



Amendment No. 1
to
Contract No. MA 5600 NS170000022
for
Web Governance Suite Software Support
between
Siteimprove, Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective December 01, 2019 to November 30, 2020. One option will remain.
- 2.0 The total contract amount is increased by \$6,646.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 12/01/2016 – 11/30/2019	\$19,938.00	\$19,938.00
Amendment No. 1: Option 1 – Extension 12/01/2019 – 11/30/2020	\$6,646.00	\$26,584.00

- 3.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 4.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

DocuSigned by:
Sign/Date: Amber Schueler

December 6, 2019 | 12:51 CST

Sign/Date: [Signature]

12/6/19

Printed Name: Amber Schueler

Authorized Representative

Siteimprove, Inc.
7807 Creekridge Circle
Bloomington, Minnesota 55438
mic@siteimprove.com
612-259-9148

Sai Xoomsai-Purcell
Procurement Supervisor
Austin Energy
721 Barton Springs Road
Austin, Texas 78704

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Siteimprove, Inc.
For
Web Governance Suite Software Support**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Siteimprove, Inc. ("Contractor"), having offices at 7807 Creekridge Cir., Bloomington, MN 55438.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Mike Carlson, Phone: 612-259-9148, Email Address: mic@siteimprove.com. The City's Contract Manager for the engagement shall be Pamela Jay, Phone: (512) 974-2737, Email Address: Pamela.jay@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work, as described herein. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not to exceed \$19,938.00 for the initial term, \$6,646.00 for the first extension, and \$6,646.00 for the second extension, for a total estimated contract amount not to exceed \$33,230.00 comprising the software maintenance and support fees.

3.2 **Economic Price Adjustment.**

3.2.1 **Price Adjustments.** Prices shown in this Contract shall remain firm for the first 12-month period of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed ten percent (10%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.

3.2.2 **Effective Date.** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.

3.2.3 **Adjustments.** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.

3.2.4 **Indexes.** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.

3.2.4.1 The following definitions apply:

3.2.4.1.1 **Base Period:** Month and year of the original contracted price (the solicitation close date).

3.2.4.1.2 **Base Price:** Initial price quoted, proposed and/or contracted per unit of measure.

3.2.4.1.3 **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.

3.2.4.1.4 **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.

3.2.4.1.5 **Weight %:** The percent of the Base Price subject to adjustment based on the index change.

3.2.4.2 **Adjustment-Request Review.** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:

3.2.4.2.1 Utilize final Compilation data instead of Preliminary data

3.2.4.2.2. If the referenced index is no longer available shift up to the next higher category index.

3.2.4.3 **Index Identification.** Complete table as they may apply.

Weight % or \$ of Base Price: 100	
Database Name: Producer Price Index Data	
Series ID: WPU34	
Not Seasonally Adjusted	Seasonally Adjusted
Geographical Area:	
Description of Series ID: Software Publishing	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: ALL	

3.2.5 **Calculation.** Price adjustment will be calculated as follows:

3.2.5.1 **Single Index.** Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation
Divided by index on solicitation close date
Equals Change Factor
Multiplied by the Base Price
Equals the Adjusted Price

- 3.2.6 If the requested adjustment is not supported by the referenced index, the City, as its sole discretion, may consider approving an adjustment on fully documented market increases.

3.3 Invoices.

3.3.1 Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Communication Technology Management or (CTM)
Attn:	Accounts Payable
Email Address	CTMAPInvoices@austintexas.gov
Mailing Address	PO Box 1088
City, State, Zip Code	Austin, TX 78767

3.3.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

3.3.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.3.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.4 Payment.

3.4.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.4.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

3.4.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

3.4.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.4.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.4.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

3.4.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.4.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.4.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.4.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.4.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.4.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.5 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.6 **Reimbursable Expenses.** Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.

3.6.1 **Administrative.** The Contractor will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, printing and binding, postage, express delivery and report processing.

3.6.2 **Travel Expenses.** All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

3.7 **Final Payment and Close-Out.**

3.7.1 The making and acceptance of final payment will constitute:

3.7.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.7.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall be in effect for an initial term of 36 months and may be extended thereafter for up to 2 additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

4.1.1 Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof, but, in any case, no less than the amount owed under the 12-month term during which the termination is effective.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 Equal Opportunity.

5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.1.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA,

including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.2 Interested Parties Disclosure. As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

5.3 Acceptance of Incomplete or Non-Conforming Deliverables. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.4 Delays.

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.4.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.5 Ownership And Use Of Deliverables. The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.5.1 **Patents.** As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

5.5.2 **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this paragraph shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause

each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

5.5.3 Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.

