is later.
- b. Due to COVID-19. Notwithstanding Paragraph 19 (Coronavirus/ COVID-19) or any other language of this Agreement, if a shelter-in-place (or similar) order due to COVID-19 is issued or is in effect 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.
 - c. For Cause. Either PARTY may terminate this Agreement by giving written notice of its intention to terminate for cause to the other PARTY. Written notice shall contain the reasons for such intention to terminate. Cause shall include (i) material violation of this Agreement or (ii) if either PARTY is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency. 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 three (3) days after the notice was provided, whichever is later, unless the condition or violation ceases or satisfactory arrangements for the correction are made.
 - d. Upon termination, VENDOR shall provide OUSD with all materials produced, maintained, or collected by VENDOR pursuant to this Agreement, whether or not such materials are complete or incomplete or are in final or draft form.
12. **Legal Notices.** All legal notices provided for under this Agreement shall be sent via email to the email address set forth below and shall be either (i) personally delivered during normal business hours or (ii) sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other PARTY at the address set forth below.

OUSD

Name: Joshua R. Daniels
Site/Dept: Office of General Counsel
Address: 1000 Broadway, Suite 300
City, ST Zip: Oakland, CA 94607
Phone: 510-879-8535
Email: ousdlegal@ousd.org

VENDOR

Name: Ken Stone
Title: Managing Partner (LLP)
Address: 5000 US Highway 17S, Ste 18-209
City, ST Zip: Fleming Island, FL 32003
Phone: 949-616-0194
Email: Ken@RestroomAlert.com

Notice shall be effective when received if personally served or emailed or, if mailed, three days after mailing. Either PARTY must give written notice of a change of mailing address or email.

13. Status.

- a. This is not an employment contract. VENDOR, in the performance of this Agreement, shall be and act as an independent contractor. VENDOR understands and agrees that it and any and all of its employees shall not be considered employees 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. VENDOR 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 VENDOR's employees.

- b. If VENDOR is a natural person, VENDOR verifies all of the following:
 - (i) VENDOR is free from the control and direction of OUSD in connection with VENDOR's work;
 - (ii) VENDOR's work is outside the usual course of OUSD's business; and
 - (iii) VENDOR is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed for OUSD.
- c. If VENDOR is a business entity, VENDOR verifies all of the following:
 - (i) VENDOR is free from the control and direction of OUSD in connection with the performance of the work;
 - (ii) VENDOR is providing services directly to OUSD rather than to customers of OUSD;
 - (iii) the contract between OUSD and VENDOR is in writing;
 - (iv) VENDOR has the required business license or business tax registration, if the work is performed in a jurisdiction that requires VENDOR to have a business license or business tax registration;
 - (v) VENDOR maintains a business location that is separate from the business or work location of OUSD;
 - (vi) VENDOR is customarily engaged in an independently established business of the same nature as that involved in the work performed;
 - (vii) VENDOR actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from OUSD;
 - (viii) VENDOR advertises and holds itself out to the public as available to provide the same or similar services;
 - (ix) VENDOR provides its own tools, vehicles, and equipment to perform the services;
 - (x) VENDOR can negotiate its own rates;
 - (xi) VENDOR can set its own hours and location of work; and
 - (xii) VENDOR is not performing the type of work for which a license from the Contractor's State License Board is required, pursuant to Chapter 9 (commencing with section 7000) of Division 3 of the Business and Professions Code.

14. **Qualifications and Training.**

- a. VENDOR represents and warrants that VENDOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of OUSD. VENDOR will performed the Services in accordance with generally and currently accepted principles and practices of its profession for services to California school districts and in accordance with applicable law, code, rule, regulation, and/or ordinance. All VENDOR employees and agents shall have sufficient skill and experience to perform the work assigned to them.
- b. VENDOR represents and warrants that its employees and agents are specially trained, experienced, competent and fully licensed to provide the Services identified in 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, if VENDOR was selected, at least in part, on such representations and warrants.

15. **Certificates/Permits/Licenses/Registration.** VENDOR's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this Agreement.

