

Board Office Use: Legislative File Info.	
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Introduction Date	12-11-2024
Enactment Number	24-2149
Enactment Date	12/11/2024 CJH



Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Preston Thomas, Chief Systems & Services Officer

Board Meeting Date December 11, 2024

Subject Agreement Between Owner and WCNSM Enterprises, LLC, dba Protect|Education - Pilot Testing of Air Purification Equipment- Division of Facilities Planning and Management

Action Requested Approval by the Board of Education of Agreement between Owner and Contractor by and between the **District and WCNSM Enterprises, LLC, dba Protect|Education**, Cincinnati, OH, for the latter to provide research services, including pilot testing of hospital-grade air purification equipment that does not require filter replacements and evaluate the effectiveness of this technology on a small subset of school sites (Hoover Elementary, Martin Luther King Jr. Elementary, Global Family Elementary, Bridges Academy Elementary, and East Oakland Pride Elementary and all Preschool classrooms), to determine whether the technology will effectively reduce airborne pathogens in the school environment during cold and flu season and lead to increased attendance rates for students, in the amount of **\$912,087.23**, with the work scheduled to commence on **December 12, 2024**, pursuant to the Agreement.

Discussion Competitive bid would be futile, impractical, and cause additional delay and cost. (Los Angeles Dredging Co. v. Long Beach (1930) 210 Cal. 348.) , (Hiller v. City of Los Angeles (1961) 197 Cal.App.2d 685, 694, (Graydon v. Pasadena Redevelopment Agency (1980) 104 Cal.App.3d 631, 635-637), (Meakin v. Steveland (1977) 68 Cal.App.3d 490

LBP (Local Business Participation Percentage) Waived

Recommendation Approval by the Board of Education of Agreement between Owner and Contractor by and between the District and WCNSM Enterprises, LLC, dba Protect|Education, Cincinnati, OH, for the latter to provide research services to determine whether the technology will effectively reduce airborne pathogens in the school environment during cold and flu season and improve the overall attendance rates in the sample schools, in the amount of \$912,087.23, with the work scheduled to commence on December 12, 2024, pursuant to the Agreement.

Fiscal Impact Fund 12 (Oakland Children’s Initiative) and Arts Music Instructional Materials Funding allocated for air quality investments.

- Attachments**
- Contract Justification Form
 - Agreement, including Exhibits
 - Certificate of Insurance
 - Routing Form



CONTRACT JUSTIFICATION FORM

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

Legislative File ID No. 24-3013

Department: Division of Facilities Planning and Management

Vendor Name: ProtectED

Project Name: Pilot Testing of Air Purification Equipment **Project No.:** _____

Contract Term: Intended Start: 12-12-2024 Intended End: 06-30-2025

Total Cost Over Contract Term: \$912,087.23

Approved by: Preston Thomas

Is Vendor a local Oakland Business or has it met the requirements of the

Local Business Policy? Yes (No if Unchecked)

How was this contractor or vendor selected?

Contractor worked with OUSD to supply air filtration systems during the pandemic. They are the sole distributor for the technology in the US that has a proven track record.

Summarize the services or supplies this contractor or vendor will be providing.

Consultant shall deliver WellAir Novaerus Protect 900W (204 units), and WellAir Novaerus Defend 1050 (18 units)

Was this contract competitively bid? Check box for "Yes" (If "No," leave box unchecked)

If "No," please answer the following questions:

1) How did you determine the price is competitive?

Competitive bid would be futile, impractical, and cause additional delay and cost. (Los Angeles Dredging Co. v. Long Beach (1930) 210 Cal. 348.) , (Hiller v. City of Los Angeles (1961) 197 Cal.App.2d 685, 694, (Graydon v. Pasadena Redevelopment Agency (1980) 104 Cal.App.3d 631, 635-637), (Meakin v. Steveland (1977) 68 Cal.App.3d 490

2) Please check the competitive bidding exception relied upon:

Construction Contract:

- Price is at or under UPCCAA threshold of \$60,000 (as of 1/1/19)
- CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- Emergency contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*
- Completion contract – *contact legal counsel to discuss if applicable*
- Lease-leaseback contract RFP process – *contact legal counsel to discuss if applicable*
- Design-build contract RFQ/RFP process – *contact legal counsel to discuss if applicable*
- Energy service contract – *contact legal counsel to discuss if applicable*
- Other: _____ – *contact legal counsel to discuss if applicable*

