

Board Office Use: Legislative File Info.	
File ID Number	17-1434
Introduction Date	6/28/2017
Enactment Number	17-1071
Enactment Date	6/29/17



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

Memo

To Board of Education

From Marion McWilliams - General Counsel
Andrea Epps – Staff Attorney
Susan Beltz – Chief Technology Officer
Colleen Calvano – Executive Director, Technology Services

Board Meeting Date June 28, 2017

Subject Software-as-a-Service Subscription Agreement – Siteimprove, Inc.

Action Requested Approval by the Board of Education of a Software-as-a-Service Subscription Agreement between the District and Siteimprove, Inc., Bloomington, MN, for the latter to provide services to comply with the terms of the Agreement to Resolve Office for Civil Rights (“OCR”) case number 09-16-1560 regarding website accessibility. The term of the Agreement is for the period July 1, 2017 through June 30, 2019, in an amount not to exceed \$19,630 per fiscal year.

Background and Discussion On August 12, 2016, under the authority of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Education Act of 1990, the Office for Civil Rights (“OCR”) initiated an investigation to determine whether the District’s webpages were inaccessible to people with disabilities. Without admitting any violation of law, the District voluntarily agreed to resolve case number 09-16-1560 under the following terms:

1. Approve policies and procedures (“the Plan for New Content”) to ensure that all new, newly added, or modified online content and functionality will be accessible to people with disabilities as measured by conformance to the Benchmarks for Measuring Accessibility;
2. Identify auditors to audit all content and functionality on the District website and identify online content or functionality that is inaccessible to persons with disabilities;
3. Audit all content and functionality of the District’s website that may be inaccessible to persons with disabilities;
4. Develop a corrective action plan to address all inaccessible content and functionality;
5. Place a notice on the District website regarding how to request the webmaster or other appropriate person to provide access to online information or functionality that is currently inaccessible to persons



- with disabilities; and
6. Deliver website accessibility training to all appropriate personnel.

The contract with Siteimprove will facilitate completion of items 3, 4, and 6. Specifically, Siteimprove will conduct an audit and identify online content or functionality that is inaccessible to persons with disabilities, develop a corrective action plan to address all inaccessible content and functionality, and provide training to District personnel. The District will also have access to online resources and materials that will assist with ongoing monitoring and compliance.

Recommendation

Approval by the Board of Education of a Software-as-a-Service Subscription Agreement between the District and Siteimprove, Inc., Bloomington, MN, for the latter to provide services to comply with the terms of the Agreement to Resolve Office for Civil Rights ("OCR") case number 09-16-1560 regarding website accessibility. The term of the Agreement is for the period July 1, 2017 through June 30, 2019, in an amount not to exceed \$19,630 per fiscal year.

Fiscal Impact

Cost is \$19,630 for the 2017-2018 school year.

Attachments

- Siteimprove Contract
- Agreement to Resolve OCR Case Number 09-16-1560



CONTRACT JUSTIFICATION FORM

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

Legislative File ID No. 17-1434

Department: Legal

Vendor Name: Siteimprove, Inc.

Contract Term: Start Date: 7/1/17 End Date: 6/30/19

Annual Cost: \$ 19,630

Approved by: Marion McWilliams

Is Vendor a local Oakland business? Yes No

Why was this Vendor selected?

Siteimprove has expertise in automation of combing through data to spot errors and accessibility.

Summarize the services this Vendor will be providing.

Siteimprove will conduct an audit and identify online content or functionality that is inaccessible to persons with disabilities, develop a corrective action plan to address all inaccessible content and functionality, and provide training to District personnel.

Was this contract competitively bid? Yes No

If No, answer the following:

1) How did you determine the price is competitive?

Rates are competitive with the industry.

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**

Software-as-a-Service Subscription Agreement

This Software-as-a-Service Subscription Agreement (“**Agreement**”) is by and between Siteimprove, Inc., a California corporation with a business address at 7807 Creekr Ridge Circle, Bloomington, MN 55439, and its Affiliates (defined below) (collectively, “**Siteimprove**”/ “**Contractor**”) and **Oakland Unified School District** (“**Customer**” / “**OUSD**”/ “**you**” / “**your**”) for Siteimprove services. This Agreement consists of the following: (A) this Software-as-a-Service Subscription Agreement document; (B) Exhibit A, “**Website(s)**”; (C) Exhibit B, “**Terms and Conditions**”; and (D) any other exhibits listed in this Agreement.

This offer is only valid if signed by you on or before June 28, 2017. After that date, please contact Siteimprove to issue a new offer.

Below is a description of the modules that are included in the Agreement (“**Included Services**”):

Included Services	Limits (the “Limits”)*
Quality Assurance Crawls website and identifies quality issues.	15,000 Pages
Policy Allows Customer to set website parameters to ensure consistency in content.	
Accessibility Checks website against selected WCAG 2.0 accessibility standards and WAI-ARIA techniques.	
SEO Details technical and content-related issues affecting search engine rankings and traffic to the website.	
Priority Allows Customer to set criteria for order in which issues and errors are reported. <u>This service requires the implementation of a script on the website.</u>	
PDF Scanning	2,500 PDFs
Response Monitors website’s availability and performance.	1 Response Check Points
Standard Support Plan	

* The Limits consist of the following and their applicable definitions:

Pages: A Page is an electronic document created with HTML and accessible with a browser.

Response Check Points: Response Check Points are single URLs that are monitored for up-time and response time performance from a series of reliable servers across the globe.