16. **Insurance.**

- a. Commercial General Liability Insurance. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR shall maintain Commercial General Liability Insurance, including automobile coverage, with limits of at least one million dollars (\$1,000,000) per occurrence for corporal punishment, sexual misconduct, harassment, bodily injury and property damage. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured with the additional insured endorsement provided to OUSD within 15 days of effective date of this Agreement (and within 15 days of each new policy year thereafter during the term of this Agreement). Evidence of insurance shall be attached to this Agreement or otherwise provided to OUSD upon request. 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 VENDOR. The policy shall protect VENDOR 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.

- b. Workers' Compensation Insurance. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR 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 (including, but not limited to, Labor Code section 3700) and Federal laws when applicable. Employers' Liability Insurance shall not be less than one million dollars (\$1,000,000) per accident or disease.

17. **Testing and Screening.**

- a. Tuberculosis Screening. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR is required to screen employees who will be working at OUSD sites for more than six hours. VENDOR agents who work with students must submit to a tuberculosis risk assessment as required by Education Code section 49406 within the prior 60 days. If tuberculosis risk factors are identified, VENDOR agents must submit to an intradermal or other approved tuberculosis examination to determine that he/she is free of infectious tuberculosis. If the results of the examination are positive, VENDOR shall obtain an x-ray of the lungs. VENDOR, at its discretion, may choose to submit the agent to the examination instead of the risk assessment.
- b. Fingerprinting/Criminal Background Investigation. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR is required to fingerprint and conduct a criminal background investigation in accordance with Education Code section 45125.1 and, through its execution of this Agreement, VENDOR certifies its compliance with these provisions as follows:

VENDOR has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all VENDOR's employees, subcontractors, agents, and subcontractors' employees or agents ("Workers") regardless of whether those Workers

are paid or unpaid, concurrently employed by OUSD, or acting as independent contractors of VENDOR, who may have contact with OUSD pupils in the course of providing Services pursuant to this Agreement, and the California Department of Justice has determined that none of those Workers has been convicted of a felony, as that term is defined in Education Code section 45122.1. VENDOR has also received and reviewed fingerprint results for each Worker and VENDOR has requested and reviewed subsequent arrest records for all Workers who may come into contact with OUSD pupils in providing services to OUSD under this Agreement.

Notwithstanding this certification, VENDOR agrees to immediately remove or cause the removal of any employee, representative, agent, or person under VENDOR's control person from OUSD property upon receiving notice from OUSD of such desire. OUSD is not required to provide VENDOR with a basis or explanation for the removal request.

18. Incident/Accident/Mandated Reporting.

- a. VENDOR shall notify OUSD, via email pursuant to Paragraph 12 (Legal Notices), within twelve (12) hours of learning of any significant accident or incident. Examples of a significant accident or incident include, without limitation, an accident or incident that involves law enforcement, possible or alleged criminal activity, or possible or actual exposure to a communicable disease such as COVID-19. VENDOR shall properly submit required accident or incident reports within one business day pursuant to the procedures specified by OUSD. VENDOR shall bear all costs of compliance with this Paragraph.
- b. To the extent that an employee, subcontractor, agent, or representative of VENDOR is included on the list of mandated reporters found in Penal Code section 11165.7, VENDOR agrees to inform the individual, in writing that they are a mandated reporter, and describing the associated obligations to report suspected cases of abuse and neglect pursuant to Penal Code section 11166.5.

19. Coronavirus/COVID-19.

- a. Through its execution of this Agreement, VENDOR declares that

it is able to meet its obligations and perform the Services required pursuant to this Agreement 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. To the extent that VENDOR provides Services in person and consistent with the requirements of Paragraph 10 (Invoicing), VENDOR agrees to include additional information in its invoices as required by OUSD if any Orders are issued by local or state authorities that would prevent VENDOR from providing Services in person.
 - c. Consistent with the requirements of Paragraph 18 (Incident/Accident/Mandated Reporting), VENDOR agrees to notify OUSD, via email pursuant to Paragraph 12 (Legal Notices), 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.
 - d. 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.
 - e. VENDOR shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.
20. **Assignment.** The obligations of VENDOR under this Agreement shall not be assigned by VENDOR without the express prior written consent of OUSD and any assignment without the express prior written consent of OUSD shall be null and void.
21. **Non-Discrimination.** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, VENDOR 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, VENDOR agrees to require like compliance by all its subcontractor (s). VENDOR 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, sexual orientation, or other legally protected class.

