Board Office Use: **Legislative File Info.**	
File ID Number	23-1050
Introduction Date	5/24/23
Enactment Number	23-0934
Enactment Date	5/24/2023 os

Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Sondra Aguilera, Chief Academic Officer
Vanessa Sifuentes, High School Network Superintendent
Vinh Trinh, Manager, Master Scheduling and Comprehensive Student Supports

Meeting Date May 24, 2023

Subject Amendment to Data Sharing Agreement with the Oakland Promise

Ask of the Board x Approve Amendment
☐ Ratify Amendment

Background and Recommendation The Oakland Promise provides OUSD with Oakland Promise's various programs, namely, Kindergarten to College (K2C) and College Access and Persistence, to help schools establish a college going culture and support with college and career exploration and access for the period of January 28, 2021 through October 31, 2023, at no cost to the District.

There is no change in the data sharing agreement other than approval to extend the Data Sharing Agreement beyond October 31, 2023 for another additional three years.

Term Start Date: November 1, 2023   End Date: October 31, 2026

Not-To-Exceed Amount No Cost and No Fiscal Impact.

Competitively Bid No.

If the Service Agreement/Contract was <u>not</u> competitively bid and the not-to-exceed amount is <u>more</u> than $109,300, list the exception(s) that applies (requires Legal review/approval and may require a resolution):
If no, exception: Oakland Promise provides the unique Cradle to Career spectrum of services.

In-Kind Contributions   The Oakland Promise will collaborate with members of the teams in the High School Linked Learning Office, Office of Equity and Department of Communications.

Funding Source(s)   N/A. No Cost and No Fiscal Impact

Attachment(s)
- Amendment No. 1 Data Sharing Agreement
- Original Agreement, File ID #21-0049, Enactment No. 21-0127

AMENDMENT NO. AMENDMENT NO. 1, Data Sharing Agreement
2020-2021

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

- The (Amended) Agreement is between the Oakland Unified School District ("OUSD") and the below named entity or individual ("VENDOR," together with OUSD, "PARTIES"):
  Oakland Promise
- The Parties entered into the Original Agreement on the below date:
  January 28, 2021
- The Enactment Number of the Original Agreement is below:
  21-0127

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

1. **Services**:   x   The scope of work of the (Amended) Agreement is <u>unchanged</u>.
     ☐ The scope of work of the (Amended) Agreement has <u>changed.</u> If the scope of work has changed: Provide brief description of revised scope of work including measurable description of expected final results, such as services, materials, products, and/or reports; select the appropriate option below:
☐ Revised scope of work <u>attached</u>
☐ VENDOR agrees to provide the <u>following</u> amended services:
No changes to services

2. **Term** (duration):   ☐ The term of the (Amended) Agreement is <u>unchanged</u>

     x The term of the (Amended) Agreement has <u>changed.</u> If the term has changed: The parties agree to amend the below original End Date of the

(Amended) Agreement to the below new End Date:
Original End Date: October 31, 2023
New End Date: October 31, 2026

3.   **Compensation**: ☐ The not-to-exceed amount in the (Amended) Agreement is <u>unchanged</u>
☐ The not-to-exceed amount in the (Amended) Agreement has <u>changed</u>. If the not-to-exceed amount has changed: The not-to-exceed amount in the (Amended) Agreement is amended as follows:
☐ Increase not-to-exceed amount by:
$0
☐ Decrease not-to-exceed amount by:
$0
The new not-to-exceed amount under the (Amended) Agreement, as herein amended, is
$0

4. **COVID-19**:   To the extent that the Amendment did not contain the following guarantees, by signing this Amendment, VENDOR agrees that:

a. Through its execution of this Amendment, VENDOR declares that it is able to meet its obligations and perform the Services required pursuant to this Amendment in accordance with any shelter-in-place (or similar) order or curfew (or similar) order ("Orders") issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.