Consultant Contract:

- Architect, engineer, construction project manager, land surveyor, or environmental services – selected (a) based on demonstrated competence and professional qualifications (Government Code §4526), **and** (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.)
- Architect or engineer *when state funds being used* – selected (a) based on demonstrated competence and professional qualifications (Government Code §4526), (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.), **and** (c) using a competitive process consistent with Government Code §§4526-4528 (Education Code §17070.50)
- Other professional or specially trained services or advice – no bidding or RFP required (Public Contract Code §20111(d) and Government Code §53060) – *contact legal counsel to discuss if applicable*
- For services other than above, the cost of services is \$109,300 or less (as of 1/1/23)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*

Purchasing Contract:

- Price is at or under bid threshold of \$109,300 (as of 1/1/23)
- Certain instructional materials (Public Contract Code §20118.3)
- Data processing systems and supporting software – choose one of three lowest bidders (Public Contract Code §20118.1)

- Electronic equipment – competitive negotiation (Public Contract Code §20118.2) – *contact legal counsel to discuss if applicable*
- CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- Piggyback contract for purchase of personal property (Public Contract Code §20118) – *contact legal counsel to discuss if applicable*
- Supplies for emergency construction contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*
- Other: _____

Maintenance Contract:

- Price is at or under bid threshold of \$109,300 (as of 1/1/23)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss*
- Other: _____

3) Explain in detail the facts that support the applicability of the exception marked above:

- Competitive bid would be futile, impractical, and cause additional delay and cost. (Los Angeles Dredging Co. v. Long Beach (1930) 210 Cal. 348.) , (Hiller v. City of Los Angeles (1961) 197 Cal.App.2d 685, 694, (Graydon v. Pasadena Redevelopment Agency (1980) 104 Cal.App.3d 631, 635-637), (Meakin v. Steveland (1977) 68 Cal.App.3d 490.

AGREEMENT FOR RESEARCH SERVICES AND RELATED ACQUISITION AND PILOT TESTING OF AIR PURIFICATION EQUIPMENT AT FIVE SCHOOL SITES

This Agreement ("Agreement") is dated December 12th, 2024, for reference purposes only, and is made by and between the Oakland Unified School District ("District") and WCNSM Enterprises, LLC, dba Protect|Education, ("Consultant"), (together, "Parties").

WHEREAS, Government Code section 53060 authorizes the District to contract with independent entities for the furnishing of special and professional services and advice, if those persons are specially trained and experienced and competent to perform the services required;

WHEREAS, Consultant represents and warrants that it is the exclusive U.S. distributor of the patented Nanostrike® technology, a patented dielectric barrier discharge (DBD) technology, developed to reduce airborne pathogens, and there is no other available alternative in the market for this technology.

WHEREAS, District wishes to evaluate the effectiveness of this technology on a small subset of school sites that have been identified as representative of Oakland's portfolio of schools (Hoover Elementary, Martin Luther King Jr. Elementary, Global Family Elementary, Bridges Academy Elementary, and East Oakland Pride Elementary, and all Early Childhood Classrooms), to determine whether the technology will effectively reduce airborne pathogens in the elementary school environment during cold and flu season, and whether the technology will reduce student absences in elementary and early childhood classes as a result improving attendance rates, and improving access to classroom instruction;

WHEREAS, in light of the foregoing, a competitive bid would be futile, impractical, and would cause additional delay and additional cost. (*Los Angeles Dredging Co. v. Long Beach* (1930) 210 Cal. 348.), (*Hiller v. City of Los Angeles* (1961) 197 Cal.App.2d 685, 694, (*Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631, 635-637), (*Meakin v. Steveland* (1977) 68 Cal.App.3d 490

WHEREAS, the District is in need of specialized services and advice and the Consultant warrants that it is specially trained, licensed, experienced and competent to perform the services required by the District;

WHEREAS, the Consultant agrees to perform the services described in this Agreement in accordance with the standards of its profession, to District's satisfaction, and in accordance with this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. Services. Consultant shall furnish to the District the services described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services").

