



Board Office Use: <b>Legislative File Info.</b>	
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Enactment Number	18-1159
Enactment Date	6/27/18 os

## Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Marcus Battle, Chief Business Officer  
Susan Beltz, Chief Technology Officer *SB*

**Board Meeting Date** June 27, 2018

**Subject** Approval of Software Services Agreement for Illuminate DnA Student Assessment Data Management System between Illuminate Education, Inc. and Oakland Unified School District.

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**Action Requested** Approval of Software Services Agreement for Illuminate DnA Student Assessment Data Management System beginning July 1, 2018 through June 30, 2019 in the amount of \$222,420 between Illuminate Education, Inc. and Oakland Unified School District.

**Background** The Oakland Unified School District has successfully used Illuminate as its assessment data management system since 2015-16 and is using this firm going forward for the same services as previously provided. The original purchase of Illuminate was Board-approved on June 10, 2015 as File ID #15-1220 (Adoption of Resolution No. 1415-1170 Authorizing Piggyback of Corona-Norco Unified School District Agreement with Illuminate Education, Inc.) Since the original piggyback agreement has

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expired, this item has been submitted with the attached Resolution explaining that it would be futile to solicit bids for the reasons cited.

**Discussion**

Illuminate is a web-based and longitudinal system that enhances the District's ability to analyze trends, use data to shape curriculum and instruction, and create assessments that provide immediate feedback on student progress. The system was deployed District-wide in 2015-16 as a replacement for the District's Edusoft system, which lacked many of the online assessment and reporting features needed by OUSD.

To avoid redundant data entry and the errors associated with this approach, a one-way data exchange has been implemented between the District Student Information System (SIS), namely Aeries, and Illuminate. Student and teacher demographic data and master schedule information is entered into Aeries and transferred to Illuminate on a nightly basis, which enables teachers to access their rosters in Illuminate.

The Software Services Agreement for Illuminate DnA Student Assessment Data Management System includes hosting, maintenance and associated support for the Illuminate system, including the one-way data exchange between Aeries and Illuminate.

**Recommendation**

Approval of Software Services Agreement for Illuminate DnA Student Assessment Data Management System beginning July 1, 2018 through June 30, 2019 in the amount of \$222,420 between Illuminate Education, Inc. and Oakland Unified School District.

**Fiscal Impact**

\$222,420 for 2018-19 from Funding Resource 9999994701: General Purpose (GP) Software Licensing.

**Attachments**

Software Services Agreement for Illuminate DnA Student Assessment Data Management System

Resolution to Determine That It Would Be Futile to Solicit Bids for a District-Wide Test Management and Web-Based Assessment System

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**RESOLUTION NO. 1718-0047**  
**OF THE OAKLAND UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION**  
**TO DETERMINE THAT IT WOULD BE FUTILE TO SOLICIT BIDS FOR A**  
**DISTRICT-WIDE TEST MANAGEMENT AND WEB-BASED ASSESSMENT SYSTEM**

**WHEREAS**, generally, Public Contract Code Section 20118.2 allows a school district to procure computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and related apparatus through a competitive negotiations process that allows for the District to base its selection of a vendor on factors other than lowest price; and

**WHEREAS**, on June 10, 2015, the District entered into a three year software license and support agreement with Illuminate Education, Inc. (Enactment No. 15-0762) for Illuminate to provide the District a District-wide Test Management and Web-based Assessment System for the period July 1, 2015 through June 30, 2018 ("2015 Agreement"); and

**WHEREAS**, the 2015 Agreement was entered into by way of a contractual "piggyback" resolution that was based upon a now-expired Illuminate-Corona Norco Unified School District contract; and

**WHEREAS**, California law provides that, "Where competitive proposals work an incongruity and are unavailing as affecting the final result or where they do not produce any advantage . . . the statute requiring competitive bidding does not apply" (*Hiller v. City of Los Angeles* (1961) 197 Cal.App.2d 685, 694), and that public entities need not comply with competitive bidding processes where to do so would be impractical or futile and would not serve the purposes of competitive bidding. (*Los Angeles Dredging Company v. City of Long Beach* (1930) 2 Cal. 348; *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631.); and

**WHEREAS**, Illuminate's system is fully integrated with the District's data processing and other systems and there exists significant knowledge and expertise of District users and stakeholders regarding Illuminate's system; and

**WHEREAS**, the District is addressing other complex, time-critical system conversions (e.g., implementation of the Escape system); and

**WHEREAS**, because only Illuminate can timely provide the test management and web-based assessment system currently integrated and in use with the District, it would be futile for the District to attempt to obtain responsive bids through a competitive negotiations process; and

**WHEREAS**, competitively negotiating the provision of the system at issue will not affect the final result to the District, except to delay work and withhold critical educational monitoring services for students, schools and the District; and

**WHEREAS**, based on the foregoing, it would be incongruous, futile and unavailing to solicit public bids for the test management and web-based assessment system; and

**WHEREAS**, the same system is potentially available to the District from other companies at comparable prices, as evidenced by the prior annual cost of \$233,694.80 for the Edusoft system.