b. VENDOR agrees to notify OUSD within twelve (12) hours if VENDOR or any employee, subcontractor, agent, or representative of VENDOR (i) tests positive for COVID-19 or shows or reports symptoms consistent with COVID-19 and (ii) has been on OUSD property or has been in prolonged close contact with any OUSD student or student's family member, staff, agents, representatives, officers, consultants, trustees, and volunteers within 48 hours of testing positive for COVID-19 or the development of symptoms consistent with COVID-19.

c. In addition to the requirements of subparagraph (b), VENDOR agrees to immediately adhere to and follow any

OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD student or student's family member, staff, agents, representatives, officers, consultants, trustees, and volunteers to VENDOR or any employee, subcontractor, agent, or representative of VENDOR and information necessary to perform contact tracing, as well as complying with any OUSD testing and vaccination requirements.

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

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

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

    a. Notwithstanding Paragraph 14 (COVID-19) of this Amendment, or any other language of the Agreement, if there is an unforeseen emergency or an Act of God during the term of this Agreement that would prohibit or limit, at the sole discretion of OUSD, the ability of VENDOR to perform the Services, OUSD may terminate this Agreement upon seven (7) days prior written notice to VENDOR. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or seven (7) days after the notice was provided, whichever is later.

    b. If OUSD, at its sole discretion, develops health and safety concerns related to the VENDOR's provision of Services, then the OUSD Superintendent or an OUSD Chief or Deputy may, upon approval by OUSD legal counsel, issue a notice to

VENDOR to suspend the Agreement, in which case VENDOR shall stop providing Services under the Agreement until further notice from OUSD. OUSD shall compensate VENDOR for Services satisfactorily provided through the date of suspension.

7. **Legal Notices.** To the extent the Agreement did not contain the following provisions, legal notices may be sent either (i) via email, (ii) personally delivered during normal business hours, or (iii) sent by U.S. Mail (certified, return receipt requested), to the contact identified in the Agreement. VENDOR agrees that the address for legal notice to OUSD is 1000 Broadway, Suite 440, Oakland, CA 94607. All other terms regarding Legal Notices remain the same.

8. **Remaining Provisions**: All other provisions of the (Amended) Agreement remain unchanged and in full force and effect as originally stated.

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

10. **Signature Authority**.
    a. Each PARTY has the full power and authority to enter into and perform this Amendment, and the person(s) signing this Amendment on behalf of each PARTY has been given the proper authority and empowered to enter into this Amendment.
    b. Notwithstanding subparagraph (a), only the Superintendent, Chiefs, Deputy Chiefs, and the General Counsel has authority to sign contracts for OUSD and only under limited circumstances, which required ratification by the OUSD Governing Board. VENDOR agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this Amendment or as legally binding in any way.

11. **Amendment Contingent on Governing Board Approval**. OUSD shall not be bound by the terms of this Amendment unless and until it has been (i) formally approved by OUSD's Governing Board or (ii) validly and properly executed by the OUSD Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code

or Board Policy, and no payment shall be owed or made to VENDOR absent such formal approval or valid and proper execution.

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

VENDOR

Name: Sandra Ernst   Signature: _Sandra Ernst_

Position: Chief Executive Officer   Date: 3/29/2023

One of the terms and conditions to which VENDOR agrees by its signature is subparagraph (e) of Paragraph 8 (Compensation) of the Agreement, 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: Sondra Aguilera   Signature: _Sondra Aguilera_

Position: Chief Academic Officer   Date: 4/13/2023

☐ Board President

☐ Superintendent

x Chief/Deputy Chief/Executive Director

Name: Kyla Johnson-Trammell   Signature: _____
Position: Secretary, Board of Education Date: 5/25/2023

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

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

Memo

To	Board of Education
From	Kyla Johnson-Trammell, Superintendent Matin Abdel-Qawi, High School Network Superintendent Lucia Moritz, Executive Director, High School Linked Learning Office Vinh Trinh, Manager, Master Schedule Comp Student Support and OPSR Counseling
Board Meeting Date	January 27, 2021
Subject	Data Sharing Agreement Contractor: Oakland Promise Services For: High School Linked Learning Office