Yearly Page Views: Yearly Page Views are the total number of Page Views a website will generate over the course of 365 days. A “Page View” is a single view by a website user of a page on a website that is being tracked by the Siteimprove Analytics tracking code. If a user clicks reload after reaching the page, it is counted as an additional Page View. If a user navigates to a different page and then returns to the original page, an additional Page View is recorded.

PDFs: Portable Document Format (PDF) is a file format that has captured all the elements of a printed document as an electronic image that you can view, navigate, print, or forward to someone else. To be included in this subscription a PDF must be hosted on one of the covered websites.

Access to the services

Please allow up to five business days for setup to the Included Services to be completed. The Included Services can be accessed at <http://my.siteimprove.com>. At that location, you can administer the logins for your authorized users. The Included Services also include training and tech support pursuant to Exhibit C.

Limitations

The Included Services are subject to the following limitations:

- Your use of the Included Services is subject to the Limits. If you exceed the Limits, we will notify you that continued use in excess of the Limits may subject you to additional charges. Additional charges will be documented in a change order that will require approval by the Oakland Unified School District Board of Education.
- Included Services may only be run on the website(s) listed in **Exhibit A**.
- Websites can be added to the Included Services, subject to the approval of Siteimprove.
- You must be the owner of the approved website(s).
- You can only add websites – approved websites cannot be replaced with different websites.
- Included Services may only be run on public websites that do not contain sensitive or personal information.

Limit Increases

Increasing the Limits for the Included Services are available at the rates and increments indicated below. These rates and increments may be updated annually. If an increase is requested after the start of the Initial or Renewal Term, the cost will be pro-rated.

Limit Increase	Additional annual subscription fee
Pages	\$650 per 1,000 pages
PDFs	\$300 per 1,000 PDFs
Response Check Points	\$100 per Check Point

Term

The first date for this Agreement (the “**Effective Date**”) is July 1, 2017. This Agreement will remain in force for a period of 2 years following the Effective Date (the “**Initial Term**”) with an option to extend, in writing, for one additional one (1) year term after the Initial Term.

Subscription Fees

The annual subscription fee (excluding applicable taxes) for the Included Services is not to exceed **\$19,630** (the “**Fee**”).

Invoices & Payments

All invoices are sent to the email address listed in the Billing Information section. If an email address is not listed, your invoice will be sent to the most current email address that Siteimprove has on file.

You will be invoiced as follows:

- Upon signing this Agreement, you will be invoiced for the Fee..
- At least 45 days prior to the expiration of the Initial or Renewal Term, you will be invoiced for the Fee so long as the Parties have agreed in writing to mutually extend the Term.

All invoices must be paid pursuant to the terms set forth in Section 2 of the Terms and Conditions (**Exhibit B**).

Billing Information

When you subscribe to the Included Services, we need to collect and process your personal information in order to identify you as a customer, to process payments and to send you invoices. This information is collected in this Agreement. We may transfer such information to affiliates for the purpose of the same. Information will not be transferred outside of the Siteimprove group.

You have the right to access, correct, modify and erase personal information you have given us. You may exercise these rights by contacting privacy@siteimprove.com

Contact information for invoicing:

Name:

Address:

Email:

Phone:

Customer Information

Is a Purchase Order Number ("PO") required?

- Yes, please provide Purchase Order Number: _____
- No

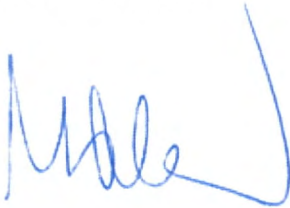
If a PO is required, will you be providing a new PO for each invoice?

- Yes
- No, the provided PO number can be used for the initial invoice and all subsequent invoices

Signatures

By signing below, each party acknowledges that it has carefully read and agrees to be bound by the terms of this Agreement. This Agreement will become effective on the Effective Date.

SITEIMPROVE Inc.



Signature

Morten Ebbesen


Name

May 10, 2017

Date

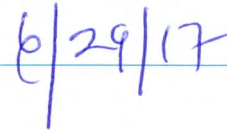
Oakland Unified School District

Signature



James Harris


President, Board of Education



Date

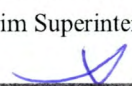
Oakland Unified School District

Signature



Dr. Devin Dillon

Interim Superintendent



Devin Dillon, Ph.D.

Interim Secretary, Board of Education



Oakland Unified School District

Signature

Board Secretary

Date

Oakland Unified School District

Approved as to Form

Marion McWilliams
Signature

Marion McWilliams
General Counsel

6/19/17
Date

Exhibit A: Website(s)

The Included Services may be run on the following website(s):

- www.ousd.org

Exhibit B: Terms and Conditions

1. DEFINITIONS

a. Interpretation. Capitalized terms used in these Terms and Conditions will have the meanings ascribed to them in the Agreement or as defined below. Terms other than those defined below will be given their plain English meaning and terms of art having specialized meanings in the software industry will be construed in accordance with industry standards. Unless the context otherwise requires, words importing the singular include the plural and words importing the masculine include the feminine and vice versa where the context so requires.

b. "Affiliate" means any entity directly or indirectly controlling or controlled by or in common control with a party, where "control" is defined in this context as the ownership of at least fifty percent (50%) or more of the voting stock or other interest entitled to vote on general decisions reserved to stockholders, partners, or other owners of such entity. An entity shall no longer be an Affiliate when through loss, divestment, dilution or other reduction of ownership, the requisite control no longer exists.

c. "Confidential Information" means information that is marked or otherwise identified as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used that either party discloses on or after the Effective Date, to the other party or its parents, affiliates' employees, contractors, officers, directors, partners, agents, attorneys, accountants or advisors. Confidential Information includes: business processes, practices, methods, policies, plans, operations, services, strategies, techniques, transactions, potential transactions, negotiations, pending negotiations, know-how, trade secrets, computer programs, computer software, applications, operating systems, software design, web design, databases, records, financial information, results, accounting information, accounting records, legal information, pricing information, credit information, payroll information, staffing information, internal controls, security procedures, sales information, revenue, costs, communications, original works of authorship,

customer information, and customer lists.