2. Term. This Agreement and the Parties' obligations hereunder shall commence on **December 12, 2024** and shall continue until such time as Consultants work is completed, or this Agreement is otherwise terminated prior to that time.

3. Submittal of Documents. The Consultant shall not commence the Services under this Contract until the Consultant has submitted and the District has approved the following documents:

- _____ Signed Agreement
- _____ Insurance Endorsements
- _____ W-9 Form
- _____ Scope of Work
- _____ Fingerprinting/Criminal Background Certificate

4. Compensation. District shall pay Consultant for Services satisfactorily rendered pursuant to this Agreement as shown on **Exhibit A**.

5. Expenses. Expenses will not be charged for Consultant's performance of these Services.

6. Materials. Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.

7. Independent Consultant. Consultant, in the performance of this Agreement, shall be and act as an independent consultant. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partners, or joint venturers of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant 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 Consultant's employees. In the performance of the Services herein contemplated, Consultant shall have the sole authority for controlling and directing the performance of the details of the work. Consultant shall defend, indemnify, and hold harmless the District against any claims that it or any of its employees or agents are employees of the District.

8. Performance of Services / Standard of Care.

8.1. Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession and applicable laws, rules and regulations.

8.1.1. Consultant hereby represents that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of the Agreement.

8.1.2. Consultant shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Consultant understands that the District relies upon such professional quality, accuracy, completeness, and coordination by Consultant in performing the Services.

8.1.3. Consultant shall ensure that any individual performing work under the Agreement requiring a California license shall possess all appropriate licenses, and shall have sufficient skill and experience to perform the work assigned to them.

8.2. Consultant and District agree to participate in regular meetings to discuss strategies, timetables, implementation of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.

8.3. The work completed hereunder must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.

9. Originality of Services. Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.

10. Copyright/Trademark/Patent. Consultant understands and agrees that all matters produced under this Agreement (including without limitation, the study described in Exhibit A) shall become the property of District for all purposes. District grants permission to Consultant to use the Study for marketing purposes. District may use Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

11. Termination.

11.1. For Convenience by District. District may, at any time, with or without reason, terminate this Agreement for convenience by giving notice as specified herein. In case of such termination, Consultant shall be paid the full price of all properly functioning equipment and for services rendered regarding the Study described in **Exhibit A** up to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three (3) calendar days after the day of mailing, whichever is sooner.

11.2. For Cause by District. District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

11.2.1. any material violation of this Agreement by the Consultant; or

11.2.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or

11.2.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and, unless within three (3) calendar days after that notice the condition or violation shall cease or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required Services from another Consultant. If the expense, fees, and/or costs to the District exceeds the cost of providing the Services pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

11.4. Upon termination, Consultant shall provide the District with all documents produced maintained or collected by Consultant pursuant to this Agreement, whether or not such documents are final or draft documents.

12. Indemnification. To the furthest extent permitted by California law, Consultant shall indemnify, and hold harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("the Indemnified Parties") from any and all claims, arising out of, pertaining to or relating to the negligence, recklessness, errors or omissions, or willful misconduct of Consultant. Consultant shall, to the fullest extent permitted by California law, defend the Indemnified Parties at Consultant's own expense, including attorneys' fees and costs, from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant. The District shall have the right to accept or reject any legal representation that Consultant proposes to defend the indemnified parties.

13. Insurance.

13.1 Insurance Requirement

Consultant shall, at his, her, or its sole cost and expense, maintain in full force and effect, during the term of this Agreement, the following insurance coverage from a California licensed and/ or admitted insurer with an A minus (A-), VII, or better rating from A.M. Best, to cover any claims, damages, liabilities, costs and expenses (including legal counsel fees) arising out of or in connection with Consultant's fulfillment of any of its obligations under this Agreement or either party's use of the Work or any component or part thereof:

Commercial General Liability Insurance, including both bodily injury and property

damage, with limits as follows:

\$1,000,000 per occurrence/\$2,000,000 general aggregate

Business Auto Liability Insurance for owned, scheduled, non-owned or hired automobiles with a combined single limit of no less than \$1 million per occurrence. If no owned autos, then non-owned/hired coverage can be accepted.