Action Requested and Recommendation	Approval by the Board of Education of a Data Sharing Agreement 2020-2023 between the District and the Oakland Promise, Oakland, CA, for the latter to provide Oakland Promise's various programs, namely, Kindergarten to College (K2C), High School Future Centers and College Access and Persistence, to help schools establish a college going culture and support with college and career exploration and access for the period of January 28, 2021 through October 31, 2023, at no cost to the District.
Background	The Oakland Promise will work in partnership with the Oakland Unified School District to help schools: 1. Promote and establish a college going culture and students develop a college going mindset 2. Provide college and career exploration and access supports in middle schools and high schools to meet the district's post-secondary education outcomes 3. Award Oakland Promise scholarships for graduating seniors who meet the minimum requirement 4. Help families build financial assets through college savings accounts (CSA's) and financial literacy
Competitively Bid	Was this contract competitively bid? No If no, exception: Oakland Promise provides the unique Cradle to Career spectrum of services.
Fiscal Impact	Funding resource(s): No Fiscal Impact
Attachments	● Data Sharing Agreement

DATA SHARING AGREEMENT 2020-2021

This Data Sharing Agreement ("Agreement") is a legally binding contract entered into between the Oakland Unified School District ("OUSD") and the below named entity(ies) or individual(s) ("RECIPIENT," together with OUSD, "PARTIES"):
Oakland Promise.

The PARTIES hereby agree as follows:

1. **Limited Purpose of Agreement**. This Agreement pertains only to OUSD's transmission of data to RECIPIENT, and RECIPIENT's protection of such data. To the extent that OUSD seeks to impose any other legal obligations on RECIPIENT (e.g., RECIPIENT's provision of services to OUSD), or RECIPIENT seeks to impose any other legal obligations on OUSD (e.g., OUSD payment of compensation to RECIPIENT), such obligations shall be set forth in a separate agreement. If such an agreement exists at the time of execution of this Agreement, the Parties shall identify it in **Exhibit A**.

2. **Data to be Provided.** The Parties shall list the categories of data to be provided in the Schedule of Data, attached hereto as **Exhibit B**, and such data shall be referred to hereinafter as OUSD Data.

3. **Term**.
   a. This Agreement shall start on the below date ("Start Date"):

      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"):

October 31, 2023

If no End Date is entered, then the End Date shall be the first June 30 after the Start Date. For OUSD Data being transmitted as part of research approved by OUSD's Department of Research, Assessment, and Data, the maximum term is one calendar year, in accordance with Administrative Regulation 6162.8.

4. **Family Educational Rights and Privacy Act**. Check any of the following that apply:

☐ OUSD Data is limited to student directory information, as defined in 34 C.F.R. § 99.31(a)(11), for those students who have not opted out of disclosure of directory information.

☐ OUSD Data is limited to de-identified student information, as defined in 34 C.F.R. § 99.31(b).

☐ OUSD Data includes personally identifiable information from a student record other than directory information. RECIPIENT is responsible for obtaining parental consent, as defined in 34 C.F.R. § 99.30, and presenting evidence thereof to OUSD.

X OUSD Data includes personally identifiable information from a student record, <u>and</u>:

X RECIPIENT is a contractor, consultant, volunteer, or other party to whom OUSD has outsourced institutional services or functions, and RECIPIENT performs an institutional service or function for which the agency or institution would otherwise use employees; is under the direct control of the agency or institution with respect to the use and maintenance of education records; and is subject to the requirements of §

99.31(a) governing the use and redisclosure of personally identifiable information from education records. (See 34 C.F.R. § 99.31(a)(1)(i)(B).)

☐ RECIPIENT is another school, school system, or institution of postsecondary education where an OUSD student seeks or intends to enroll, or where the student is already enrolled, and the disclosure is for purposes related to the student's enrollment or transfer. (See 34 C.F.R. § 99.31(a)(2).)

☐ RECIPIENT is an authorized representatives of the Comptroller General of the United States; the Attorney General of the United States; the Secretary of Education; or State and local educational authorities. (See 34 C.F.R. § 99.31(a)(3).)