Confidential Information does not include information that: (a) was in the public domain prior or subsequent to the time such portion was communicated to the receiving party, through no fault of that party; (b) was rightfully in the receiving party's possession free of any obligation of confidence at or subsequent to the time such portion was communicated by the disclosing party; (c) was developed by the receiving party independently of and without reference to any information communicated by the disclosing party; (d) was communicated by the disclosing party to an unaffiliated third party free of any obligation of confidence; or (e) is approved by the disclosing party for release by the receiving party.

Notwithstanding the foregoing regarding Confidential Information, Siteimprove understands and agrees that OUSD, as a California public entity, is subject to the California Public Records Act and other public disclosure laws under California and federal law, and therefore OUSD may be required to disclose any Confidential Information that is not otherwise exempt from disclosure under California and/or federal law. Siteimprove further understands and agrees that this Agreement, and any and all attachments, exhibits, amendments, etc. to said Agreement, is a document that OUSD will make available to the public via OUSD's online legislative search engine (aka "Legistar").

2. INVOICES; PAYMENTS; PAST-DUE INVOICES

Unless expressly agreed otherwise, the Fee for the Initial Term will be invoiced on the Effective Date. At least 45 days prior to the expiration of the Initial or Renewal Term, Customer will be invoiced for the Fee for the Renewal Term. Customer will pay all invoices within 30 days of issuance. Unless expressly agreed otherwise, all prices are in United States Dollars. There is no charge for updates to, or new releases of, Included Services. However Siteimprove may launch new modules/services/products that are not covered by the Fee. In the event that an invoice becomes past-due, Siteimprove will notify Customer by phone or email. After Siteimprove has provided notice, Customer will



have five business days to pay the past-due invoice. If Customer fails to make the payment by the end of the cure period, then Siteimprove reserves the right to: (i) begin charging Customer interest for the past-due amount at an interest rate of 1.5% per month, or the highest rate allowed by applicable law, whichever is smaller; (ii) discontinue the Included Services; or (iii) terminate this Agreement pursuant to Section 3 (a) (Termination).

3. TERMINATION

a. For Material Breach. Either party may terminate this Agreement in the event of a material breach by the other party of its obligations under this Agreement if the other party fails to cure the breach within 30 days after receipt of written notice of breach.

b. For Convenience. During the Initial Term or Renewal Term, either party may terminate this Agreement at any time for its convenience, with or without cause, by giving written notice to the other party at least 30-days prior to the date of termination. Customer remains liable for payment of all Fees owed will not be entitled to a credit or refund when the Agreement is terminated pursuant to this Section 3(b).

4. INCLUDED SERVICES

Subject to the terms and conditions of this Agreement, Siteimprove will allow the Customer to access to the Included Services.

a. Ownership. Customer acknowledges and agrees that Siteimprove owns and shall remain the sole owner of all intellectual property rights vested in the Included Services created prior to or during the performance by the parties of this Agreement. This ownership right includes any inventions, patents, utility model rights, copyrights, design rights, mask works, trademark rights, or know-how, whether registered or not.

b. Use. The right to access the Included Services is worldwide, non-transferable, non-assignable (except as permitted in this Agreement) and limited in time to access and use during the Initial and any Renewal Terms and solely for Customer's internal business purposes by Customer's authorized agents. Customer will have access to the Included Services

only for those website domain(s) authorized pursuant to this Agreement.

c. Restrictions. This right is not a perpetual right to use, and Customer has no right to retain or to use the Included Services after termination of the Initial or Renewal Term. Customer has no right to rent, lease, assign, transfer, sublicense, display or otherwise distribute or make the Included Services available to any third party. Without limiting the generality of any other provisions stated in this Agreement, the Included Services may not be (a) used in the performance of services for or on behalf of any third party or as a service bureau; (b) modified, incorporated into or combined with other software, or created as a derivative work of any part of the Included Services; (c) used to process any sensitive or personal information; or (d) used for any illegal purpose. Customer may not modify, disassemble, decompile or otherwise reverse engineer the Included Services nor permit any third party to do so except as expressly permitted by law. Siteimprove reserves all rights not expressly granted to Customer under this Agreement. The use of Siteimprove's intellectual property beyond the express access grant in this Section 4 is outside the scope of this Agreement.

d. Support. Siteimprove will provide support to the Customer pursuant to the agreed support plan attached as Exhibit C. In no event will Siteimprove be obligated to furnish support for any version of the Included Services that Customer has modified or altered in any way.

e. Operational Data. The Included Services are designed to collect certain operational data, which may be used by Siteimprove for various business purposes, which may include customer support, verifying the need for and providing updates to the Included Services, market research and product planning, verifying Customer's compliance with the terms and conditions of this Agreement and protecting Siteimprove's intellectual property. If Customer has used the Included Services outside the parameters set forth in the Agreement, Customer will be required to pay additional fees to cover the additional use.

