File ID Number	17-0953
Introduction Date	5/24/17
Enactment Number	17-0721
Enactment Date	5/24/17
By	e

OAKLAND UNIFIED SCHOOL DISTRICT

Community Schools, Thriving Students

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the Board of Education

TO: Board of Education

FROM: Devin Dillon, Interim Superintendent

SUBJECT: **AGREEMENT BETWEEN OAKLAND UNIFIED SCHOOL DISTRICT AND THE AMERICAN INSTITUTES FOR RESEARCH (AIR)**

ACTION REQUESTED
Approval and acceptance by the Board of Education of Agreement between Oakland Unified School District and American Institutes for Research (AIR), for the period February 23, 2017 through June 30, 2017.

BACKGROUND
The American Institutes for Research has the experience, qualification and capabilities needed to provide, in a timely manner, all technical, management and materials needed to successfully complete the proposal process.

DISCUSSION
The American Institutes for Research will conduct an independent evaluation of the activities supported by the Education Innovation and Research (EIR) grant to Oakland Unified School District. The evaluation will include studies of implementation and impact. The study of implementation will use mixed methods and will address fidelity of implementation. The impact evaluation will examine efforts on student outcomes using a quasi-experimental design.

FISCAL IMPACT
If the Education Innovation and Research grant by the Department of Education is awarded, we would receive 3.75 million over four years to cover the cost of scaling Ethnic Studies courses in all OUSD high schools.

RECOMMENDATION
Approval and acceptance by the Board of Education of Agreement between Oakland Unified School District and American Institutes for Research for the period February 23, 2017 through June 30, 2017.

ATTACHMENTS
Teaming Agreement

OAKLAND UNIFIED SCHOOL DISTRICT
Community Schools, Thriving Students

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

Legislative File ID No. 17-0953

Department: High School Linked Learning Office

Vendor Name: American Institutes for Research (AIR)

Contract Term: Start Date: February 23, 2017 End Date: June 30, 2017

Annual Cost: $0.00

Approved by: _____ 5/10/17

Is Vendor a local Oakland business? Yes ☐ No ☑

Why was this Vendor selected?

The American Institutes for Research has the experience, qualification and capabilities needed.

Summarize the services this Vendor will be providing.

AIR will conduct an independent evaluation of the activities supported by the EIR grant to Oakland Unified School District. The evaluation will include studies of implementation and impact. The study of implementation will use mixed methods and will address fidelity of implementation. The impact evaluation will examine effects on student outcomes using a quasi-experimental design.

Was this contract competitively bid? Yes ☐ No ☑

If No, answer the following:

1) How did you determine the price is competitive?

N/A

2) Please check the competitive bid exception relied upon:

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

N/A

TEAMING AGREEMENT

This Agreement made on **February 23, 2017**, between ***Oakland Unified School District*** ("PRIME"), with principal offices located at ***1000 Broadway, Oakland, CA 94607***, and American Institutes for Research ("AIR"), with principal offices located at 1000 Thomas Jefferson Street, N.W., Washington, D.C. 20007-3835, states the nature and extent of the agreement between the parties hereto to develop and submit a proposal to ***U.S. Department of Education*** ("Client") in response to Solicitation of the **CFDA Number: 84.411C** ("Solicitation") related to **Early Phase EIR Grant Program** ("Program").

WITNESSETH

WHEREAS, PRIME intends to submit a proposal ("Proposal") as prime contractor to the Client in response to the Solicitation, and AIR desires to participate with PRIME as a Subcontractor in the Proposal submittal;

WHEREAS, AIR has the experience, qualification and capabilities in regard to the Program which would be valuable to the Program within those areas as set forth in the Scope of Work ("Exhibit A"), which is attached hereto;

WHEREAS, each of the Parties hereto ("Parties" or individually "Party"), having carefully assessed the qualifications and interest of the other, has concluded that a mutual effort would be advantageous;

WHEREAS, PRIME desires to engage AIR as a subcontractor under the anticipated prime contract ("Prime Contract") for the Program, and AIR intends to accept a subcontract ("Subcontract") from PRIME, if the Proposal for the Program is accepted by the Client and a Prime Contract is awarded to PRIME as a consequence of this Proposal;