**WHEREAS**, District staff believes that Illuminate's price of \$ 222,420 Dollars (\$ 222,420) to provide the critical test management and web-based assessment system for the period July 1, 2018 to 6/30, 2019 is reasonable; and

**WHEREAS**, the District is presenting such contract for the procurement of the test management and web-based assessment system to the Board for the Board's approval.

**NOW, THEREFORE BE IT RESOLVED** by the Governing Board of the Oakland Unified School District hereby resolves, determines, and finds the following:

**Section 1. Recitals.** That the above recitals are true and correct.

**Section 2. Disadvantage to District.** For the reasons stated above, public bidding for the test management and web-based assessment system would not produce an advantage to the District, and would produce a net burden and distinct disadvantages to the District.

**Section 3. Futility.** That based on the foregoing, it would be incongruous, futile, and unavailing to attempt to bid this system.

**Section 4. Contract Approval.** That the District's Board approves the contract with Illuminate to provide the system to the District, without advertising for or inviting of bids, and to take all steps and perform all actions necessary to execute and implement the contract.

**Section 5. Approval of Actions.** All actions heretofore taken and to be taken by District staff, as set forth above, are hereby approved, confirmed and ratified.

**PASSED AND ADOPTED** this 27th day of June, 2018, at a Regular Meeting of the Governing Board by the following vote:

AYES: Jame Harris, Shanthi Gonzales, Roseann Torres, Jody London, Vice President Jumoke Hinton  
Hodge, President Aimee Eng

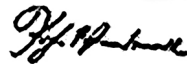
NOES: Nina Senn

ABSTAIN: None

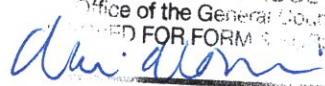
ABSENT: None

I hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Governing Board of Oakland Unified School District, held on June 27, 2018.

Date: 6/28/18



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Kyla Johnson-Trammell  
Secretary, Governing Board  
Oakland Unified School District

OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the General Counsel  
NOTED FOR FORMS ASSISTANCE  
  
Nathan McWilliams, General Counsel

## DnA Software Services Agreement

This DnA Software Services Agreement (“**Agreement**”) is entered into effective as of July 1, 2018 (“**Effective Date**”) by and between Illuminate Education, Inc., a California corporation (“**Illuminate**”), and Oakland Unified School District (“**District**”) (collectively, “**Parties**”)

### RECITALS

WHEREAS, District desires to implement a web-based software system for student data and assessment management;

WHEREAS, Illuminate has developed, owns and hosts online such a system known as the Illuminate Data and Assessment Management System (the “**System**”);

WHEREAS, Illuminate also has acquired from third parties the right to make available in conjunction with the System (i) a database of test questions known as the KDS Inspect Item Bank (“**Item Bank**”);

WHEREAS, District desires to access and use the System and obtain the other services as provided herein.

NOW, THEREFORE, in consideration of the mutual representations, warranties and agreements contained herein, the parties hereto agree as follows:

### AGREEMENT

1. Term of Agreement. Unless earlier terminated as provided herein, the initial term of this Agreement shall be from the Effective Date through June 30, 2019 (“**Term**”), with the option of the Parties to extend this Agreement for two (2) additional one year terms upon the same terms and conditions as set forth in this Agreement.

2. System Services; Third Party Services.

(a) System Services. Subject to the terms of this Agreement, during the Term, District and District Users (as defined below) may access and use the System for the benefit of District’s students, but only with respect to the schools identified on Exhibit A hereto. Exhibit A may be amended for future school years to include additional District schools. District is responsible for the actions of all District Users and other District employees and agents, for ensuring that only District Users are provided access to the System (including ensuring ID and password security), and that access of District Users is limited to that portion of the System and District Data (as defined below) as is reasonably necessary in order to fulfill the purposes of this Agreement. “**District Users**” means District employees, students and such students’ parents or guardians holding a valid ID and password to use the System issued by the District.