22. **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, VENDORS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.
23. **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 this Agreement.
24. **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.
25. **Conflict of Interest.**
 - a. VENDOR shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest. VENDOR shall not hire any officer or employee of OUSD to perform any service by this Agreement without the prior approval of OUSD Human Resources.
 - b. VENDOR affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between VENDOR'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.
 - c. Through its execution of this Agreement, VENDOR acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event VENDOR receives any

information subsequent to execution of this Agreement which might constitute a violation of said provisions, VENDOR agrees it shall notify OUSD in writing.

26. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Through its execution of this Agreement, VENDOR certifies to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).
27. **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 described in Paragraph 8 (Compensation). 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.
28. **Indemnification.**
 - a. To the furthest extent permitted by California law, VENDOR shall indemnify, defend and hold harmless OUSD, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("OUSD Indemnified Parties") from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of VENDOR's performance of this Agreement. VENDOR also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by any supplier, VENDOR, or subcontractor furnishing work, services, or materials to VENDOR arising out of the performance of this Agreement. VENDOR shall, to the fullest extent permitted by California law, defend OUSD Indemnified Parties at VENDOR's own expense, including attorneys' fees and costs, and OUSD shall have the right to accept or reject any legal

representation that **VENDOR** proposes to defend **OUSD Indemnified Parties**.

- b. To the furthest extent permitted by California law, **OUSD** shall indemnify, defend, and hold harmless **VENDOR**, its Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("**VENDOR Indemnified Parties**") from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of **OUSD's** performance of this Agreement. **OUSD** shall, to the fullest extent permitted by California law, defend **VENDOR Indemnified Parties** at **OUSD's** own expense, including attorneys' fees and costs.
29. **Audit.** **VENDOR** shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of **VENDOR** transacted under this Agreement. **VENDOR** shall retain these books, records, and systems of account during the term of this Agreement and for three (3) years after the End Date. **VENDOR** shall permit **OUSD**, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to Services covered by this Agreement. Audit(s) may be performed at any time, provided that **OUSD** shall give reasonable prior notice to **VENDOR** and shall conduct audit(s) during **VENDOR'S** normal business hours, unless **VENDOR** otherwise consents.
 30. **Litigation.** This Agreement shall be deemed to be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.
 31. **Incorporation of Recitals and Exhibits.** Any recitals and exhibits attached to this Agreement are incorporated herein by reference. **VENDOR** agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Professional Services Contract, the terms and provisions of this Professional Services Contract shall govern.

32. **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.
33. **Severability.** If any term, condition or provision of 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 and effect, and shall not be affected, impaired or invalidated in any way.
34. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
35. **Captions and Interpretations.** Section and paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a PARTY because that PARTY or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the PARTIES.
36. **Calculation of Time.** For the purposes of this Agreement, “days” refers to calendar days unless otherwise specified and “hours” refers to hours regardless of whether it is a work day, weekend, or holiday.
37. **Counterparts and Electronic Signature.** This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either PARTY and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing PARTY and the receiving PARTY may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been

received. Through its execution of this Agreement, each PARTY waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.

38. **W-9 Form.** If VENDOR is doing business with OUSD for the first time, VENDOR acknowledges that it must complete and return a signed W-9 form to OUSD.
39. **Agreement Publicly Posted.** This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
40. **Signature Authority.**
 - a. Each PARTY has the full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each PARTY has been given the proper authority and empowered to enter into this Agreement.
 - 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 Agreement or as legally binding in any way.
41. **Contract Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Agreement 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 BLACK


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

VENDOR

Name: Restroom Alert, LLC Signature: Ken Stone
Position: Managing Partner (LLP) Date: 04/12/2021

One of the terms and conditions to which VENDOR agrees by its signature is subparagraph (e) of Paragraph 8 (Compensation), which states that 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: PRESTON THOMAS Signature: 
Position: Chief Sys & Serv Officer Date: 04/12/2021
☐ Board President
☐ Superintendent
☒ Chief/Deputy Chief


Name: Kyla Johnson-Trammell Signature: 
Position: Secretary, Board of Education Date: 05/15/2021

EXHIBIT A

- 1A. **General Description of Services to be Provided:** *Provide a description of the service(s) VENDOR will provide.*

See Attached Scope of Work

- 1B. **Description of Services to be Provided During School Closure or Similar Event:** *If there is a school closure (e.g., due to poor air quality, planned loss of power, COVID-19) or similar event in which school sites and/or District offices may be closed or otherwise inaccessible, would services be able to continue?*

☐

No, services would not be able to continue.