5.5.4 Pre-Existing Software. The City acknowledges and agrees that the Contractor owns and shall remain the sole owner of all intellectual property rights vested in the software 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. The right to access the software is worldwide, non-transferable, non-assignable (except as permitted in this Agreement) and limited in time to access and use during the terms of this Agreement and solely for the City's internal business purposes. The City will have access to the software only for those website domain(s) authorized pursuant to this Agreement. The City has no right to rent, lease, assign, transfer, sublicense, display or otherwise distribute or make the software available to any third party. Without limiting the generality of any other provisions stated in this Agreement, the software 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 software; (c) used to process any sensitive or personal information; or (d) used for any illegal purpose. The City may not modify, disassemble, decompile or otherwise reverse engineer the software nor permit any third party to do so except as expressly permitted by law. The Contractor reserves all rights not expressly granted to the City under this Agreement.

5.6 Rights to Proposal and Contractual Material. All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.7 Publications. All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES

6.1 Warranty – Price.

6.1.1 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.2 Warranty – Services. The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 Workforce.

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might

reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.4.3 any significant termination or addition of provider contracts;

7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.4.6 reorganization, reduction and/or relocation in key personnel;

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

7.5 **Audits and Records.**

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 Records Retention:

7.5.2.1 For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the contract.

7.5.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when:

7.5.2.2.1 requested by a director or an authorized City employee; or

7.5.2.2.2 the contract is completed or terminated.

7.5.3 The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 **Indemnity.**

7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all third-party and City claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.7.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Bartley Tyler, Buyer I

P O Box 1088

Austin, TX 78767

To the Contractor:

Siteimprove, Inc

ATTN: Legal Department

7807 Creekridge Cir.

Bloomington, MN 55438

7.10 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge,

recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 Advertising. The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 No Contingent Fees. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 Gratuities. The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 Prohibition Against Personal Interest in Contracts. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 Independent Contractor. The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 Assignment-Delegation. The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.17 Waiver. No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 Modifications. The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 Interpretation. The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the

trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other.

7.20 Dispute Resolution.

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 Subcontractors.

7.21.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.21.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.21.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.21.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.21.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable

the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.21.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.21.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.21.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.21.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

7.22 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.23 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.24 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.25 Survivability of Obligations. All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.26 Non-Suspension or Debarment Certification. The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.27 Incorporation of Documents. Section 0100, **Standard Purchase Definitions**, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:
https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

7.28 Order of Precedence. The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.28.1 This Contract, which includes the Standard and Supplemental Terms and Conditions, exhibits, if any; and

7.28.2 any exceptions to the Offer accepted in writing by the City.

7.28.3 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

Siteimprove, Inc.

DocuSigned by:

By: Steve Hennigs

Signature E8DB8DD2B417...

Name: Steve Hennigs

Printed Name

Title: Director of Customer Success

Date: January 25, 2017 | 19:15 CST

CITY OF AUSTIN

By: Bartley Tyler

Signature

Name: Bartley Tyler

Printed Name

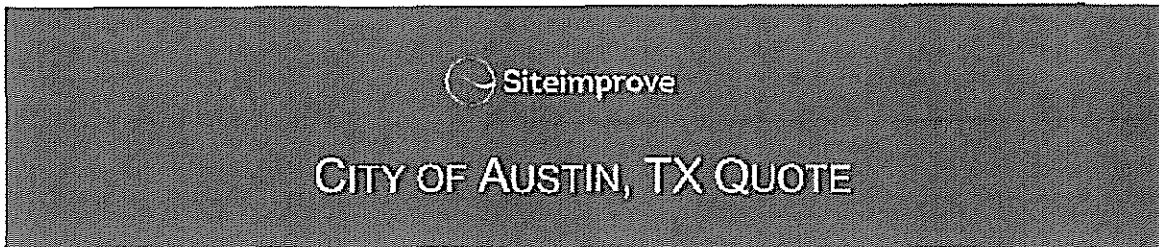
Title: Procurement Specialist I

Date: 2/1/17

List of Exhibits

Exhibit A	Pricing Agreement
Exhibit B	Support Agreement
Exhibit C	Non Discrimination Certification, Section 0800

EXHIBIT A
Pricing Agreement



Content Suite Quote for Siteimprove Subscription:
3 year agreement with two options to extend

Service:

- Quality Assurance, Accessibility & SEO
 - 12,000 pages
- Response
 - 3 Checkpoints

Annual Subscription

- Year 1: \$6,646
- Year 2: \$6,646
- Year 3: \$6,646
- Option 1: \$6,646
- Option 2: \$6,646

All Siteimprove customers receive access to free training and support. Also, there is no limit to how many people gain access to our service.

Signed:  Date: 8/25/2016
Siteimprove, Inc.