(b) Third Party Services. Illuminate has entered into agreements with third parties that permit it to authorize District Users to download from such third parties’ servers, or otherwise access, and use, through the System, (A) the Item Bank, subject, in certain instances, to execution of a standard end user license agreement with the third party provider. So long as Illuminate continues to have the right from the applicable third party to authorize District to use the Item Bank in connection with the System, it will enable the System to allow District Users to do so. In the event that Illuminate ceases to have such right, or the applicable third party dissolves or otherwise ceases to make such product available to Illuminate, Illuminate will work with District to identify an alternative product providing substantially similar functionality and on substantially similar terms, and make such product available to District. If Illuminate is unable to find or obtain the right to provide an alternative product on such terms, District’s sole remedy will be either (i) a reduction in the Annual Fee by the per student fee indicated in the table below in 3 (b), in the case of the unavailability of the Item Bank, or (ii) termination of this Agreement. Illuminate makes no representations or warranties regarding the functionality, quality or continuing availability of either the Item Bank (or any alternative product) and will have no liability with respect thereto.

3. Fees.

(a) Annual Fee. District agrees to pay to Illuminate an annual fee (the “**Annual Fee**”) for access and use of the System and applicable third party services each school year during the Term, and any extension thereof. The annual fee for Year 1 shall not exceed \$222,420 in accordance with the CALPADS 2017-18 Fall 1 count of 37,070 students enrolled in the District, and the annual fee for Years 2 and 3 shall not exceed the amount as calculated by the below “Student Count” formula.

(b) Student Count. The parties agree that the number of students to be used in calculating the Annual Fee for each school year (the “**Student Count**”) shall be the number of students during the preceding school year based upon the official California state website for schools in the District that will be using or are authorized to use the System.

By way of example, the estimated Annual Fees for the Term assuming the following Student Count(s) would be as follows:

Year 1 Dates: 7/1/2018 - 6/30/2019

QTY	PRODUCT	DESCRIPTION	LIST	UNIT	TOTAL PRICE
37.070	DnA Licenses	Per Student Licenses - Illuminate Data and Assessment™	\$3.50	\$3.50	\$129,745.00
37.070	Grading Software	Assessment Scanning and Scoring	\$1.00	\$1.00	\$37,070.00
37.070	KDS Inspect (Legacy)	Access to Key Data Systems' KDS Inspect Item Bank and Pre-built Assessments.	\$1.50	\$1.50	\$55,605.00
Total					\$222,420.00

Year 2 Dates: 7/1/2019 - 6/30/2020

QTY	PRODUCT	DESCRIPTION	LIST	UNIT	TOTAL PRICE
37.070	DnA Licenses	Per Student Licenses - Illuminate Data and Assessment™	\$3.50	\$3.50	\$129,745.00
37.070	Grading Software	Assessment Scanning and Scoring	\$1.00	\$1.00	\$37,070.00
37.070	KDS Inspect (Legacy)	Access to Key Data Systems' KDS Inspect Item Bank and Pre-built Assessments.	\$1.50	\$1.50	\$55,605.00
Total					\$222,420.00

Year 3 Dates: 7/1/2020 - 6/30/2021

QTY	PRODUCT	DESCRIPTION	LIST	UNIT	TOTAL PRICE
37.070	DnA Licenses	Per Student Licenses - Illuminate Data and Assessment™	\$3.50	\$3.50	\$129,745.00
37.070	Grading Software	Assessment Scanning and Scoring	\$1.00	\$1.00	\$37,070.00
37.070	KDS Inspect (Legacy)	Access to Key Data Systems' KDS Inspect Item Bank and Pre-built Assessments.	\$1.50	\$1.50	\$55,605.00
Total					\$222,420.00

(c) Additional Training and Services. Upon written request and authorization by District, Illuminate will conduct additional training and provide additional services to District. Training after initial training is exhausted will be at a rate equal the initial training rate for on-site training and \$500 per day for on-line training.

(d) Payment. The Annual Fee for each school year and fees for training and services shall be paid by District within 30 days of receipt of an invoice from Illuminate. Illuminate may submit an invoice for the

Annual Fee in advance of each school year on or after the first day of such school year. Illuminate may submit an invoice for training and other services following the provision of such training or service.