Workers' Compensation and Employer's Liability Insurance in compliance with California Law. Without limiting any other obligation stated herein, Consultant shall defend, indemnify and hold harmless the District against any claim that it has not properly complied with applicable laws regarding Worker's Compensation.

Errors & Omissions (Professional Liability) coverage
[not required].

13.2. Proof of Carriage of Insurance.

Consultant, upon execution of this contract and periodically thereafter upon request, shall furnish District with certificates of insurance evidencing such coverage. The Commercial General and Automobile Liability policies shall name the District as additional insureds with respect to any potential tort liability, irrespective of whether such potential liability might be predicated on theories of negligence, strict liability or products liability. The Consultant shall be required to provide District with 30 days' prior written notice if the insurance afforded by this policy shall be suspended, cancelled, reduced in coverage limits or non-renewed. Premiums on all insurance policies shall be paid by Consultant and shall be deemed included in Consultant's obligations under this Agreement at no additional charge.

14. Assignment. The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant.

15. Compliance with Laws. Consultant shall observe and comply with all applicable rules and regulations of the governing board of the District and all applicable federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If Consultant observes that any of the Services required by this Agreement are at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant knowingly performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.

16. Certificates/Permits/Licenses/Registration. Consultant and all Consultant'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.

17. Safety and Security. Consultant is responsible for maintaining safety in the performance of this Agreement. Consultant shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.

18. Employment with Public Agency. Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.

19. Anti-Discrimination. It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status and therefore the Consultant 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 District policy. In addition, the Consultant agrees to require like compliance by all its subconsultant(s).

20. Fingerprinting of Employees.

The Consultant shall comply with the requirements of California Education Code section 45125.1, and perform the following acts:

20.1. Require all current and subsequent employees of Consultant who may enter a school site during the time that pupils are present who are not being continuously monitored by a school employee to submit their fingerprints in a manner authorized by the California Department of Justice (the "CADOJ").

20.2. Prohibit employees of Consultant from coming into contact with pupils until the CADOJ has ascertained that the employee has not been convicted of a felony as defined in California Education Code section 45122.1.

20.3. Certify in writing, using the District's fingerprinting certification form to the District that neither Consultant nor any of Consultant's employees who may enter a school site during the time that pupils are present who are not being continuously monitored by a school employee have been convicted of a felony as defined in California Education Code section 45122.1 and provide such certification to the District.

20.4. Provide a list of the names of Consultant's employees who may have unsupervised contact with pupils to the District who have been fingerprinted. This list shall be updated for employee changes and shall list employees by appropriate school site.

20.5. The District may require the Consultant and its employees who may have unsupervised contact with pupils to submit to additional background checks at the District's sole and absolute discretion.

21. Audit. Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Consultant shall permit the District, 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 the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.

22. 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.

23. District's Evaluation of Consultant and Consultant's Employees and/or Subconsultants. The District may evaluate the Consultant in any manner which is permissible under the law. The District's evaluation may include, without limitation:

23.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subconsultants and each of their performance.

23.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subconsultant(s).

24. Limitation of District Liability. Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District 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.

25. Disputes: In the event of a dispute between the parties as to performance of the Services, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute in good faith. Pending resolution of the dispute, Consultant agrees it will neither rescind the Agreement nor stop the performance of the Services, but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute. Disputes

may be determined by mediation if mutually agreeable. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Consultant shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Consultant's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Consultant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

26. Confidentiality. The Consultant and all Consultant's agents, personnel, employee(s), and/or subconsultant(s) shall maintain the confidentiality of all information received in the course of performing the Services. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

27. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, or email, addressed as follows:

Oakland Unified School District
Attn: Preston Thomas
955 High St.
Oakland, CA 94601

WCNSM Enterprises, LLC. dba Protect|Education
10300 Alliance Road, Suite 315
Cincinnati, Ohio 45243

Any notice personally given or sent by facsimile or email transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

28. 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.

29. California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California.

The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administration offices are located.

30. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

31. 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.

32. Incorporation of Recitals and Exhibit. The Recitals and exhibit attached hereto are hereby incorporated herein by reference.