5. REPRESENTATIONS AND WARRANTIES

a. For Siteimprove. Siteimprove represents and warrants that: (i) it has the full power and authority to enter into and perform its obligations under this Agreement; (ii) this Agreement has been duly authorized, executed and delivered by it and constitutes the valid, legal and binding agreement of it and is enforceable against it; (iii) entering into and performing its obligations under this Agreement will not result in any breach of, or constitute a default under, any other agreement to which it is a party; and (iv) the Included Services will perform substantially as described in this Agreement, provided that it is used in accordance with the Agreement, including on the specified domains. These representations and warranties are only for the benefit of Customer.

b. For Customer. Customer represents and warrants that: (i) it has the full power and authority to enter into and perform its obligations under this Agreement; (ii) this Agreement has been duly authorized, executed and delivered by it and constitutes the valid, legal and binding agreement of it and is enforceable against it; (iii) entering into and performing its obligations under this Agreement will not result in any breach of, or constitute a default under, any other agreement to which it is a party; and (iv) it has full and legal right or authorization to display, disclose, transfer, assign or convey the information set forth and accessible on the websites on which the Included Services will be administered.

c. Disclaimer. Except for the express representations and warranties listed in this Agreement, each party makes no representations or warranties of any kind, whether express or implied, and expressly disclaims all warranties of title, non-infringement, merchantability, and fitness for a particular purpose. Unless set forth in this Agreement, no oral or written information or advice given by either party will create a representation or warranty.

6. FORCE MAJEURE

No party will 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 obligations to make payments to the other party), when and to the extent such failure or delay is caused by or

results from acts beyond the impacted party's ("Impacted Party") reasonable control ("Force Majeure Events"). Force Majeure Events include: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; and (i) shortage of adequate power or transportation facilities. A change in economic circumstances is not a Force Majeure Event. If a Force Majeure Event occurs, the Impacted Party will provide prompt notice to the other party, stating the period of time the failure or delay is estimated to last. In the event that the Impacted Party's failure or delay remains uncured for a period of 30 days following written notice, either party may terminate this Agreement upon five days' written notice.

7. LIMITATION OF LIABILITY

a. In no event will either party or its agents, officers, directors, employees, successors, assigns, or Affiliates be liable to the other party or its agents, officers, directors, employees, successors, assigns, or Affiliates for any indirect, incidental, consequential, punitive, or other special damages. This limitation includes any loss of profits, business interruption, goodwill, loss of data/content or the restoration of any of those items.

b. In addition to and without limiting the generality of Section 7(a), the aggregate liability of either party for any and all claims arising out of or relating to this Agreement will, in any circumstances, be limited to the Fees paid or payable by Customer to Siteimprove for the right to access or use the Included Services during the Initial Term or any Renewal Term (as the case may be).

8. CONFIDENTIALITY

Each party will: (a) hold Confidential Information in confidence; (b) use its best efforts to protect Confidential

Information in accordance with the same degree of care with which it protects its own Confidential Information; and (c) not disclose the other party's Confidential Information to any third party, except in response to a valid order by a court or other governmental body or as required by law. The receiving party will promptly give notice to the disclosing party of any unauthorized use or disclosure of the disclosing party's Confidential Information. The receiving party agrees to assist the disclosing party in remedying any such unauthorized use or disclosure of the disclosing party's Confidential Information. At any time, upon written request, the receiving party will return or destroy the Confidential Information that the disclosing party has provided to it.

9. PRIVACY

The Included Services are designed and developed to collect and process our Customers' website content and certain operational data in relation thereto. As such, Siteimprove may collect and processes both personally-identifiable information and nonpersonally-identifiable information from our Customers when performing the Included Services. Siteimprove does not sell any information processed this way to any third party. Any personal data processed by Siteimprove when performing the Included Services, such as storing cache copies of the Customer website content, is processed according to the Customer's instructions and on it's behalf. The parties agree that, in this regard, the Customer shall be the Data Controller and Siteimprove shall be a Data Processor, as defined in the General Data Protection Regulation (EU) 2016/679. Siteimprove also collects general Customer information, such as the billing information above, for internal necessary uses such as customer identification, invoicing, support and marketing. In this regard, Siteimprove will be the Data Controller. The Customer acknowledges and agrees that: (i) personal data which Siteimprove processes on behalf of the Customer when performing the included Services may be stored with Siteimprove's cloud hosting provider within the EEA (currently, Amazon Web Services); (ii) general Customer information collected for Siteimprove's internal use may be stored in Siteimprove's support and marketing systems,

currently hosted outside EEA under security conditions in accordance with applicable data protection rules under EU law; and (iii) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data (including obtaining relevant third party consent to any data transfer), or its accidental loss, destruction or damage. The Customer has the right to access, correct, modify and erase any personal data provided by the Customer to Siteimprove. To exercise these rights contact privacy-eu@siteimprove.com. For more information see Siteimprove Privacy Policy.

10. ASSIGNABILITY

This Agreement is binding upon and will inure to the benefit of the parties, their legal representatives, successors, and assigns. Except as otherwise expressly provided in this Agreement, neither party may assign, transfer, convey or encumber this Agreement or any rights granted in it, either voluntarily or by operation of law, without the prior written consent of the other party. Any attempt to do so is null and void. Notwithstanding the foregoing, a party shall have the right to assign this Agreement to its parent entity or affiliates or to a successor entity in the event of a merger, consolidation, transfer, sale, stock purchase, or public offering, provided the assignee is subject to all obligations of the Agreement.