(e) Failure to Make Payment. In the event District fails to pay the Annual Fee or other fees due hereunder when due it will constitute a material breach of this Agreement and, upon written notice from Illuminate, District agrees to immediately cease, and to cause District Users to immediately cease, using the System and Illuminate will have no further obligation to provide any maintenance or support to District or District Users.

(f) Taxes. The fees in this Section 3 do not include sales, use or similar taxes which may be applicable. District is solely responsible and liable for payment of all sales, use, excise, value added or similar taxes, duties or charges imposed by any federal, state or local government or jurisdiction with respect to any fees or other payments to be made by District to Illuminate under this Agreement, excluding taxes based on Illuminate's overall net income.

4. Ownership of System; Third Party Materials. Illuminate and its third party providers are and will remain the exclusive owners of all right, title and interest in and to the System and all derivative works, and in the materials licensed or provided by such third parties to Illuminate ("***Third Party Materials***"), including but not limited to copyrights, patent rights, and trade secrets and all other intellectual property rights as may exist now and/or hereafter come into existence, subject only to the rights of third parties in open source components. In addition, Illuminate shall own any and all other ideas, concepts, themes, technology, algorithms, programming codes, documentation or other intellectual property or copyrightable material conceived, developed, created, written or contributed by Illuminate pursuant to this Agreement ("***Specific Developments***"). District will have no rights in the System, any derivative works, the Specific Developments or Third Party Materials, except the right to access and use them as expressly set forth in this Agreement. District agrees not to (i) alter, merge, modify, adapt or translate the System or Third Party Materials, or decompile, reverse-engineer, disassemble, or otherwise reduce the System or Third Party Materials to a human-perceivable form, (ii) sell, rent, lease or license the System or Third Party Materials, (iii) create derivative works based upon the System or Third Party Materials or (iv) permit anyone other than District Users to use the System. District acknowledges that the System is confidential in nature and constitutes a trade secret of Illuminate and agrees to use reasonable efforts to prevent inadvertent disclosure of the System, or elements thereof, to any third party during the Term or thereafter.

5. Implementation, Data Conversion and Hosting. Illuminate agrees to provide the services associated with the implementation of the System and District Data conversion and hosting as follows:

(a) Hosting. The System and District Data will be hosted on Illuminate's servers.

6. System Maintenance and Support. Illuminate agrees to provide maintenance and support of the System to District. Such maintenance and support will include coverage in the form of bug fixes and other corrections to the System; telephone and e-mail support for questions regarding operations of the System; change the System as necessary to incorporate upgrades and new features; support to District in resolving problems/errors resulting from misuse or hardware/software failure; telephone or web conferences with District to address future growth or modifications to the System. Maintenance and support of the System is provided at no additional cost to District. Illuminate is not responsible for, nor will it have any liability resulting from, (a) modifications to or alterations of the System or databases by District or District Users, District employees or agents, unless such modification or alteration is approved in writing by Illuminate, or (b) any failure of District equipment or software.

7. Responsibilities of District. District agrees to prepare and furnish to Illuminate upon request such information as is reasonably requested by Illuminate in order for Illuminate to perform its obligations under this Agreement.

8. District Data.

(a) Ownership and Control. District will retain ownership of, and the ability to control, all District information, including Pupil Records (as defined below), imported into the System (“***District Data***”). Illuminate may, however, internally use District Data that has been de-identified (by removing students’ names, IDs and any other demographic data), on an aggregate basis, in order to improve its educational products, to demonstrate the effectiveness of its products and in the development and improvement of educational sites, services or applications. Upon the termination of this Agreement, to the extent District Data resides on Illuminate servers, Illuminate agrees to assist in the transfer all District Data back to District in an industry standard open format such as SQL at no charge.

(b) Sharing of District Data. Illuminate will not share District Data with or disclose it to any third party, except (i) to District Users, (ii) as directed by District or District Users, (iii) to Illuminate’s subcontractors who need access to fulfill Illuminate’s obligations under this Agreement and who have agreed to maintain the confidentiality of such information or (iv) as required by applicable law. When Illuminate believes that any disclosure is required by applicable law, it will promptly notify District prior to the disclosure and give District a reasonable opportunity to object to the disclosure.

(c) Storage and Process. Illuminate will store and process District Data in accordance with commercially reasonable practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use.

(d) Social Security Numbers. District agrees that it will not collect or store as part of the District Data or otherwise any social security numbers.