WHEREAS, the Parties view this Agreement as enforceable and agree to be bound by its terms and conditions;

NOW, THEREFORE, in consideration of these premises and of the mutual agreements set forth herein, the Parties hereby agree as follows:

ARTICLE 1: PROPOSAL ACTIVITIES

1.1 PRIME will be responsible for overall proposal and program management. PRIME will prepare and submit the Proposal to the Client, together with a supporting contribution from AIR responsive to the requirements of the Solicitation. PRIME shall exert its best efforts to secure the selection of PRIME as the prime contractor for the Program and to secure the approval, if required, of AIR as subcontractor for the work herein assigned to AIR. AIR's agreement to participate in this teaming arrangement is based upon its reliance on PRIME's efforts to secure AIR the benefits of a Subcontract for the Program.

1.2 AIR shall participate in and support PRIME in the areas of its responsibility as set forth in the Scope of Work detailed in Exhibit A, unless required to be changed by the Client. Any modifications to Exhibit A shall be in writing signed by both Parties. AIR shall furnish personnel, information and materials as reasonably necessary, and shall devote reasonable business efforts to assist PRIME in developing and preparing sections of the Proposal and any modifications thereto related to AIR's proposed Scope of Work. AIR will provide to PRIME in a timely manner all technical, management, resumes, and materials as PRIME may reasonably request to facilitate the successful completion of the proposal process. AIR proposal information shall contain or be accompanied by accurate, current, and complete pricing information in sufficient detail to permit

costing of the Proposal and Prime Contract and negotiation of the Subcontract for the Exhibit A work.

1.3 The Parties agree that, in consideration of the proprietary information that is expected to be exchanged, i) PRIME will not utilize the services of any other company in the areas of responsibility assigned to AIR under Exhibit A, without AIR's prior written consent; ii) AIR will not assist any other potential prime contractor or subcontractor in the areas of responsibility assigned to AIR under Exhibit A; and iii) AIR will not seek to obtain a prime contract for the Program directly from the Client. However, if the Client awards a prime contract for the Program to another entity other than PRIME, PRIME and AIR shall be free to work with the successful contractor or any subcontractor.

1.4 Each Party shall bear all costs, risks, and liabilities incurred by it arising out of its performance of this Agreement. PRIME shall be responsible for the graphic arts, printing, binding, and delivery costs of the proposal. Any proposal effort on the part of AIR will be accomplished without cost to PRIME, except that if AIR is not awarded a Subcontract even though PRIME is awarded a Prime Contract for the Program, AIR shall be reimbursed its reasonable incurred costs by PRIME.

1.5 PRIME shall be the primary contact with the Client concerning the Program. It is recognized that AIR may have a continuing relationship with the Client and may be the recipient of inquiries from the Client concerning the Program. AIR will use reasonable efforts to keep PRIME informed as to the substance of any such direct contacts. Nothing herein is intended to affect the rights of the Client to negotiate directly with either Party on any basis the Client may desire. AIR shall, as reasonably requested, assure the availability of management and technical personnel to assist PRIME in discussions and negotiations with the Client. If PRIME should be requested or is presented the opportunity to make presentations, whether orally or by written communications to the Client concerning AIR's area of work on the Program, PRIME shall ensure AIR's participation in such presentations to the Client, subject to Client approval.

1.6 AIR's proposal to the PRIME, and the PRIME's Proposal to the Client, are specifically incorporated by reference to further describe the Scope of Work and the price/cost/profit to be paid to AIR. In the event AIR's costs are submitted directly to the Client, AIR will submit summary level cost or pricing data to the PRIME for inclusion in its Proposal to the Client. AIR will submit, directly to the Client, a proprietary sealed package containing AIR's cost or pricing data in the level of detail required by the Solicitation.

1.7 PRIME will not submit a bid or proposal which contemplates AIR as a subcontractor unless and until the Scope of Work, price, cost estimate, or quotation for AIR work has been approved by AIR.