11. NOTICES

Unless expressly set forth in the Agreement, all notices and other communications required by this Agreement must be in writing and sent to the parties at the addresses set forth below via overnight courier service, express postal service, or email with read-receipt. Notices are effective only: (a) upon receipt; and (b) if the party giving the Notice has complied with the requirements of this Section. Notice to Customer should be sent to the address set forth in the Billing Information Section.

Notice to Siteimprove should be sent to:

Siteimprove, Inc.

Attn: Legal Department

7807 Creekridge Circle

Bloomington, MN 55439

With a copy to:

legal@siteimprove.com

12. CONSUMER PRICE INDEX

The agreement is made in line with the Consumer Price Index (CPI). At the time of invoicing for the Renewal Term, the parties agree that the Fee may be increased to align with the latest CPI. The increase may not be more than 3% of the prior year's contract value.

13. STATUS OF CONTRACTOR

This is not an employment contract. Siteimprove is a contractor ("CONTRACTOR"), in the performance of this Agreement, shall be and act as an independent contractor. CONTRACTOR understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture 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. CONTRACTOR 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 CONTRACTOR's employees. In the performance of the work herein contemplated, CONTRACTOR is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, OUSD being interested only in the results obtained

14. LICENSE and PERMITS. CONTRACTOR shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this Agreement.

15. 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, CONTRACTOR agrees to comply with applicable Federal and State laws. In addition, CONTRACTOR agrees to require like compliance by all its subcontractor(s). CONTRACTOR 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 or sexual orientation.

16. INDEMNIFICATION.

CONTRACTOR agrees to hold harmless, indemnify, and defend OUSD and its officers, agents, and employees from any and all third party claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the negligent performance of this Agreement. CONTRACTOR also agrees to hold harmless, indemnify, and defend OUSD and its elective board, officers, agents, and employees from any and all third party claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to CONTRACTOR in connection with the negligent performance of this Agreement. This provision survives termination of this Agreement.

17. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION.

Contractor certifies to the best of his/her/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/>).

18. CONTRACT CONTINGENT ON GOVERNING BOARD APPROVAL.

OUSD shall not be bound by the terms of this Agreement until it has been formally approved by OUSD's Governing Board, and no payment shall be owed or made to CONTRACTOR absent formal approval. This Agreement shall be deemed to be approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

19. GOVERNING LAW

This Agreement will be governed by and construed in

accordance with the laws of California and the United States of America, except for its conflicts of law rules and principles. In the event of any suit or proceeding arising out of or related to this Agreement Alameda Superior Court of California will have exclusive jurisdiction and the parties will submit to the jurisdiction of that courts.

20. NO WAIVER

The delay or failure of either party to exercise any right, power, or privilege under this Agreement is not to be treated as a waiver of that right, power, or privilege or prevent a similar subsequent act from constituting a violation of the Agreement.

21. PUBLICITY

Customer consents to Siteimprove reproducing and publicizing its trading name, trademarks, logos and any Included Services utilized by Customer, on the corporate website of Siteimprove and in company presentations. Customer retains the right to revoke this consent through written notification to Siteimprove.

22. COUNTERPARTS

The Agreement may be executed in any number of counterparts. Each counterpart is an original and, when combined with another counterpart, will be treated as part of the same document. Any counterparts of this Agreement may be delivered electronically in PDF

format; these formats have the same effect as an original executed counterpart.

23. SEVERABILITY

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective to the extent of that prohibition or unenforceability in that jurisdiction. The validity, enforceability, or legality of the remaining provisions will not be affected.

24. ENTIRE AGREEMENT

This Agreement constitutes and expresses the entire agreement and understanding between the parties. This Agreement supersedes any prior communications, understanding, commitments, or agreements, oral or written, with respect to the subject matter of this Agreement. The parties are not relying on any representations or warranties other than those expressly listed in this Agreement. Any standard or boilerplate terms and conditions included on any document provided by one party to another (e.g., click-wrap agreements and purchase orders) are not part of this Agreement and will not be binding on either party. Any changes or modifications to this Agreement must be in writing, acknowledge the intent to amend the terms and conditions of this Agreement and be signed by an authorized representative of both parties before taking effect.

Exhibit C - Standard Support Plan

1. SELF-HELP RESOURCES. Customers can take full advantage of Siteimprove self-help tools, available online via our [Help Center](https://support.siteimprove.com/) (https://support.siteimprove.com/). From that page, Customers can find links to technical documentation and knowledge base articles, discuss issues with other users in our community forums, review what's new, read technical notes, and access free webinars.

2. PRODUCT SUPPORT AND TRAINING. Customers can contact Siteimprove for product support, training, and additional services by visiting our [Help Center](https://support.siteimprove.com/) (https://support.siteimprove.com/). At that location, Customers can submit a support ticket 24x7x365.

2.1 SERVICE LEVELS. Siteimprove will utilize commercially reasonable efforts to promptly respond to all requests. Siteimprove aspires to review and respond to at least ninety percent (90%) of all tickets and requests within three (3) Business Days (See Section 4). Besides general questions and technical issues, services covered by these tickets and requests include:

- Custom CMS deep-link setup
- Custom event-tracking setup
- Custom setup of internal search tracking
- Setup of Development website crawls (subject to additional terms and conditions)

2.2 SEVERITY LEVELS. The severity level is a measure of the relative impact of the reported issue on the Customer's systems or business. Accurately defining the severity ensures a timely response and helps Siteimprove to better understand the nature of the issue.