33. 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.

34. Authority to Bind Parties. Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

35. Attorney's Fees/Costs. Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

36. Captions and Interpretations. 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.

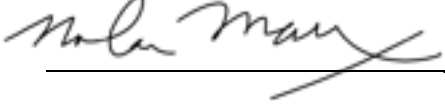
37. Calculation of Time. For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

38. Signature Authority. Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.

39. Counterparts. This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

[Signatures on Following Page]

CONSULTANT: _____


By: 

Name: Nolan Marx

Title: Chief Executive Officer

Date: 12/4/24


SCHOOL DISTRICT

By: 
Preston Thomas (Dec 5, 2024 11:57 PST)

Name: Preston Thomas

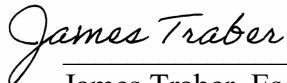
Title: Chief Systems & Services Officer

Date: Dec 5, 2024


Benjamin Davis, President, Board of Education
12/12/2024


Kyla Johnson Trammell, Secretary, Board of
Education 12/12/2024

Approval as to form:

 12/05/2024
James Traber, Esq. Date
Facility Counsel, OUSD

CONFLICT OF INTEREST STATEMENT

The undersigned Consultant for the Oakland Unified School District is required to disclose any actual or possible conflicts of interest, the existence of his or her financial interest, and any outside alliance or professional or personal involvement that might conflict with his/her responsibilities to the District.

Through its execution of this Agreement, Consultant acknowledges that it is familiar with the provisions of section 1090 et seq. and section 87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event Consultant receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, Consultant agrees it shall notify District in writing.

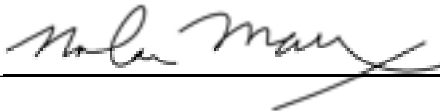
If the District has reasonable cause to believe that a Consultant has failed to disclose actual or possible conflicts of interest, it will provide the member an opportunity to explain the situation.

If, after hearing the response of the Consultant and making such further investigation as appropriate, the District determines that the Consultant has failed to disclose an actual or possible conflict of interest, the contract is subject to immediate termination.

I have read and understand the foregoing, and I certify that:

I do / X do not have business or financial interests in the Oakland Unified School District or a business entity affiliated with the District that might conflict with my responsibilities under this Agreement.

Exceptions to Statement of Disclosure, if any:

By: 

Name: Nolan Marx

Title: Chief Executive Officer

Date: 12/4/24

FINGERPRINTING AND CRIMINAL BACKGROUND CHECK CERTIFICATION
(Consultant REQUIRED to complete.)

One of the boxes below **must** be checked, and an executed copy of this form must be attached to the Consultant Agreement (“Agreement”):

- Consultant’s employees will have no contact or interaction with District pupils outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee. Accordingly, the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Consultant’s services under this Agreement.

- Consultant’s employees will have contact or interaction with District pupils outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee. Accordingly, the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Consultant’s services under this Agreement, and Consultant certifies its compliance with these provisions as follows: *“Consultant certifies that the it has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Consultant’s employees, subconsultants, agents, and subconsultants’ employees or agents (“Employees”) regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent consultants of the Consultant, who may have contact with District pupils, outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee, in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto.”*

- Consultant’s services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility, and Consultant’s employees shall have only limited contact with students. Accordingly, the requirements of Education Code section 45125.2 shall not apply to Consultant’s services under this Agreement.

- Consultant’s services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility, and Consultant’s employees will have contact, other than limited contact, with District pupils. Pursuant to Education Code section 45125.2, District shall ensure the safety of the pupils by at least one of the following as marked:
 - The installation of a physical barrier at the worksite to limit contact with pupils.

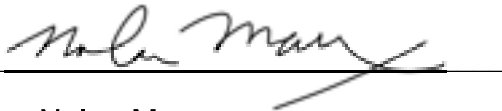
 - Continual supervision and monitoring of all Consultant’s on-site employees of Consultant by an employee of Consultant, _____, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

- ☐ Surveillance of Employees by District personnel.

Megan’s Law (Sex Offenders). Consultant shall verify and continue to verify that the employees of Consultant that will be on the project site and the employees of the subconsultant(s) that will be on the project site are **not** listed on California’s “Megan’s Law” Website (<http://www.meganslaw.ca.gov/>).