## 9. Privacy and Security of Student Data.

### (a) Definitions.

(i) “***Pupil-Generated Content***” means materials created by a pupil, excluding pupil responses to a standardized assessment where pupil possession and control would jeopardize the validity and reliability of that assessment.

(ii) “***Pupil Records***” means any information (i) directly related to a pupil that is maintained by District or (ii) acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other District employee, but does not include aggregated de-identified information, used by Illuminate to improve its educational products, to demonstrate the effectiveness of its products and in the development and improvement of educational sites, services or applications.

(b) Ownership and Control of Pupil Records. Pupil Records obtained by Illuminate from District will continue to be the property of and under the control of the District.

(c) Possession and Control of Pupil-Generated Content. Pupils may retain possession and control of their own Pupil-Generated Content, and may transfer their own Pupil-Generated Content to a personal account, by submitting a written request directly to the District.

(d) Use of Pupil Records. Illuminate will not use any information in a Pupil Record for any purpose other than those required or specifically permitted by this Agreement and specifically will not use personally identifiable information in a student’s Pupil Records to engage in targeted advertising.

(e) Correction of Pupil Records. A parent, legal guardian, or student who has reached 18 years of age may review personally identifiable information in the student’s Pupil Records and correct erroneous information contained therein by submitting a written request for access or a written description of the erroneous information and request for correction to District and furnishing District, upon request, such information as is reasonably required to respond to the request. District is responsible for correcting all such erroneous information and Illuminate agrees to fully cooperate with District to make such corrections.



(f) Security and Confidentiality. Illuminate will take all legally required actions to ensure the security and confidentiality of Pupil Records, including but not limited to the designation and training of responsible individuals. Illuminate will identify those employees and subcontractors who will have access to Pupil Records and ensure that such individuals receive instructions as to compliance with the security and confidentiality requirements of this Agreement with respect to Pupil Records. Illuminate warrants that all Pupil Records will be encrypted in transmission. Illuminate further warrants that it will deploy electronic security tools and technologies, including anti-virus protection and intrusion-detection methods in providing the services under Agreement.

(g) Notice of Unauthorized Disclosure. In the event of an unauthorized disclosure of Pupil Records, each party agrees to advise the other promptly upon discovery of such a disclosure and, if required by law, District will notify affected parents, legal guardians, or students who have reached 18 years of age, as applicable, in writing of such unauthorized disclosure.

(h) Certification of Non-Retention. Illuminate certifies that, in accordance with this Agreement, Pupil Records will not be retained or available to Illuminate upon completion of the terms of this Agreement. This certification may be enforced through any lawful means, including but not limited to civil action.

(i) FERPA and State Equivalent Compliance. District and Illuminate each represents and warrants that it and its agents, employees and subcontractors have and will continue to receive training so as to be familiar with the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and equivalent state provisions, and each party agrees that it will comply with such provisions and take all reasonable measures necessary to protect Pupil Records from disclosure.

(j) Other Third Party Content. Nothing in this Section shall be construed to impose liability on Illuminate for content provided by any third party.

#### 10. Illuminate Warranty.

(a) System Warranty. Illuminate warrants to District that the System as delivered, will materially comply with the published specifications of Illuminate for such System. Illuminate does not warrant that the operation of the System will be uninterrupted or error-free. IN PARTICULAR, FOR PURPOSES OF THE FOREGOING WARRANTY, ILLUMINATE AND DISTRICT ACKNOWLEDGE THAT THE SYSTEM IS NOT AND CANNOT BE MADE TO BE 100% ACCURATE, AND THAT ANY ERRORS OR FAILURE TO PERFORM SHALL NOT BE DEEMED A BREACH OF SUCH WARRANTY UNLESS THEY ARE SIGNIFICANT AND NOT TO BE EXPECTED IN LIGHT OF THE LIMITATIONS OF SYSTEMS OF THIS TYPE.

(b) Disclaimer of Warranties. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH ABOVE, THE SYSTEM AND ALL ILLUMINATE SERVICES ARE PROVIDED "AS IS" AND ILLUMINATE HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND ILLUMINATE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. ALL THIRD-PARTY SERVICES ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY SERVICES IS STRICTLY BETWEEN DISTRICT AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY SERVICES.

#### 11. Indemnification.

(a) By Illuminate. Illuminate agrees to defend, indemnify and hold harmless District and its directors, officers, employees, and agents from and against all damages, costs (including reasonable attorneys' fees), judgments and other expenses arising out of or on account of any third party claim: (i) alleging that District's use of the System infringes or misappropriates the proprietary or intellectual property rights of any

third party, except to the extent that such infringement results from District's misuse of or modifications to the System; (ii) that results from the gross negligence or intentional misconduct of Illuminate or its employees or agents; or (iii) that results from any material breach of any of the representations, warranties or covenants contained herein by Illuminate.