COSMETIC	MINOR	MAJOR	CRITICAL
<ul style="list-style-type: none"> • Minor problem not impacting service functionality • Feature requests or missing or erroneous documentation • Question/information request that does not affect delivery of service 	<ul style="list-style-type: none"> • Service is operational but partially degraded for some or all users, and an acceptable workaround or solution exists • The problem is with a non-critical feature or functionality 	<ul style="list-style-type: none"> • Service is operational but performance is highly degraded to the point of major impact on usage • Important features are unavailable, with no acceptable workaround; however, operations can continue in a restricted fashion • Access to a particular third-party application or service provider deemed noncritical is impacted 	<ul style="list-style-type: none"> • Service is down or unavailable • Critical features or functionality is unavailable or inaccessible, resulting in total disruption of work or critical business impact • Service crashes or hangs indefinitely causing unacceptable or indefinite delays for resources or response • Data is corrupted or lost and must be restored from backup


3. SUPPORT AVAILABILITY. Siteimprove has regional support centers servicing the Americas, EMEA and APAC. Open hours for these regional support centers are as follows.



- Americas Support Center - Minneapolis, MN, USA
Weekdays 8:00 a.m. to 5:00 p.m. — Central Standard Time (CST/CDT) -0600 UTC excluding the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, Christmas Day, Day after Christmas, New Year's Eve
- EMEA Support Center - Copenhagen, Denmark
Weekdays 8:00 a.m. to 5:00 p.m. — Central European Time (CET/CEST) +0100 UTC excluding Danish public holidays
- APAC Support Center - Sydney, NSW, Australia
Weekdays 8:00 a.m. to 5:00 p.m. — Australian Eastern Standard Time (AEST/AEDT) +1000 UTC excluding New South Wales national and regional public holidays

4. BUSINESS DAYS. “Business Days” are defined as the days on which Customer’s regional support center is open for business (see Section 3).

5. SUPPORT CHANGES. Siteimprove has the sole discretion to change the terms and conditions of the Standard Support Plan.

Board Office Use: Legislative File Info.	
File ID Number	16-2757
Introduction Date	1/25/17
Enactment Number	17-0152
Enactment Date	1/25/17 



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Marion McWilliams, General Counsel
Andrea Epps, Staff Attorney

Board Meeting Date January 25, 2017

Subject **Resolution Agreement, Office for Civil Rights – Matter Number 09-16-1560**

Action Requested **Approval by the Board of Education of the Office for Civil Rights Resolution Agreement for Matter No. 09-16-1560**

Background A complaint was filed with the Office for Civil Rights (“OCR”) that alleged that the District’s webpages were inaccessible to students and adults with disabilities including but not limited to, vision impairments. District and OCR attorneys were able to finalize a resolution agreement to resolve the matter.

Discussion Attached is the Resolution Agreement. The District has agreed to: approve policies and procedures (“the Plan for New Content”) to ensure that all new, newly-added, or modified online content and functionality will be accessible to people with disabilities; issue a Request for Proposal (“RFP”) to identify auditors to audit all content and functionality on the District website and to identify any online content or functionality that is inaccessible to persons with disabilities; audit all content and functionality of the District’s website to identify any online content or functionality that is inaccessible to persons with disabilities; develop a Corrective Action Plan to address all inaccessible content and functionality identified during the Audit; place a Notice on the District website regarding how to request the webmaster or other appropriate person to provide access to (or notify the District regarding) online information or functionality that is currently inaccessible to persons with disabilities; and deliver website accessibility training to all appropriate personnel.

Recommendation **Approval by the Board of Education of Office for Civil Rights Resolution Agreement for Matter No. 09-16-1560.**

Fiscal Impact Approximately \$50,000-\$75,000 over 18 month corrective action and implementation period.-

Attachments • **Resolution 1617-0008**

**RESOLUTION
OF THE
BOARD OF EDUCATION
OF THE
OAKLAND UNIFIED SCHOOL DISTRICT**

Resolution No. 1617-0008

**AGREEMENT TO RESOLVE UNITED STATES DEPARTMENT OF EDUCATION,
OFFICE FOR CIVIL MATTER NUMBER 09-16-1560**

WHEREAS, on August 12, 2016, under the authority of Section 504 of Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Education Act of 1990, the United States Department of Education, Office for Civil Rights ("OCR") initiated an investigation to determine whether the District's webpages were inaccessible to students and adults with disabilities including but not limited to, vision impairments (OCR Docket No 09-16-1560);

WHEREAS, pursuant to OCR's Case Processing Manual, OCR has the authority to resolve this compliance review by means of a resolution agreement before the conclusion of the investigation;

WHEREAS, without admitting to any violation of law, the District voluntarily agrees to the following terms:

- A) Approve policies and procedures ("the Plan for New Content") to ensure that all new, newly-added, or modified online content and functionality will be accessible to people with disabilities as measured by conformance to the Benchmarks for Measuring Accessibility;
- B) Issue a Request for Proposal ("RFP") to identify auditors to audit all content and functionality on its website and to identify any online content or functionality that is inaccessible to persons with disabilities;
- C) Audit all content and functionality of the District's website, including, but not limited to, the home page, all subordinate pages, to identify any online content or functionality that is inaccessible to persons with disabilities;
- D) Develop a Corrective Action Plan to address all inaccessible content and functionality identified during the Audit;
- E) Place a Notice on the District website regarding how to request the webmaster or other appropriate person to provide access to (or notify the District regarding) online information or functionality that is currently inaccessible to persons with disabilities;
- F) Deliver website accessibility training to all appropriate personnel, including, but not limited to: content developers, webmasters, procurement officials,

and all others responsible for developing, loading, maintaining, or auditing web content and functionality.