X   RECIPIENT requires the data in order to determine an OUSD student's eligibility for financial aid; amount of aid; conditions for aid; or to enforce the terms and conditions of the aid. (See 34 C.F.R. § 99.31(a)(4).)

☐ RECIPIENT is an organization conducting studies for, or on behalf of, educational agencies or institutions to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction. (See 34 C.F.R. § 99.31(a)(6).) Any RECIPIENT receiving OUSD Data pursuant to this subsection must first submit a research application pursuant to OUSD's Department of Research, Assessment, and Data protocols, and such application shall be incorporated into this Agreement by reference.

☐ The disclosure is in connection with a health or safety emergency. (See 34 C.F.R. §§ 99.31(a)(10) & 99.36.)

5. **Privacy Compliance**. RECIPIENT shall comply with all applicable state and federal laws and regulations pertaining to data privacy and security, including the Family Educational Rights and Privacy Act, the Children's Online Privacy Protection Act, the Protection of Pupil Rights Amendment, the Student Online Personal Information Protection Act, AB 1584, and all other California privacy statutes.

6. **Authorized Use**. OUSD Data, including persistent unique identifiers, shall be used for no purpose other than as agreed herein and/or otherwise legally authorized. RECIPIENT shall not make any re-disclosure of any OUSD Data or any portion thereof, including without limitation, meta data, user content or other non-public information and/or personally identifiable information contained in the OUSD Data, without the express written consent of OUSD.

7. **Advertising Prohibition**. RECIPIENT is prohibited from using or selling OUSD Data to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing, advertising, or other commercial efforts by a RECIPIENT; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to OUSD; or (d) use the OUSD Data for the development of commercial products or services.

8. **OUSD Data Property of OUSD**. All OUSD Data transmitted to the RECIPIENT pursuant to this Agreement is and will continue to be the property of and under the control of OUSD. RECIPIENT acknowledges and agrees that all copies of such OUSD Data transmitted to the RECIPIENT, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this Agreement in the same manner as the original OUSD Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to OUSD Data contemplated per the Service Agreement shall remain the exclusive property of OUSD.

9. **Correction of Records**. OUSD shall establish reasonable procedures by which a parent, guardian, or eligible student may review OUSD Data in the pupil's records, correct erroneous information, and procedures for the transfer of pupil-generated content to a personal account,

consistent with the functionality of services. RECIPIENT shall respond in a timely manner to OUSD's request for OUSD Data in a pupil's records held by RECIPIENT to view or correct as necessary.

10. **Third Party Request**. Should a Third Party, including law enforcement and government entities, contact RECIPIENT with a request for data held by RECIPIENT pursuant to the Services, RECIPIENT shall redirect the Third Party to request the data directly from OUSD. RECIPIENT shall notify OUSD in advance of a compelled disclosure to a Third Party.

11. **Employee Obligation**. RECIPIENT shall require all employees and agents who have access to OUSD Data to comply with all applicable provisions of this DPA with respect to the data shared under the Service Agreement.

12. **Subprocessors**. RECIPIENT shall enter into written agreements with all Subprocessors performing functions pursuant to this Agreement or any other Agreement identified in **Exhibit A**, whereby the Subprocessors agree to protect OUSD Data in manner consistent with the terms of this Agreement.

13. **No Re-Identification or Re-Disclosure**. RECIPIENT agrees not to attempt to re-identify de-identified OUSD Data and not to transfer de-identified OUSD Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to OUSD who has provided prior written consent for such transfer. RECIPIENT shall not copy, reproduce or transmit any data obtained except as necessary to fulfill the Service Agreement

14. **Disposition of Data**. RECIPIENT shall dispose or delete all OUSD Data upon written request by OUSD or when it is no longer needed for the purpose for which it was obtained. Disposition shall include (1) the shredding of any hard copies of any OUSD Data; (2) Erasing; or (3) Otherwise modifying the personal information in those records to make it unreadable or indecipherable by human or digital means. Nothing in this Agreement authorizes RECIPIENT to maintain OUSD Data beyond the time period reasonably needed to complete the disposition.