☒

Yes, services would be able to continue as described in 1A.

☐

Yes, but services would be different than described in 1A. Please briefly describe how the services would be different.

- 1C. **Rate of Compensation:** *Please describe the basis by which compensation will be paid to VENDOR:*

Rate Type: Monthly Rate

Rate Amount: \$5,000.00 per Month

2. **Specific Outcomes:** (A) *What are the expected outcomes from the services of this Agreement? Please be specific. For example, as a result of the service(s): How many more OUSD students will graduate from high school? How many more OUSD students will attend school 95% or more? How many more OUSD students will have meaningful internships and/or paying jobs? How many more OUSD students will have access to, and use, the health services they need?* (B) *Please describe the measurable outcomes specific to the services. Please complete the sentence prompt: "Participants will be able to..."* C. *If applicable, please provide details of program participation. Please complete the sentence prompt: "Students will..."*

This service will allow custodians to receive up-to-date notices on the status of school site restrooms.

Performance Monitoring during Pilot Phase - Through a multi-step training program, we will confirm designated staff have been trained on the following:

Checking In/Checking Out via SMS; Adding App to Home Screen; Signing into Smart Clipboard App; Understanding Metrics That Matter; Understanding Rooms List; How to Switching Locations and Navigate App; Installing Signage and Activating Rooms; Sending an Alert; Clearing an Alert; Logging Room Check; Logging QC Check; Adding a Repair Request; Signing into Manager's Portal; Adding and Modifying Policies & Cleaning Schedules; Adding and Modifying Check Lists; Subscribing to Automated Reports

Updating Notification Settings; Performing UV Audits; Managing Team Meetings with

3. **Alignment with Single Plan for Student Achievement – SPSA (required if using State or Federal Funds):** *Please select the appropriate option below:*

☐

Action Item included in Board Approved SPSA (no additional documentation required) – Item Number(s):

☐

Action Item added as modification to Board Approved SPSA – VENDOR agrees to submit the following documents to the Resource Manager either electronically via email of scanned documents, fax or drop off.

- Relevant page of SPSA with action item highlighted. Page must include header with the word "Modified", modification date, school site name, both principal and school site council chair initials and date.
- Meeting announcement for meeting in which the SPSA modification was approved.
- Minutes for meeting in which the SPSA modification was approved indicating approval of the modification.
- Sign-in sheet for meeting in which the SPSA modification was approved.

4. **Waivers:** *OUSD has waived the following:*

- ☐ Commercial General Liability Insurance
- ☐ Workers' Compensation Insurance
- ☒ Tuberculosis Screening
- ☒ Fingerprinting/Criminal Background Investigation

Vendor has no student interaction

<Restroom Alert>

IMPLEMENTATION PLAN

Version *<1.0>*

<1/14/2021>

Introduction

I. Purpose

Custodial Services has assessed the existing restroom management system and identified a new interactive application that has the ability to enhance and sustain a high level of customer satisfaction through service responsiveness in real time. The Restroom Alert management system allows the custodial services management team to analyze recurring problem locations, shifts, inventory utilization, employee activities and restrooms activities in order to help determine areas of improvement.

The Restroom Alert management system provides a convenient tool for monitoring restroom cleanliness and improving restroom service. The interactive system enables staff, students, parents and the community to submit a text request for service. After a request is submitted, the system transmits an email/SMS alert to the electronic device of the designee, who then initiates the appropriate corrective action the custodial management team also receives the alert. Custodians are required to log into the system with their unique ID card to enable the system to document scheduled restroom inspections, response times, and completed tasks.