(b) By District. To the extent permitted under applicable law, District agrees to defend, indemnify and hold harmless Illuminate and its directors, officers, employees, and agents from and against all damages, costs (including reasonable attorneys' fees), judgments and other expenses arising out of or on account of any third party claim that results from (i) the gross negligence or intentional misconduct of District or its employees or agents or (ii) any material breach of any of the representations, warranties or covenants contained herein by District.

(c) Indemnification Procedure. The parties' obligation to indemnify is subject to the conditions that the party with the obligation to indemnify ("**Indemnifying Party**") is given prompt notice of any such claims and is given primary control of and all reasonably requested assistance (at the other party's cost) for the defense of such claims (with counsel reasonably satisfactory to the party being indemnified ("**Indemnified Party**"), provided that the Indemnified Party shall under no circumstances be required to admit liability, and provided further that any delay in notification shall not relieve the Indemnifying Party of its obligations hereunder except to the extent that the delay materially impairs its ability to indemnify. Without limiting the foregoing, the Indemnified Party may participate in the defense at its own expense and with its own counsel; provided that if the Indemnified Party reasonably concludes that the Indemnifying Party has conflicting interests or different defenses available with respect to such claim, the reasonable fees and expenses of one counsel to the Indemnified Party shall be borne by the Indemnifying Party. The Indemnifying Party shall not enter into or acquiesce to any settlement containing any admission of or stipulation to any guilt, fault, liability or wrongdoing on the part of the Indemnified Party or which would otherwise adversely affect the Indemnified Party without the Indemnified Party's prior written consent (which shall not be unreasonably withheld). The Indemnifying Party shall keep the Indemnified Party advised of the status of the claims and the defense thereof and shall consider in good faith the recommendations made by the Indemnified Party with respect thereto.

12. Insurance. Illuminate agrees to carry a comprehensive general and, if Illuminate has any company-owned or company-leased vehicles, automobile, liability (including cyber) insurance with limits of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit for bodily injury and property damage in a form mutually acceptable to both parties to protect Illuminate and District against liability or claims of liability which may arise out of this Agreement. Illuminate agrees to maintain workers' compensation insurance as required under applicable law. Illuminate shall name the District as an additional insured under all policies applicable under this Agreement, and shall provide an additional insured endorsement to the District within 30 days of the Effective date of this Agreement and any extension thereof

### 13. Termination.

(a) Termination by District. District may terminate this Agreement without cause prior to the expiration of the Term, effective upon the end of a District fiscal year, by giving Illuminate written notice of its intent to so terminate at least sixty (60) days prior to the end of such District fiscal year.

(b) Termination for Cause. Either party may terminate this Agreement prior to the expiration of the Term, effective immediately upon written notice to the other party, in the event of a material breach of this Agreement by the other party hereto, which breach remains uncured for more than thirty (30) days after written notice thereof. In addition, either party may terminate this Agreement upon ten (10) days written notice to the other party upon the occurrence of any one or more of the following: (i) the institution by or against the other party of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of the other party's debts; (ii) the other party making an assignment for the benefit of creditors; or (iii) the other party's dissolution.

(c) Rights in Law and Equity Remain. The foregoing rights to terminate are in addition to, not in lieu of, all other rights and remedies which may be available to either party under this Agreement, at law and/or in equity.

(d) Survival. The obligations in the following Sections will survive any expiration or termination of this Agreement: Sections 4, 8, 9, 10, 11, 13 and 14 and any obligations to pay for license fees, services, training or taxes pursuant to Section 3 that were earned or payable relating to the period prior to termination.

14. Miscellaneous.

(a) Entire Agreement; Counterparts. This Agreement and the Exhibits hereto contain the entire agreement between the parties with respect to the transactions contemplated hereby and supersedes all prior negotiations, commitments, agreements and understandings between them with respect thereto. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and will become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission, or by e-mail delivery of a “.pdf” data file, such signature will create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile signature page were an original thereof.