RECIPIENT shall provide written notification to OUSD when the OUSD Data has been disposed.

15. **Data Security**. RECIPIENT agrees to abide by and maintain adequate data security measures, consistent with industry standards and technology best practices, to protect OUSD Data from unauthorized disclosure or acquisition by an unauthorized person.

16. **Data Breach**. In the event that OUSD Data is accessed or obtained by an unauthorized individual, RECIPIENT shall provide notification to OUSD within a reasonable amount of time of the incident, and not exceeding forty-eight (48) hours. RECIPIENT shall follow the following process:

    a. The security breach notification shall be written in plain language, shall be titled "Notice of Data Breach," and shall present the information described herein under the following headings: "What Happened," "What Information Was Involved," "What We Are Doing," "What You Can Do," and "For More Information." Additional information may be provided as a supplement to the notice.

    b. The security breach notification described above shall include, at a minimum, the following information:

        (i) The name and contact information of the reporting OUSD subject to this section.
        (ii) A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
        (iii) If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
        (iv) Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided.
        (v) A general description of the breach incident, if that information is possible to determine at the time the notice

is provided.

c. RECIPIENT agrees to adhere to all requirements in applicable State and in federal law with respect to a data breach related to the OUSD Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.

d. RECIPIENT further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of OUSD Data or any portion thereof, including personally identifiable information and agrees to provide OUSD, upon request, with a copy of said written incident response plan.

e. RECIPIENT is prohibited from directly contacting parent, legal guardian or eligible pupil unless expressly requested by OUSD. If OUSD requests RECIPIENT's assistance providing notice of unauthorized access, and such assistance is not unduly burdensome to RECIPIENT, RECIPIENT shall notify the affected parent, legal guardian or eligible pupil of the unauthorized access, which shall include the information listed above. If requested by OUSD, RECIPIENT shall reimburse OUSD for costs incurred to notify parents/families of a breach not originating from OUSD's use of the Service.

17. **Equipment and Materials**. RECIPIENT shall provide all equipment, materials, and supplies necessary for the performance of this Agreement.

18. **Termination**.
a. For Convenience by OUSD. OUSD may at any time terminate this Agreement upon thirty (30) days prior written notice to RECIPIENT. 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 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 RECIPIENT to perform the Services, OUSD may terminate this Agreement upon seven (7) days prior written notice to RECIPIENT. 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, RECIPIENT shall provide OUSD with all materials produced, maintained, or collected by RECIPIENT pursuant to this Agreement, whether or not such materials are complete or incomplete or are in final or draft form.

19. **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

RECIPIENT

Name: Mialisa Bonta

Title: CEO, Oakland Promise

Address: 300 Frank H Ogawa Plaza 430

City, ST Zip: Oakland, CA 94612

Phone: 4157281796

Email: mia@oaklandpromise.org

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.

20. **Status**.

    a. This is not an employment contract. RECIPIENT, in the performance of this Agreement, shall be and act as an independent contractor. RECIPIENT 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. RECIPIENT 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 RECIPIENT's employees.

b. If RECIPIENT is a natural person, RECIPIENT verifies all of the following:

   (i)   RECIPIENT is free from the control and direction of OUSD in connection with RECIPIENT's work;

   (ii)   RECIPIENT's work is outside the usual course of OUSD's business; and

   (iii)   RECIPIENT 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 RECIPIENT is a business entity, RECIPIENT verifies all of the following:

   (i)   RECIPIENT is free from the control and direction of OUSD in connection with the performance of the work;

   (ii)   RECIPIENT is providing services directly to OUSD rather than to customers of OUSD;

   (iii)   the contract between OUSD and RECIPIENT is in writing;

   (iv)   RECIPIENT has the required business license or business tax registration, if the work is performed in a jurisdiction that requires RECIPIENT to have a business license or business tax registration;

   (v)   RECIPIENT maintains a business location that is separate from the business or work location of OUSD;

   (vi)   RECIPIENT is customarily engaged in an independently established business of the same nature as that involved in the work performed;

   (vii)   RECIPIENT actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from OUSD;

   (viii)   RECIPIENT advertises and holds itself out to the public as available to provide the same or similar services;

   (ix)   RECIPIENT provides its own tools, vehicles, and equipment to perform the services;

   (x)   RECIPIENT can negotiate its own rates;

   (xi)   RECIPIENT can set its own hours and location of work; and

   (xii)   RECIPIENT 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.