MUST BE COMPLETED BY CONSULTANT’S AUTHORIZED REPRESENTATIVE:
I am a representative of the Consultant entering into this Agreement with the District and I am familiar with the facts herein certified and am authorized and qualified to execute this certificate on behalf of Consultant.

CONSULTANT

By: 

Name: Nolan Marx

Title: Chief Executive Officer

Date: 12/4/24

MUST BE COMPLETED BY DISTRICT’S AUTHORIZED REPRESENTATIVE:
As an authorized District official, I am familiar with the facts herein certified and am authorized to execute this certificate on behalf of the District.

DISTRICT

By: 
Preston Thomas (Dec 5, 2024 11:57 PST)

Name: Preston Thomas

Title: Chief Systems & Services Officer

Date:

EXHIBIT "A"
**DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT AND
ADDITIONAL TERMS**

1. Delivery Of Equipment & Payment. Consultant shall deliver WellAir Novaerus Protect 900W (204 units), and WellAir Novaerus Defend 1050 (18 units), (hereinafter the "Equipment") in good working order to the District's Warehouse/Distribution Center at 900 High St. Oakland, CA 94601 on or before **December 16, 2024**. Consultant shall coordinate delivery with the District to ensure District staff is present to ensure the units are properly received and secured. Within **thirty (30) days** of delivery, District shall pay **six hundred thirty-nine thousand dollars (\$639,000)** (the "**Initial Payment**"). District shall have the right to withhold payment for any unit that is not in new and properly functioning condition at the rate of \$2,595 for Protect 900W units and, \$10,995 for Defend 1050 units.

2. District Installation and Expenses. District shall use commercially reasonable efforts to install the Equipment by **January 3, 2024**. The Parties recognize that the Initial Payment has been reduced by eleven thousand dollars (\$11,000) to account for the District's costs of installation of the Equipment.

3. Research Study and Verification. Consultant shall commission an independent study (the "Study"), the primary goals of which shall be to evaluate whether Nanostrike® can significantly reduce student absences and improve air quality. The Study shall be led by Dr. Jamie Balarashti, and shall span the peak flu season over seven weeks in January and February. Researchers shall analyze daily air samples alongside non-identifiable, FERPA-compliant student attendance and health metrics. The Study shall incorporate two distinct approaches to evaluate the technology's impact:

1. **Comparative Analysis:** Two schools equipped with Nanostrike® technology will be compared to two untreated schools. These schools shall be within close proximity to one another and share similar socioeconomic demographics.
2. **Split-School Design:** A single school will implement a partial control design to further validate the results within a controlled environment.

All material aspects of the Study methodology shall be approved in writing by the District's Department of Research, Assessment, and Data (RAD) prior to delivery of the Equipment.

The Study shall be performed in a manner capable of peer review and verification. The Study shall ultimately evaluate the effect of the Equipment on air quality and evaluate whether Nanostrike®' has reduced student absences. Ultimately, the Consultant shall deliver a written version of the Study, on or before **May 30, 2025**.

4. Guarantee and Final Payment. Consultant represents, warrants, and guarantees that the Equipment shall reduce airborne pathogens (mold, bacteria, and fungi) more than existing District equipment.

If the Study demonstrates that this condition has been met, then within thirty (30) days of delivery of the Study in a form acceptable to the District, the District shall pay Consultant the remaining amount of two hundred fifty-one thousand eighty-seven dollars and twenty-three cents (**\$262,087.23**) (the “Second Payment”). If however, the Study does not meet this requirement, then the District shall have no obligation to make any further payment whatsoever.