Goal Statement:

- Develop and sustain a high level of customer satisfaction through service delivery.
- Determine current level of customer satisfaction with service delivery and provide a convenient means of customer feedback in order to perform regular ongoing satisfaction evaluation.
- Identify opportunities to improve customer satisfaction.
- Identify and evaluate custodial training needs.
- Develop and implement standardized operating procedures.
- Develop, implement, and sustain an efficient budget allocation structure.
- Identify and implement cost saving practices, policies, and technologies.
- Develop and implement program improvements that recognize, motivate, and reward safe workforce performance.

II. System Overview

VENDOR INPUT

Restroom Alert is a text feedback system that helps keep restrooms clean and well-stocked.

It works by allowing the faculty, visitors and students to send a short text message, the system then answers back with an apology and notifies cleaning staff instantly.

It tracks when restrooms are scheduled to be serviced, and logs all staff activity for reporting to management to hold staff accountable.

Just think of it as replacing the handwritten log sheet you used to see on the back of restroom doors.

Reporting of metrics can be automated on a daily, weekly, and/or monthly basis

III. System Description

VENDOR INPUT

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Reporting of metrics can be automated on a daily, weekly, and/or monthly basis

IV. Constraints

Budgetary - On Going cost associated with monthly service fee

Staffing deficiencies; employee and managerial.

V. Management Overview

Custodial Management: Monthly review of system performance, strategies regarding system improvements

Field Supervisors: Quality Assurance; ensuring that the site custodian is fulfilling the requests and collaborating with the site and incorporating email/Restroom Alert checks into Standard Operating Procedures.

Head Custodians: Facilitate onsite services requests and incorporating email/Restroom Alert checks into Standard Operating Procedures.

School site Office Staff: ensuring that the site custodian is fulfilling the requests and collaborating with the Field Supervisor (Pilot sites provide feedback on this process)

Custodial Services Office Staff: monitor services requests, collaborate with Field Supervisors and School site staff.

VI. Description of Implementation

Currently Custodians document and record restroom inspections via Restroom Reports, submitting reports weekly for Field Supervisor review. Using the new Restroom Alert system, custodial staff will be able to use electronic devices to more efficiently track and record restroom inspections as well as better respond to service requests. The implementation of the new restroom alert system will take place over the course of 5 phases:

Phase 1. School Site Assessments:

- 1.1: Field Supervisors & Custodians will be issued a *template* Spreadsheet to document and record the physical location, room number and description of all restrooms;
- 1.2: Field Supervisors & Custodians will assess, document and record the physical location, room number and description of all restrooms using the assigned template spreadsheet;
- 1.3: Field Supervisors & Custodians will submit completed template spreadsheet to their Field Supervisor
- 1.4: Once all of the above information has been vetted, Custodial Services management team will submit to the vendor for processing

Phase 2: Receive & Install Coded Signage:

- 2.1: Upon receipt of the coded signage from vendor, Custodial Services will distribute the signage to each school site; prioritizing sites that actually have students attending
- 2.2: Field Supervisors & Custodians will place signage in the designated areas

Phase 3: Tech Distributions to Custodians:

- 3.1: Management creates a inventory of all newly assigned devices
- 3.2: Custodial staff check out assigned device from Management using inventory tracking log

Phase 4: Train All Custodians & Management on Device functionality , Restroom Alert Application, Daily Expectations and Procedures:

- 4.1 Restroom Alert Technician trains OUSD Custodial Management team on the Restroom Management system
- 4.2 Management develops operational expectations and protocols
- 4.3 Management schedules Meet and Confer confer with union regarding new protocols and procedures (Contract Reference)

Duties and activities and workplace and responsibilities

- Upgrade to use technology and upgrade
- Use of data to support
- Transferring from restroom expectations from paper to electronic

- 4.4 Management schedules all Custodial Trainings with Restroom Alert Technician; slide deck presentation
- 4.5 Management conducts survey to gather feedback and identify need for additional technical assistance at the conclusion of all training sessions; possible one on one support

Phase 5: Community Engagement / How to Guide

5.1 Provide the school site administrators with expectations and procedures

5.2 Conduct a Q&A session with site administrators

5.3 Provide one pager to school sites/ how to guide developed by vendor based on expertise in roll out in other school systems