21. **Certificates/ Permits/ Licenses/ Registration**. RECIPIENT'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.

22. **Coronavirus/COVID-19**.
    a. Through its execution of this Agreement, RECIPIENT 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. Consistent with the requirements of the paragraph titled Incident/Accident/Mandated Reporting, RECIPIENT agrees to notify OUSD, via email pursuant to the paragraph titled Legal Notices, within twelve (12) hours if RECIPIENT or any employee, subcontractor, agent, or representative of RECIPIENT tests positive for COVID-19, shows or reports symptoms consistent with COVID-19, or reports to RECIPIENT possible COVID-19 exposure.
    c. RECIPIENT 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 RECIPIENT or any employee, subcontractor, agent, or representative of RECIPIENT and information necessary to perform contact tracing.
    d. RECIPIENT shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.

23. **Assignment**. The obligations of RECIPIENT under this Agreement shall not be assigned by RECIPIENT without the express prior written consent of OUSD and any assignment without the express prior written consent of OUSD shall be null and void.

24. **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, RECIPIENT 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, RECIPIENT agrees to require like compliance by all its subcontractor (s). RECIPIENT 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.

25. **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, RECIPIENTS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.

26. **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.

27. **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.

28. **Conflict of Interest**.
    a. RECIPIENT shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest. RECIPIENT 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. RECIPIENT affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between RECIPIENT'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, RECIPIENT

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

29. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**. Through its execution of this Agreement, RECIPIENT 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/).

30. **Limitation of OUSD Liability**. OUSD shall have no financial obligations under this Agreement other than as provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the Services performed in connection with this Agreement.

31. **Indemnification**.
    a. To the furthest extent permitted by California law, RECIPIENT 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 RECIPIENT's performance of this Agreement. RECIPIENT also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by any supplier, RECIPIENT, or subcontractor furnishing work, services, or materials to RECIPIENT arising out of the performance of this Agreement. RECIPIENT shall, to the fullest

extent permitted by California law, defend OUSD Indemnified Parties at RECIPIENT's own expense, including attorneys' fees and costs, and OUSD shall have the right to accept or reject any legal representation that RECIPIENT proposes to defend OUSD Indemnified Parties.

b.   To the furthest extent permitted by California law, OUSD shall indemnify, defend, and hold harmless RECIPIENT, its Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("RECIPIENT 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 RECIPIENT Indemnified Parties at OUSD's own expense, including attorneys' fees and costs.

32.   **Audit**. RECIPIENT shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of RECIPIENT transacted under this Agreement. RECIPIENT shall retain these books, records, and systems of account during the term of this Agreement and for three (3) years after the End Date. RECIPIENT 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 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 RECIPIENT and shall conduct audit(s) during RECIPIENT'S normal business hours, unless RECIPIENT otherwise consents.

33.   **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.

34.   **Incorporation of Recitals and Exhibits**. Any recitals and exhibits attached to this Agreement are incorporated herein by reference. RECIPIENT 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.

35. **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.

36. **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.

37. **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.

38. **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.

39. **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.

40. **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.

41. **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.

42. **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. RECIPIENT 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.