NOW THEREFORE, BE IT RESOLVED THAT the Board of Education of the Oakland Unified School District does approve the agreement to resolve the U.S. Department of Education, Office for Civil Rights Docket No. No 09-16-1560 by agreeing to enter into the Resolution Agreement which is attached hereto and incorporated by reference herein.

PASSED AND ADOPTED by the Governing Board of the Oakland Unified School District this 25th day of January, 2017; by the following vote, to wit:

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

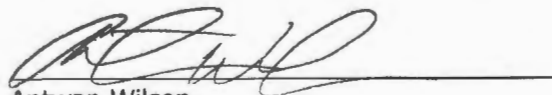
NOES: None

ABSTAINED: None

ABSENT: None

CERTIFICATION

I, Antwan Wilson, Superintendent and Secretary of the Board of Education of the Oakland Unified School District, Alameda County, State of California, do hereby certify that the foregoing Resolution was duly approved and adopted by the Board of Education of said district at a meeting thereof held on the 25th day of January, 2017 with a copy of such Resolution being on file in the Administrative Office of said District.



Antwan Wilson
Superintendent and Secretary of the Board

Resolution Agreement

Oakland Unified School District
OCR Reference No. 09-16-1560

The Office for Civil Rights (OCR) of the U.S. Department of Education initiated an investigation into an allegation that the Oakland Unified School District (District) violated Section 504 of the Rehabilitation Act of 1973 (“Section 504”) and that statute’s implementing regulations at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (“Title II”) and that statute’s implementing regulations at 28 C.F.R. Part 35. Specifically, the complainant alleges that the District’s website contains barriers to access for people with disabilities, thereby denying them an equal opportunity to participate in the District’s programs, services, and activities, and denying them effective communication necessary for full participation in the Districts programs, services, and activities.

Assurances of Nondiscrimination. The District hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in the District’s programs, benefits, and services, including those delivered through electronic and information technology, except where doing so would impose an undue burden or create a fundamental alteration.

Benchmarks for Measuring Accessibility. For the purposes of this Agreement, the accessibility of online content and functionality will be measured according to the World Wide Web Consortium’s (W3C’s) Web Content Accessibility Guidelines (WCAG) 2.0 Level AA and the Web Accessibility Initiative Accessible Rich Internet Applications Suite (WAI-ARIA) 1.0 for web content, which are incorporated by reference.

Adherence to these accessible technology standards is one way to ensure compliance with the District’s underlying legal obligations to ensure people with disabilities are able to acquire the same information, engage in the same interactions, and enjoy the same benefits and services within the same timeframe as their nondisabled peers, with substantially equivalent ease of use; that they are not excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any the District’s programs, services, and activities delivered online, as required by Section 504 and Title II and those statutes’ implementing regulations; and that they receive effective communications with the District’s programs, services, and activities delivered online.

The District voluntarily agrees to take the actions set forth below.

Remedies and Reporting

1. Policies and Procedures for New Online Content and Functionality. By February 17, 2017 the District will submit to OCR for its review and approval proposed policies and procedures (“the Plan for New Content”) to ensure that all new, newly-added, or modified online content and functionality will be accessible to people with disabilities as measured

by conformance to the Benchmarks for Measuring Accessibility set forth above, except where doing so would impose a fundamental alteration or undue burden.

- a) When fundamental alteration or undue burden defenses apply, the Plan for New Content will require the District to provide equally effective alternate access. The Plan for New Content will require the District, in providing equally effective alternate access, to take any actions that do not result in a fundamental alteration or undue financial and administrative burdens, but nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the same benefits or services as their nondisabled peers. To provide equally effective alternate access, alternatives are not required to produce the identical result or level of achievement for persons with and without disabilities, but must afford persons with disabilities an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.
 - b) The Plan for New Content must include sufficient quality assurance procedures, backed by adequate personnel and financial resources, for full implementation. This provision also applies to the District's online content and functionality developed by, maintained by, or offered through a third-party vendor or through the use of open sources.
 - c) Within 60 calendar days of receiving OCR's approval of the Plan for New Content, the District will officially adopt, and fully implement, the amended policies and procedures.
 - d) Reporting: Within 80 calendar days of receiving OCR's approval, the District will submit to OCR the approved policies and procedures, evidence of their adoption and distribution, and a description of how they are being implemented.
2. Undue Burden and Fundamental Alteration. For any technology-related requirement in this Agreement for which the District asserts an undue burden or fundamental alteration defense, such assertion may only be made by the District Superintendent ("Superintendent") or by an individual designated by the Superintendent and who has budgetary authority after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion, including the cost of meeting the requirement and the available funding and other resources. The written statement will be certified by the Superintendent or designee. If such a determination is made, the certifying official will describe in the written statement how it will provide equally effective alternate access, i.e., other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the same benefits or services provided by the District as their nondisabled peers.

3. Designation of Auditor. Within 60 calendar days of execution of this Agreement, the District will issue a Request for Proposal (“RFP”) to identify auditors to audit all content and functionality on its website and to identify any online content or functionality that is inaccessible to persons with disabilities. By March 17, 2017, the District will propose for OCR’s review and approval the identity and bona fides of Auditors (corporation or individual), selected through the District’s RFP process, to audit all content and functionality on its website, including, but not limited to, the home page, all subordinate pages, to identify any online content or functionality that is inaccessible to persons with disabilities, including online content and functionality developed by, maintained by, or offered through a third-party vendor or an open source. The Auditors will have sufficient knowledge and experience in website accessibility for people with disabilities to carry out all related tasks, including developing a proposed Corrective Action Plan.
 - a) Reporting: OCR will evaluate whether the Auditors proposed according to Paragraph 3 have the requisite experience and knowledge to carry out an appropriate Audit and to develop a proposed Corrective Action Plan. Within 45 calendar days of receiving OCR’s approval of the proposed Auditors, the District will submit to OCR documentation that it has assigned or retained an Auditor approved by OCR to conduct the Audit of existing content and functionality.