5.4 Conduct an evaluation of functionality and performance from Principals for process improvements one month following implementation

VI. Implementation Schedule

Enabling Conditions:

- Schools that are tracking the cleaning of classrooms are better prepared to implement Restroom Alert
- Staffing at school sites are all trained
- Distribution of technology on site.
- Dry runs for each site that tracks the implementation
- Meeting with Administration at the site and Safety Leads at the school site.
- Meeting with Network Superintendents (update)

| Date | Task |
|----------------------------------|--|
| January 2021 | School Site Assessments |
| February 2021 (Phase 1: 2/15) | Install Coded Signage Tech Distribution Train Management Develop Protocols and Procedures |
| March 2021 (Phase 2: 3/16) | Open at Learning Hubs and Schools Reopening Train Pilot Program Personnel Implement Pilot programs |
| April 2021 | |
| May 2021 | Train All Custodians |
| June 2021, - July 2021 | Train All Custodians |
| August 2021 | School Site Engagement System Rollout |

VII. Security/Privacy

***VENDOR'S RESPONSE**

Outside of direct communication regarding the restroom event, WE DO NOT SEND TEXT OR EMAIL OF ANY KIND to restroom users, other than a system generated apology. In no case are restroom users (your faculty, visitors, students, or anyone who interacts with our system) phone numbers marketed to, shared or exposed to any users of the system internally or externally. Privacy and anonymity are paramount in the success of our service.

Restroom Alert™ stores, archives, and encrypts all data on a daily basis, with weekly off-site backups for redundancy. We can provide subscribers with a copy of their data with a written request (or email). We have no practical method to remove archived data from encrypted backups.

Standard Users have full access to the Subscriber Portal, as well as our Smart Clipboard™ mobile app. An Admin or Super Admin can add as many Standard Users as needed without any additional fees.

For Standard Users , we collect and store:

- Email Address*
- Work Phone Number
- Mobile Phone Number*
- First and Last Name*
- Title
- Employee ID
- Role*
- Gender*
- Primary Location*
- Opt-In / Opt-Out for Email and/or SMS Text Notifications
- Notes

*required fields

VIII. System Security Features

VENDORS RESPONSE

The system runs entirely on the web as a Progressive Web App. There is nothing to download, nothing to install, and therefore... no additional security measures are necessary.

If there is a catch-all firewall, then IT will need to whitelist the following web addresses to ensure our website works so users can access the portal and our app:

- <https://smartclipboard.net>
- <https://app.restroomalert.com>
- <https://app.restroomalert.com/smartcb>
- <https://ws.pusherapp.com>
- <https://pusherapp.com>
- <https://stats.pusher.com>
- <https://pusher.com>
- https://*.pusher.com

- https://*.pusherapp.com

IX. Implementation Support

X. Software

***VENDOR'S RESPONSE ***

The system runs entirely on the web as a Progressive Web App. There is nothing to download, nothing to install. All updates are done automatically on the server side.

Release numbers are noted at the bottom of the sign-in screen of the web app. Restroom Alert retains all ownership and rights to all data.

There are no hidden or additional costs for our realtime restroom management system beyond the flat monthly rate of \$15.00 per room, per month (or \$10/mo/room for 1000+ room volume discount).

Technical Overview can be found here:

https://drive.google.com/file/d/1ePg68kV1l_fF1F7qVyNMHLdI-o88fKMy/view

Personnel

[This subsection of the Project Implementation Plan describes committed and proposed staffing requirements. Describe the training, if any, to be provided for the implementation staff.]

Staffing Requirements

Implementation of Training Staff

[This subsection of the Project Implementation Plan addresses the training, if any, necessary to prepare staff for implementing the system; it does not address user training, which is the subject of the Software Training Plan.]

Describe the type and amount of training required for each of the following areas, if appropriate, for the system:

- *System hardware/software installation*
- *System support*
- *System maintenance and modification*

List the courses that will be provided, a course sequence, and a proposed schedule. If appropriate, identify which courses particular types of staff should attend by job position description.

If one or more commercial vendors will provide training, identify them, the course name(s), and a description of the course content.