(b) Notices. All notices, requests, demands and consents to be made hereunder to the parties hereto pursuant to this Agreement will be in writing and will be sufficiently given if personally delivered, sent by other means of electronic transmission (including electronic mail) or sent by mail, postage prepaid to the party at the following addresses or to such other address as either party may hereafter designate to the other in accordance herewith:

If to Illuminate:  
Illuminate Education, Inc.  
6531 Irvine Center Drive, Suite 100  
Irvine, California 92618  
Attention: Contracts Administrator  
E-mail: [Contracts@IlluminateEd.com](mailto:Contracts@IlluminateEd.com)

If to District:  
Oakland Unified School District  
1000 Broadway Suite 600  
Oakland, California 94607  
Attention: David Chambliss  
E-mail: [david.chambliss@ousd.org](mailto:david.chambliss@ousd.org)

(c) Assignment; Successors and Assigns. Neither party may assign this Agreement or its obligations hereunder without the prior written consent of the other party hereto, except that either party may assign this Agreement in connection with a sale of all or substantially all its outstanding equity or assets without the consent of the other party hereto. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of, each of the parties hereto and, except as otherwise expressly provided herein, their respective legal representatives, successors and assigns.

(d) Amendments, Waivers and Severability. Except as otherwise provided herein, this Agreement may be amended, and compliance with any provision of this Agreement may be omitted or waived, only by written agreement duly signed by Illuminate and District. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will not invalidate or render unenforceable the remaining provisions of this Agreement.

(e) Governing Law. This Agreement will be governed by, and construed and enforced in accordance with, the substantive laws of the State of California, without regard to its principles of conflicts of laws. The Alameda County Superior Court or the U.S. District Court for the Northern District of California shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.

(f) Relationship of the Parties. Nothing contained in this Agreement will be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties will at all times be that of independent contractors. Neither party will have authority to contract for or bind the other in any manner whatsoever. This Agreement confers no rights upon either party except those expressly granted herein.

(g) Interpretation. This Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement.

(h) No Third-Party Beneficiaries. Except for the indemnification rights of certain directors, officers, employees and agents expressly set forth in Section 11, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(i) Improper Payments/Certification Regarding Debarment. Illuminate represents and warrants that it has not directly or indirectly offered or given, and will not directly or indirectly offer or give, to any employee, agent or representative of District any cash or noncash gratuity or payment with a view toward securing any business from District or influencing such person with respect to the conditions, or performance of any contracts with or orders from District, including without limitation this Agreement. Illuminate also 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 Agreement, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>)

(j) EXCLUSION OF DAMAGES. IN NO EVENT WILL EITHER DISTRICT OR ILLUMINATE BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION, OR DELAY OF THE SYSTEM, (b) LOSS, DAMAGE OR CORRUPTION OF DATA OR (c) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(k) CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE ANNUAL FEE FOR ONE YEAR SET FORTH IN SECTION 3. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(l) Force Majeure. In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any payment obligation), when and to the extent such failure or delay is caused by any circumstance beyond such party's reasonable control (a "*Force Majeure Event*"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes

or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority, or national or regional shortage of adequate power or telecommunications. Performance times will be considered extended for a period of time equivalent to time lost because of any such delay by providing prompt written notice of such expected delay to the other party.

(m) Due Authority of Signatories/District Board Approval/Agreement Publicly Posted. Each individual signing this Agreement on behalf of a party represents and warrants that he or she has been duly authorized by appropriate action of such party to execute, and thereby bind such party to, this Agreement. The District shall not be bound by the terms of this Agreement until it has been formally approved by the District's Governing Board, and no payment shall be owed or made to Illuminate absent that formal approval. This Agreement shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee. Finally, this Agreement, its contents, and all incorporated documents are public documents and will be made available by the District to the public online via the Internet.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

Oakland Unified School  
District

ILLUMINATE EDUCATION,  
INC.

*Amy Eng*

President, Board of Education 6/28/18  
Date

June 15, 2018  
Date

*Amy Eng*

Secretary, Board of Education 6/28/18  
Amy Eng

*Scott Hickson*  
Scott Hickson, CFO

\_\_\_\_\_  
Print

OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the General Counsel  
APPROVED FOR FORM & SUBSTANCE  
By: *Marion McWilliams*  
Marion McWilliams, General Counsel