43. **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 RECIPIENT 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:

RECIPIENT

Name:. Mialisa Bonta   Signature: *Mialisa Bonta*

Position:. CEO, Oakland Promise   Date: 1/28/2021

OUSD

Name:. Sondra Aguilera   Signature: *Sondra Aguilera*

Position:. Chief Academic Officer   Date: 12/18/2020

☐ Board President

☐ Superintendent

☒ Chief/Deputy Chief   _____ 1/28/2021
Shanthi Gonzales
President, Board of Education

Name: Kyla Johnson-Trammell   Signature: _____

Position: Secretary, Board of Education
        Date: 1/28/2021

Approved as to form by OUSD Staff Attorney Joanna Powell on 12/4/2020.

EXHIBIT A

Description of existing agreements between OUSD and Recipient: *To the extent that OUSD and Recipient have entered separate agreements imposing legal obligations in addition to data sharing, list their date, Enactment Number (if applicable), and a brief summary below.*

OUSD and Recipient intend to enter an MOU describing services to be provided by Recipient to OUSD students. This MOU will be presented to the OUSD Board on 12/9/2020.

The requested action is approval by the Board of Education of a Data Sharing Agreement 2020-2023 between the District and the Oakland Promise, Oakland, CA, for the latter to provide Oakland Promise's various programs, namely, Kindergarten to College (K2C), High School Future Centers and College Access and Persistence, to help schools establish a college going culture and support with college and career exploration and access for the period of January 28, 2021 through October 31, 2023, at no cost to the District.

The Oakland Promise will work in partnership with the Oakland Unified School District to help schools:
Administer the Kindergarten to College Early College Scholarship (ECS).
Provide college and career exploration and access supports for financial aid eligibility, application and award determination and   summer melt prevention.
Implement OUSD special initiatives in the Office of Equity and Office of Family Engagement to share and align goals.
Help families build financial assets through college savings accounts (CSA's) and financial literacy.

EXHIBIT B

Please indicate each data element requested below.

Category	Elements	Check if Requested
Application Technology Metadata	IP Addresses of users, use of cookies, etc.	☐
	Other application technology metadata - please specify	☐
Application Use Statistics	Metadata on user interaction with application	☐
Assessment	SBAC results	☐
	ELPAC results	☐
	IAB Results	☐
	Local benchmark assessment results	☐
Attendance	Attendance rate	☐
	Number of absences	☐
Communications	Online communications that are captured (emails, blog entries)	☐
Conduct	Number of Suspensions	☐
	Days suspended	☐
Demographics	Gender	X
	Race/Ethnicity	X
	Special ed. flag	X
	Home language	X

	Language proficiency	X
	Birth country	
Enrollment	School	X
	Grade level	X
	Other - please specify	☐
Parent/Guardian Contact Information	Name	X
	Address	X
	Email	X
	Phone	X
Schedule	Student scheduled courses	☐
	Teacher names	☐
Special Indicator	English language learner	☐
	Low income status (only available if data requested is de-identified)	☐
	Title 1 flag (schoolwide)	☐
	Other - please specify	☐
Student Contact Information	Name	X
	Address	☐
	Email	X

	Phone	X
Local Identifiers	Local student ID number	X
	Teacher ID number	☐
	State student ID number	X
	Provider/App assigned student ID number	X
	Student app username	☐
	Student app password(s)	☐
	Dummy identifiers (please check here if data requested are de-identified)	☐
Student In App Performance	Program/application performance (typing program - student types 60wpm, reading program - student reads below grade level) - Please specify	☐
Student Work	Student generated content; writing, pictures etc.	☐
	Other - please specify	☐
Transcript	Student course grades	☐
	Current year GPA	☐
	Cumulative GPA	X
Transportation	Student bus assignment	☐
	Student pick up and/or drop off location	☐
	Student bus card ID number	☐

	Other - Please specify	☐
Other	Please list each additional data element used, stored, or collected	X Please see below a complete list of data elements requested, organized by purpose of the request