4. Audit of Existing Content and Functionality. The Auditor approved by OCR will audit all content and functionality of the District’s website, including, but not limited to, the home page, all subordinate pages, to identify any online content or functionality that is inaccessible to persons with disabilities, including online content and functionality developed by, maintained by, or offered through a third-party vendor or an open source. The Audit will use the Benchmarks for Measuring Accessibility set out above, unless the District receives prior permission from OCR to use a different standard as a benchmark. During the Audit, the District will also seek input from members of the public with disabilities, including parents, students, employees, and others associated with the District, and other persons knowledgeable about website accessibility, regarding the accessibility of its online content and functionality.
 - a) Reporting: Within 120 calendar days of receiving OCR’s approval of the proposed Auditor, the District will submit to OCR documentation of the steps taken by the Auditor during the Audit, a description of the outreach it undertook and the input it received, and a detailed accounting of the results of the Audit.

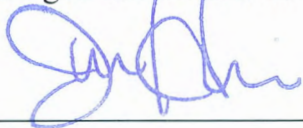
5. Proposed Corrective Action Plan. Simultaneously with the submission of the Audit, The District will submit to OCR for its review and approval a proposed Corrective Action Plan to address all inaccessible content and functionality identified during the District’s Audit.

The proposed Corrective Action Plan will set out a detailed schedule for addressing problems, taking into account identified priorities, with all corrective actions to be completed within 18 months of the date OCR approved the Corrective Action Plan, setting up systems of accountability and verifying claims of accessibility by vendors or open sources; and setting up a system of testing and accountability to maintain the accessibility of all online content and functionality on an ongoing basis.

- a) In its Corrective Action Plan, the District will acknowledge that if all inaccessible content and functionality identified during the Audit is not removed or made accessible on a timely basis, the District will be in violation of this Agreement, Section 504, and Title II, and OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this agreement.
 - b) Within 45 calendar days of receiving OCR's approval of the proposed Corrective Action Plan, the District will officially adopt and implement the Corrective Action Plan.
 - c) Reporting: Within 60 calendar days of receiving OCR's approval of the proposed Corrective Action Plan, the District will submit to OCR the approved Corrective Action Plan, and documentation establishing that the approved Corrective Action Plan is being implemented according to the approved schedule. Reports will be due every six months thereafter until the Corrective Action Plan has been completed.
6. Notice. Within 60 calendar days of the date of this Agreement, the District will submit to OCR for review and approval a proposed Notice on its website to persons with disabilities regarding how to request the webmaster or other appropriate person to provide access to (or notify the District regarding) online information or functionality that is currently inaccessible. The proposed Notice will also include information or an accessible link to information instructing people how to file more formal grievances under Section 504 and Title II. Within 10 calendar days of receiving OCR's approval of the proposed Notice, the District will officially adopt and publish the approved Notice by prominently posting the approved Notice on its home page and throughout its website (including all subordinate pages and intranet pages and sites).
- a) Reporting. Within 15 calendar days of receiving OCR's approval of the District's proposed Notice, The District will provide documentation to OCR regarding the locations and content of its published Notice.
7. Training. Starting no later than 60 calendar days from the date of this Agreement, and annually thereafter until such time as OCR closes its monitoring of this Agreement, the District, will deliver website accessibility training to all appropriate personnel, including, but not limited to: content developers, webmasters, procurement officials, and all others

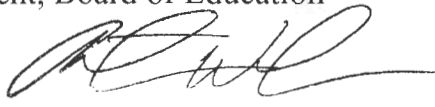
responsible for developing, loading, maintaining, or auditing web content and functionality. After OCR closes monitoring of this agreement, training shall be continued on a schedule designed to maintain website accessibility consistent with, or superior to, that which is required under federal law.

- a) Reporting: For each training session required by this Agreement, until such time as OCR closes its monitoring of this Agreement, the District will submit to OCR documentation that the training has been delivered. The documentation will include a list of invitees and attendees and their position titles, a description of the delivered training content, and the presenters' credentials for providing such training.
- 8. The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the District has fulfilled the terms of this agreement and is in compliance with the regulations implementing Section 504 at 34 C.F.R. 104.4 and the regulations implementing Title II at 28 C.F.R. 35.130 and 35.160(a), which were at issue in this case.
- 9. The District also understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this agreement. Further, the District understands that during the monitoring of this agreement, if necessary, OCR may visit the District, interview staff members, and request such additional reports or data, including simulated website accounts and passwords, as are necessary for OCR to determine whether the District has fulfilled the terms of this agreement and is in compliance with the regulations implementing Section 504 at 34 C.F.R. 104.4 and the regulations implementing Title II at 28 C.F.R. 35.130 and 35.160(a), which are at issue in this case.
- 10. The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. 100.9 and 100.10), or judicial proceedings to enforce this agreement, OCR shall give the District written notice of the alleged breach and 60 calendar days to cure the alleged breach.



James Harris
President, Board of Education

Dated: 1/26/17



Antwan Wilson
Superintendent & Board Secretary

Dated: 1/26/17