1.8 PRIME shall allow AIR to review the Proposal, at a minimum with respect to i) the PRIME's description of AIR's Scope of Work in the proposal, and ii) AIR's cost/price proposal as incorporated into the Proposal.

ARTICLE 2: SCOPE OF AGREEMENT

2.1 This Agreement shall relate only to the Solicitation, contracts and subcontracts relating to the Parties' cooperative effort in accordance with FAR Subpart 9.6, with respect to the Program. Nothing herein shall be deemed to i) confer any right or impose any obligation or restriction on either Party with respect to any other program effort or marketing activity at any time undertaken by either Party which does not pertain to the Solicitation; ii) preclude either Party from independently soliciting or accepting any prime contract or subcontract not resulting from the Solicitation; or iii) limit the rights of either Party to independently promote, market, sell, lease, license, or otherwise dispose of its standard products or services apart from the Solicitation.

ARTICLE 3: AWARD OF SUBCONTRACT

3.1 If a Prime Contract is awarded to the PRIME as a consequence of the Proposal submitted in response to the Solicitation, the PRIME shall award AIR a Subcontract for the work described in Exhibit A, to the extent such work is required under the Prime Contract. In the event that the Proposal submitted hereunder is altered as to price or Scope of Work during negotiations with Client, the Parties agree to negotiate an adjustment of the price and Scope of Work accordingly to reflect the results of final negotiations between PRIME and the Client to the extent such changes affect AIR's portion of the effort.

3.2 This Agreement shall be incorporated into the Subcontract as part of the consideration between the Parties. This reflects the intent of the Parties for AIR to participate throughout the life of the resulting Prime Contract. Any inconsistencies between this Agreement and the Subcontract shall be governed by the provisions as detailed in the Subcontract.

3.3 Any Subcontract hereunder shall be subject to the mutual agreement of the Parties relative to terms and conditions, including price, specifications, and delivery schedule. In that regard, it is agreed that all required flow down clauses required by the Prime Contract shall be included in any such Subcontract, except that the termination for convenience clause, if included, shall be amended to state that it may be exercised only upon termination of the Prime Contract.

3.4 PRIME may be directed by the Client to place some or all of the work contemplated as AIR's responsibility in Exhibit A with another source, or direct that such work be bid on a competitive basis. In either of such cases, PRIME, in consultation and cooperation with AIR, shall use its best efforts to determine the cause for the Client's direction and to use its best efforts to convince the Client to accept AIR for the work in Exhibit A. If such efforts are unsuccessful, it is agreed that PRIME shall comply with the Client's direction and shall immediately notify AIR in writing providing evidence of such refusal.

ARTICLE 4: CONFIDENTIAL AND PROPRIETARY INFORMATION

4.1 The Parties have executed a Nondisclosure Agreement (NDA), which is included as Exhibit B and incorporated herein.

ARTICLE 5: INTELLECTUAL PROPERTY

5.1 For purposes of this Agreement, Intellectual Property shall mean patented and unpatented inventions, mask works, copyrighted works, software, software development tools, methodologies, processes, technologies, algorithms, trade secrets, know-how and proprietary information of either Party ("Intellectual Property"). It is mutually understood and agreed that neither Party shall acquire, directly or by implication, any rights in any Intellectual Property of the other Party which is owned, controlled, acquired, developed, authored, conceived or reduced to practice independent of this Agreement or prior to the date of this Agreement, regardless of whether such Intellectual Property is embodied in any materials provided to the other hereunder.

5.2 Subject to any rights of the Client, each Party shall retain title to any Intellectual Property if developed, authored, conceived, or reduced to practice independently and solely by that Party during the performance of this Agreement without the other Party's Intellectual Property. In such event, no license, express or implied, shall inure to the benefit of the other participating Party to prepare copies and derivative works of such copyrighted works or to make, use, sell, and export/import products or processes incorporating such Intellectual Property, except as expressly provided herein or in any resulting Subcontract between the Parties.