Exhibit A
Continued on Next Page

ESTIMATE

Protect|ED
10300 Alliance Rd - Suite 315
Blue Ash, OH 45242

jeff@protectededucation.com
+1 (513) 604-5077
www.cleanairinschools.com



SAFE AND HEALTHY SCHOOLS MADE POSSIBLE

Bill to

Oakland Unified School District
Accounts Payable
1000 Broadway Suite 450
Oakland, CA 94607

Ship to

Oakland Unified School District
Warehouse/Distribution Center
900 High St
Oakland, CA 94601

Estimate details

Estimate no.: 2018
Estimate date: 11/05/2024
Expiration date: 12/30/2024

Product or service	Description	Qty	Rate	Amount
WellAir Novaerus Protect 900W	Air Purifiers	204	\$2,595.00	\$529,380.00
WellAir Novaerus Defend 1050	Air Purifiers	18	\$10,995.00	\$197,910.00
Research Report	IAQ and Attendance Study	1	\$100,000.00	\$100,000.00

Subtotal \$827,290.00

Sales tax \$94,797.23

Total \$912,087.23

Note to customer

Indoor Air Quality pilot study for Hoover, MLK, Global Family, Bridges, Pride

Items are non-returnable, non-refundable

To improve security and provide efficiency, we now accept payments via ACH as well as check.

Republic Bank (www.republicbank.com)
ABA: 083001314
Account: 102007772

Expiry date 12/30/2024



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/4/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Foundation Risk Partners 625 Eden Park Dr, Ste 350 Cincinnati KY 45202 License#: L100460 WCNSNT-01	CONTACT NAME: Jennifer Nugent	
	PHONE (A/C No. Ext): 513-358-0666	FAX (A/C, No):
E-MAIL ADDRESS: jnugent@foundationrp.com		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Motorists Commercial Mutual Insurance Company		13331
INSURER B: Hartford Financial Services Group Inc		914
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

COVERAGES

CERTIFICATE NUMBER: 895240334

REVISION NUMBER:


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y		5000335822	10/26/2024	10/26/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 OHIO STOP GAP \$ 1,000,000
A	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			5000335822	10/26/2024	10/26/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			5000340651	10/26/2024	10/26/2025	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	33WECAU5HX4	10/11/2024	10/11/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER CA, GA, KY E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

Oakland Unified School District is included as Additional Insured on the General Liability if required by written contract. A 30-day notice of cancellation is included for the certificate holder.

CERTIFICATE HOLDER**CANCELLATION**

Oakland Unified School District 1011 Union Street Oakland CA 94607	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

Project Information

Project Name	Pilot Testing of Air Purification Equipment- Division of Facilities Planning and Management	Site	913
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Basic Directions

Services cannot be provided until the contract is awarded by the Board or is entered by the Superintendent pursuant to authority delegated by the Board.

Attachment Checklist	<input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider
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Contractor Information

Contractor Name	WCNSM Enterprises, LLC. dba Protect Education	Agency's Contact	Nolan Marx				
OUSD Vendor ID #		Title	CEO				
Street Address	10300 Alliance Road Suite 315	City	Cincinnati	State	OH	Zip	45242
Telephone	513-680-0975	Policy Expires					
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
OUSD Project #							

Term of Original/Amended Contract

Date Work Will Begin (i.e., effective date of contract)	12-12-2024	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	06-30-2025
		New Date of Contract End (If Any)	

Compensation/Revised Compensation

If New Contract, Total Contract Price (Lump Sum)	\$	If New Contract, Total Contract Price (Not To Exceed)	\$912,087.23
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Change in Price	\$
Other Expenses		Requisition Number	

Budget Information

If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.

Resource #	Funding Source	Org Key	Object Code	Amount
6762	AMIM/OCI Funding	010- 6762- 0- 1110- 8200- 5825- 913- 9130- 1110- 9999- 99999	5825	\$460,093.00
9186	AMIM/OCI Funding	120- 9186- 0- 8500- 1000- 5825- 913- 9130- 8500- 9999- 99999	5825	\$451,994.00

Approval and Routing (in order of approval steps)

Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.

	Division Head	Phone	510-535-7038	Fax	510-535-7082
1.	Executive Director of Facilities				
	Signature	Date Approved			
2.	Counsel, Department of Facilities Planning and Management				
	Signature <i>James Traber</i>	Date Approved	12/05/2024		
3.	Chief Systems and Services Officer				
	Signature <i>P. Thomas</i> <small>Preston Thomas (Dec 5, 2024 11:57 PST)</small>	Date Approved			
4.	Chief Financial Officer				
	Signature	Date Approved			

5.	President, Board of Education		
	Signature	Date Approved	