1 / 1

QA Quote
Siteimprove, Inc.
7807 Creekridge Cir
Bloomington, MN 55438
Phone: 612-545-5662
Fax: 1-800-409-5612
Email: info@siteimprove.com

EXHIBIT B Support Agreement



Quote Number: 37926

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 Creekridge Circle, Bloomington, MN 55439, and its Affiliates (defined below) (collectively, "Siteimprove") and City of Austin ("Customer" / "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 Agreement replaces the previous Agreement with Quote #3929.

This offer is only valid if signed by you on or before November 21, 2016. 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.	12,000 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.	
Response Monitors website's availability and performance.	3 Response Check Points

* 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.

Siteimprove Inc. | 7807 Creekridge Circle | MN 55439 | Minneapolis
+1 855 748 3467 | Fax: +1 800 409 5612 | info@siteimprove.com | www.siteimprove.com

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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 free training and tech support.

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 which will be documented in a mutually-agreed change order.
- 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	\$600 per 1,000 pages
PDFs	\$750 per 2,500 PDFs
Response Check Points	\$150 per Check Point

Term

The first date for this Agreement (the "Effective Date") is November 28, 2016. This Agreement will remain in force for a period of 3 years following the Effective Date (the "Initial Term"). ~~After the Initial Term, this Agreement will automatically renew for one or more additional consecutive periods of 12 months (the "Renewal Term") until terminated according to Section 3 (Termination) of the Terms.~~

Subscription Fees

The annual subscription fee (excluding applicable taxes) for the Included Services is: \$6,646 (the "Fee").

This Fee includes a discount of 39.03%, which is only valid through November 21, 2016.

Siteimprove Inc. | 7807 Creekridge Circle | MN 55439 | Minneapolis
+1 855 748 3467 | Fax: +1 800 409 3612 | info@siteimprove.com | www.siteimprove.com

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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:

- On November 28, 2016, 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.

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

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+1 855 748 3467 | Fax: +1 800 409 5612 | info@siteimprove.com | www.siteimprove.com

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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.

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

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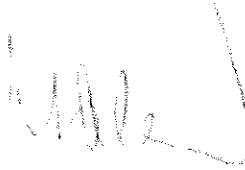
Quote Number: 37926

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.

City of Austin



Signature

Signature

Morten Ebbesen

Name

Name

November 8, 2016

Date

Date

Siteimprove Inc. | 7807 Creekridge Circle | MN 55439 | Minneapolis
+1 855 748 3467 | Fax: +1 800 409 5612 | info@siteimprove.com | www.siteimprove.com

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Exhibit A: Website(s)

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

- austintexas.gov/

Siteimprove Inc. | 7807 Creekridge Circle | MN 55439 | Minneapolis
+1 855 748 3467 | Fax: +1 800 409 5612 | info@siteimprove.com | www.siteimprove.com

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Quote Number: 37926

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, agreements, contracts, terms of

agreements, 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.

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



Quote Number: 37926

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 or 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 60-days prior to the start of the Renewal Term. Customer remains liable for payment of all Fees owed and 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

Siteimprove Inc. | 7807 Creekridge Circle | MN 55439 | Minneapolis
+1 855 748 3467 | Fax: +1 800 409 5612 | info@siteimprove.com | www.siteimprove.com

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the express access grant in this Section 4 is outside the scope of this Agreement.

d. Support. During the Initial and Renewal Term, Siteimprove will provide support to Customer pursuant to its then-current standard support plan. 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,



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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. 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.

10. 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



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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

11. GOVERNING LAW

This Agreement will be governed by and construed in accordance with the laws of Texas 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, the courts of Texas will have exclusive jurisdiction and the parties will submit to the jurisdiction of those courts.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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
City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin

Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this January 25, 2017 | 19:15 CST day of _____, _____

CONTRACTOR

Authorized
Signature

Title

Siteimprove, Inc.

DocuSigned by:

Steve Hennings

BFCEBDB8DD2B417...

Director of Customer Success

CITY OF AUSTIN, TX QUOTE

Content Suite Quote for Siteimprove Subscription: 3 year agreement with two options to extend

Service:

- Quality Assurance, Accessibility & SEO
 - 12,000 pages
- Response
 - 3 Checkpoints

Annual Subscription

- Year 1: \$6,646
- Year 2: \$6,646
- Year 3: \$6,646
- Option 1: \$6,646
- Option 2: \$6,646

All Siteimprove customers receive access to free training and support. Also, there is no limit to how many people gain access to our service.

Signed:



¹ Siteimprove, Inc.

Date: 8/25/2016

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 Creekridge Circle, Bloomington, MN 55439, and its Affiliates (defined below) (collectively, "**Siteimprove**") and **City of Austin** ("**Customer**" / "**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 Agreement replaces the previous Agreement with Quote #3929.

This offer is only valid if signed by you on or before November 21, 2016. 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.	12,000 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.	
Response Monitors website's availability and performance.	3 Response Check Points

* 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 free training and tech support.