If Center staff will provide the training, provide the course name(s) and an outline of the content of each course. Identify the resources, support materials, and proposed instructors required to teach the course(s).]

Outstanding Issues

- License Subscription Contract
- Union Meet & Confer

Implementation Impact

[This subsection of the Project Implementation Plan describes how the system's implementation is expected to impact the network infrastructure, support staff, user community, etc. Include any references to Service Level Agreements which describe the performance requirements, availability, security requirements, expected response times, system backups, expected transaction rates, initial storage requirements with expected growth rate, as well as help desk support requirements.

If impacts are site-specific, provide this information in Section 4, Implementation Requirements by Site.]

Performance Monitoring

VENDOR'S RESPONSE

Through a multi-step training program, we will confirm designated staff have been trained on the following:

- Checking In/Checking Out via SMS
- Adding App to Home Screen
- Signing into Smart Clipboard App
- Understanding Metrics That Matter
- Understanding Rooms List
- How to Switching Locations and Navigate App
- Installing Signage and Activating Rooms
- Sending an Alert
- Clearing an Alert
- Logging Room Check
- Logging QC Check
- Adding a Repair Request
- Signing into Manager's Portal
- Adding and Modifying Policies & Cleaning Schedules
- Adding and Modifying Check Lists
- Subscribing to Automated Reports
- Updating Notification Settings
- Performing UV Audits
- Managing Team Meetings with Reports (Alert Reports, No Responses, Room Checks and QC Checks)

Implementation Requirements by Site

[This section of the Project Implementation Plan describes site-specific implementation requirements and procedures. If requirements and procedures differ by site, provide this information in an appendix and reference it here.]

The "X" in the subsection number should be replaced with a sequenced number beginning with 1. Each subsection with the same value of "X" is associated with the same implementation site. If a complete set of subsections will be associated with each implementation site, then "X" is assigned a new value for each site.]

4.1 Site Name or Identification for Site X

[This subsection of the Project Implementation Plan identifies the site by name, location and ownership.]

Site Implementation Details

[This subsection of the Project Implementation Plan addresses the specifics of the implementation for this site. Include a description of the implementation team, schedule, procedures, and database and data updates. This subsection should also provide information on the following:

- *Team -- If an implementation team is required, describe its composition and the tasks to be performed at this site by each team member.*
- *Schedule -- Provide the subsection of the master implementation schedule described in paragraph 2.4, Implementation Schedule, above that applies to this site.*
- *Procedures -- Provide the detailed procedures required to accomplish the implementation at this site. If necessary, other documents may be referenced. If appropriate, include a step-by-step sequence of the detailed procedures. A checklist of the installation events may be provided to record the results of the process.*
 - *If the site operations startup is an important factor in the implementation, then address startup procedures in some detail.*
 - *If the system will replace an already operating system, then address the startup and cutover processes in detail.*
 - *If there is a period of parallel operations with an existing system, then address the startup procedures that include technical and operations support during the parallel cycle and the consistency of data within the databases of the two systems.*

- *Database -- Describe the environment where the system and the database(s) will be installed. Include a description of the different types of databases and library environments (such as, production, test, and training databases).*
 - *Reference database operating procedures, database file and library naming conventions, database system generation parameters, and any other information needed to effectively establish the database.*
 - *Reference the database administration testing procedures to be used before the system implementation.*

- *Data Update -- If data update procedures are described in another document, such as the operations manual or conversion plan, that document may be referenced here. The following are examples of information to be included:*
 - *Control inputs*
 - *Operating instructions*
 - *Database data sources and inputs*
 - *Output reports*
 - *Restart and recovery procedures]*

Risks and Contingencies

[This subsection of the Project Implementation Plan identifies the risks and specific actions to be taken in the event the implementation fails or needs to be altered at any point and includes the factors to be used for making the decision. Refer to the Project's Contingency Plan, Risk Management Plan and the Risk Management Process for additional guidance.]

Points-of-Contact

| Role | Name | Contact Number |
|----------------|------|----------------|
| Manager | | |
| Office Support | | |

| | | |
|---------------------------------------|--|--|
| System Developer or System Maintainer | | |
| Training Designee | | |
| | | |