Oakland Unified School District and Oakland Promise

Purpose	Data Elements Requested	Frequency of Request
1. Early College Scholarships and Kindergarten to College Supports: Administration of Kindergarten to College Early College Scholarship (ECS); for the purpose of populating Outcome Tracker (VistaShare, LLC) and programming K-graduation ceremonies (OP)	a. Student local ID, CALPADSID, student name, student date of birth, and zip code to VistaShare, LLC, online platform, Outcome Tracker, for families to access. MOU to be created between OUSD and VistaShare, LLC for November 2020 through June 2025. b. Directory info to OP, to generate certificates for graduation ceremony - Student Name, School	May & October, annually; SFTP to VistaShare, LLC (OP's web platform vendor); directory info to OP
2. College Access Support Services – for financial aid eligibility, application and award determination, summer melt prevention, and college and career planning advising and mentorship	a. Student Tracker: Data collection and dashboard platform to support CCRS and college advisors (DCAC, SRA, UAspire, and other site-based college access partners) i. Student name ii. Student School ID iii. Pathway iv. SEX v. STUDENT PHONE vi. STUDENT EMAIL vii. PARENT/GUARDIAN NUMBER viii. PARENT GUARDIAN EMAIL ix. FUTURE CENTER ADVISOR x. GPA Total Cumulative xi. GPA UC xii. GRADUATION On-Track	Student Tracker rosters uploaded October and updated March, annually Batch student transcripts at the end of the school year, annually Webgrants user accounts updated annually

	xiii. A-G On-Track ALL xiv. A-G On-Track History (A) xv. A-G On-Track English (B) xvi. A-G On-Track Math (c) xvii. A-G On-Track Science (D) xviii. A-G On-Track Language (E) xix. A-G On-Track Arts (F) xx. A-G On-Track Elective (G) b. College Access Team Maintains in Student Tracker i. TRANSCRIPT NOTES ii. CSUs APPLIED iii. EOP PROGRAMS APPLIED iv. UCs APPLIED v. PRIVATE/OUT-OF-STATES APPLIED vi. HBCU's APPLIED vii. CCCs APPLIED viii. FINAID NOTES ix. FINAID APP DREAM ACT APP ID# x. EFC xi. PELL GRANT ELIGIBLE? Y/N xii. CAL GRANTS MATCHED xiii. CAL GRANTS RECEIVED xiv. CREATED WEBGRANTS ACCOUNT? Y/N xv. SCHOLARSHIPS APPLIED xvi. SCHOLARSHIPS RECEIVED xvii. COLLEGES ACCEPTED xviii. FALL 1:1 MTG YES/NO xix. FALL 1:1 MTG NOTES xx. (4Y - 4 year college track) xxi. (CC - community college track) xxii. (AS - art/fashion school) xxiii. (TS - trade schools) xxiv. (W - working) (M-military) (U-undecided) xxv. COMPLETED SENIOR EXIT SURVEY? Y/N xxvi. Final Destination (4 = 4 year college/university) xxvii. ADDITIONAL NOTES	

	c. Student Transcripts of 8th, 11th and 12th graders, in batch d. Webgrants user accounts for OP and CCRS staff	
3. Mutual support of OUSD special initiatives in the Office of Equity; Office of Family Engagement to Share and align goals, mutually exchange content / resources to support each team's goals, and to amplify messaging across our platforms	List of students and student contact information	Annually
4. Annual Data Review - Ongoing monitoring of aggregate OUSD student trends for implementation and evaluation of student outcomes, in support of High School Linked Learning Office efforts, and for special initiatives Oakland Thrives, City of Oakland, and the Harlem Children's Zone.	**OUSD Dashboards** a. Enrollment: demographics, live-go, other patterns and trends b. Preschool Experiences Survey c. CHKS Survey d. Senior Survey e. Indicators: High School Readiness, A-G requirements, On track to Graduate f. EDI - Kindergarten Readiness domains g. Cohort Graduation / Dropout h. College Enrollment within 12 months of graduation i. School Climate j. National Student Clearinghouse District Report	Consultant accounts to OUSDData.org dashboards for OP Data & Evaluation Director, OP College Access team members

5. Data access - Tracking which OUSD student has participated in OP programs: Brilliant Baby, OP Scholars	Maintain data fields that link student records in Aeries to participation in OP programs.	Annual data reconciliation between OP and OUSD