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 which will be documented in a mutually-agreed change order.
- 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	\$600 per 1,000 pages
PDFs	\$750 per 2,500 PDFs
Response Check Points	\$150 per Check Point

Term

The first date for this Agreement (the “**Effective Date**”) is November 28, 2016. This Agreement will remain in force for a period of 3 years following the Effective Date (the “Initial Term”). After the Initial Term, this Agreement will automatically renew for one or more additional consecutive periods of 12 months (the “Renewal Term”) until terminated according to Section 3 (Termination) of the Terms.

Subscription Fees

The annual subscription fee (excluding applicable taxes) for the Included Services is: **\$6,646** (the “**Fee**”).

This Fee includes a discount of 39.03%, which is only valid through November 21, 2016.

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:

- On November 28, 2016, 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.

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.

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.

City of Austin



Signature

Signature

Morten Ebbesen

Name

Name

November 8, 2016

Date

Date

Exhibit A: Website(s)

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

- austintexas.gov/

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, agreements, contracts, terms of

agreements, 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.

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 60-days prior to the start of the Renewal Term. Customer remains liable for payment of all Fees owed and 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. During the Initial and Renewal Term, Siteimprove will provide support to Customer pursuant to its then-current standard support plan. 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. 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.

10. 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

11. GOVERNING LAW

This Agreement will be governed by and construed in accordance with the laws of Texas 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, the courts of Texas will have exclusive jurisdiction and the parties will submit to the jurisdiction of those courts.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 08/26/2016

DEPT: CPIO

TO: Purchasing Officer or Designee

FROM: Matthew Chustz

BUYER: Sandy Brandt

PHONE: (512) 974-7270

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)

- ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
- ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
- ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
- ☐ a procurement for personal, professional, or planning services
- ☐ a procurement for work that is performed and paid for by the day as the work progresses
- ☐ a purchase of land or right-of-way
- ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for

- equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
- ☐ a purchase of rare books, papers, and other library materials for a public library
- ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
- ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391
- ☐ services performed by blind or severely disabled persons
- ☐ goods purchased by a municipality for subsequent retail sale by the municipality
- ☐ electricity
- ☐ advertising, other than legal notices
- ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

Sole Source Letter is attached. Siteimprove is the only company that offers the web governance suite. The web governance suite was developed and is provided by Siteimprove.

Siteimprove checks www.austintexas.gov web pages for broken links using their web governance suite of products. They find misspellings, ensure information's credibility, see WCAG 2.0 and Section 508 issues and make our website Accessible. They allow us to schedule customized reports that monitor performance.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

CPIO has a broad knowledge of the market and searched alternative firms for similar products. The vendor is responsible - CPIO has utilized their service for a couple of years. They are reliable, service oriented, and responsive.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Siteimprove, Inc.
which will cost approximately \$ 33,230.00 (Provide estimate and/or breakdown of cost).
(see attached quote)

Recommended
Certification

Matthew Christy 8/26/16
Originator Date

Approved
Certification

[Signature] 8/29/16
Department Director or designee Date

Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)

Battle 11/1/14 9/11/16
Buyer Date Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee Date

02/26/2013

SOLE SOURCE LETTER

Siteimprove Web Governance Suite

This letter serves as a sole source document for Siteimprove Web Governance Suite which is developed/manufactured and provided solely by Siteimprove, Inc.

Service Description

Siteimprove's Web Governance Suite is a hosted service that will scan your website every five (5) days for broken links, misspellings, accessibility and SEO issues, all while monitoring web analytics and website response from a single user friendly dashboard.

Several features make Siteimprove's Web Governance Suite stand apart from other services/products on the market:

- A single management area for broken links, misspellings, accessibility issues, website inventory, Search Engine Optimization (SEO) issues, website uptime and response monitoring, and analytics.
- Automated reports that highlight broken links and misspellings directly on the webpage and in the source code.
- Automated reports that highlight duplicate title tags, missing <h1> tags, and page content issues.
- Prioritized error fixes based on number of page views.
- Easy distribution of reports sent through automated e-mails when the check is completed
- Easy separation of reports by department, section, or team. These are called "Groups" within Quality Assurance. This is done on a per site basis either by URL, Page Title, or through a body tag match.
- Free Certification Courses for the Siteimprove Web Governance Tool and Web Accessibility
- Access to on-demand educational resources, training, and webinars.

Sincerely,
Morten Ebbesen, CEO & Founder of Siteimprove, Inc.

Who is Siteimprove?

Siteimprove provides organizations of all shapes and sizes with smart tools that make website management and maintenance both easier and more affordable. Siteimprove has a global presence in offices in the US, Canada, Australia, Denmark and other European cities. The company has a worldwide customer base of over 3,500 organizations.