EXHIBIT A  
LOCATIONS

ACORN Woodland Elementary  
Allendale Elementary  
Alliance Academy  
Bella Vista Elementary  
Bret Harte Middle  
Bridges Academy  
Brookfield Elementary  
Burckhalter Elementary  
Carl B. Munck Elementary  
Castlemont High  
Chabot Elementary  
Claremont Middle  
Cleveland Elementary  
Coliseum College Prep Academy  
Community Day High  
Community Day Middle  
Community United Elementary  
Crocker Highlands Elementary  
Dewey Academy  
East Oakland Leadership Academy  
East Oakland Pride Elementary  
Edna Brewer Middle  
Elmhurst Community Prep  
Emerson Elementary  
EnCompass Academy Elementary  
Esperanza Elementary  
Franklin Elementary  
Fred T. Korematsu Discovery Academy  
Fremont High  
Frick Middle  
Fruitvale Elementary  
Futures Elementary  
Garfield Elementary  
Gateway to College at Laney College  
Glenview Elementary  
Global Family  
Grass Valley Elementary  
Greenleaf Elementary  
Hillcrest Elementary  
Home and Hospital Program  
Hoover Elementary  
Horace Mann Elementary  
Howard Elementary  
Independent Study, Sojourner Truth  
International Community  
Joaquin Miller Elementary  
Kaiser Elementary  
La Escuelita Elementary  
Laurel Elementary  
LIFE Academy  
Lincoln Elementary  
Madison Park Academy 6-12  
Madison Park Academy TK-5  
Manzanita Community

Manzanita SEED Elementary  
Markham Elementary  
Martin Luther King, Jr. Elementary  
McClymonds High  
Melrose Leadership Academy  
MetWest High  
MLK / Lafayette Elementary  
Montclair Elementary  
Montera Middle  
New Highland Academy  
Nonpublic, Nonsectarian Schools  
Oakland High  
Oakland International High  
Oakland Technical High  
Parker Elementary  
Peralta Elementary  
Piedmont Avenue Elementary  
Preparatory Literary Academy of Cultural Excellence  
Ralph J. Bunche High  
Reach Academy  
Redwood Heights Elementary  
Rise Community  
Roosevelt Middle  
ROOTS International Academy  
Rudsdale Continuation  
Sankofa Academy  
Sequoia Elementary  
Skyline High  
Street Academy (Alternative)  
Think College Now  
Thornhill Elementary  
United for Success Academy  
Urban Promise Academy  
West Oakland Middle  
Westlake Middle



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

**Legislative File ID No.** 18- \_\_\_\_\_

**Department:** Technology Services

**Vendor Name:** Illuminate Education, Inc.

**Contract Term:** Start Date: July 1, 2018 End Date: June 30, 2019

**Annual Cost:** \$ 222,420

**Approved by:** Susan Beltz

**Is Vendor a local Oakland business?** Yes  No

**Why was this Vendor selected?**

The Oakland Unified School District has successfully used illuminate as its assessment data management system since 2015-16. illuminate is a web-based and longitudinal system that enhances the District's ability to analyze trends, use data to shape curriculum and instruction, and create assessments that provide immediate feedback on student progress. To avoid redundant data entry and the errors associated with this approach, a one-way data exchange has been implemented between the District Student Information System (SIS), namely Aeries, and illuminate. Student and teacher demographic data and master schedule information is entered into Aeries and transferred to illuminate on a nightly basis, which enables teachers to access their rosters in illuminate.

**Summarize the services this Vendor will be providing.**

Illuminate Education, Inc. will provide licensing, maintenance and support for the illuminate DnA Student Assessment Data Management System for the 2018-19 fiscal year.

**Was this contract competitively bid?** Yes  No

If No, answer the following:

1) How did you determine the price is competitive?

The Oakland Unified School District receives the illuminate DnA Student Assessment Data Management System at the rate of \$6.00 per student per year, totaling \$222,420 in 2018-19. For comparison purposes, the prior Edusoft assessment system cost the District \$234,699.80 per year and lacked many of the online assessment and reporting features needed by OUSD. District staff believes that pricing for student information and assessment systems have been generally stable since the prior contract was competitively bid. In addition, OUSD has made significant investments in illuminate, including development of the one-way integration between illuminate and Aeries, ingest of state and prior District assessment data, and training of District staff. Switching to another assessment system is expected to incur significant one-time external and internal costs above and beyond software licensing and support.



2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$87,800 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- Emergency** contracts [requires Board resolution declaring an emergency]
- Technology** contracts
  - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$87,800 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
  - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
  - Western States Contracting Alliance Contracts (WSCA)
  - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- "Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception**

See attached Resolution of the Oakland Unified School District Board of Education to Determine that it would be Futile to Solicit Bids for a District-Wide Test Management and Web-Based Assessment System.