5.3 In the event Intellectual Property is developed jointly by the parties during the performance of this Agreement, unless expressly provided otherwise in any subsequent Subcontract between the parties resulting from this Agreement, such Intellectual Property shall be owned jointly by the parties unless one of the parties elects not to participate in such joint ownership. Neither Party shall take action with respect thereto which will adversely affect the rights of the other Party without the prior written consent of that Party, which consent shall not be unreasonably withheld or delayed. As to all such jointly owned Intellectual Property, each owning Party shall be free to use, practice and license non-exclusively such jointly owned Intellectual Property, without in any way accounting to the other owning Party, except that each owning Party agrees to use reasonable efforts to maintain such jointly owned Intellectual Property as confidential and proprietary in the same manner it treats its own Intellectual Property of a similar character. Procedures for seeking and maintaining protection such as patents or copyrights for jointly owned Intellectual Property shall be mutually agreed in good faith by the owning parties. Any Party which does not bear its proportionate share of expenses in securing and maintaining patent protection on jointly owned Intellectual Property in any particular country or countries shall surrender its joint ownership under any resulting patents in such country or countries.

5.4 Certain data or software, including Intellectual Property, may be furnished to either Party with limited or restricted rights, including, but not limited to, restrictions on use, licensing, sublicensing, assignment, copying, or modification. The receiving Party agrees to observe such limitations or restrictions as may be imposed by the giving Party; provided, however, that each such unit of data is prominently marked as being subject to limited or restricted rights.

ARTICLE 6: ORGANIZATIONAL CONFLICT OF INTEREST

6.1 Neither Party has knowledge of any actual or potential organizational conflict of interest (OCI) as defined in Part 9 of the Federal Acquisition Regulation (FAR) (a situation in which either Party has a financial interest or relationship or unequal access to information which could adversely affect that Party's ability to perform under any contract or Program contemplated under this Agreement) that would render either Party unable to give impartial assistance or support to the other Party; interfere with objectivity in performing the contemplated contract work; give either Party an unfair competitive advantage; or preclude the Parties from being eligible for and being able to perform the contract contemplated by this Agreement. If a potential or actual conflict of interest matter becomes known by either Party after the effective date of this Agreement, written notice of the matter will be given within five (5) business days to the other Party. If the Parties conclude that an actual OCI exists, and it cannot be satisfactorily resolved through good faith negotiations or development of an effective OCI mitigation plan, either Party may terminate this Agreement by written notice to the other Party.

ARTICLE 7: PROCUREMENT INTEGRITY/REPRESENTATION & WARRANTIES

7.1 Both Parties agree, in pursuing the award of a Prime Contract for the Program contemplated by this Agreement, that they will each comply with applicable Federal Law, including, but not limited to 41 U.S.C. 423 (Procurement Integrity) and the implementing FAR.

7.2 Each Party in order to induce the other to enter into this Agreement hereby represents and warrants the following:

a. Full Disclosure. No representation, warranty, guarantee, or statement made by a Party contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make accurate or complete the statements contained herein.

b. Disqualification. Neither Party has undertaken nor will they undertake action that may

disqualify the team's bid or its proposed role in the Program. Furthermore, neither Party has knowledge of any reason why the bid may be disqualified.

ARTICLE 8: TERMINATION

8.1 This Agreement shall terminate and all rights and duties hereunder, except those in Articles 4, 5, 9, and 18 shall cease upon the first to occur of the following:

a. Official announcement by the Client that the Program has been canceled or an award will not be made for the Program;
b. Award of a Prime Contract to a contractor other than PRIME;
c. Award of a Prime Contract to PRIME under the Program which includes Exhibit A work and funding therefore; and
   i) award to AIR of a Subcontract under such Prime Contract in accordance with this Agreement, or
   ii) disapproval by the Client of such a Subcontract to AIR, provided that PRIME did nothing to effect such a result and made its best efforts to have AIR approved as a Subcontractor;
d. Mutual consent of the Parties in writing;
e. The expiration of twelve (12) months from the date of this Agreement unless renewed for an additional term upon mutual written agreement between the Parties;
f. Actual debarment or suspension of a Party by a competent authority of the Government pursuant to FAR 9.406-2 or 9.407-2, making that Party unable to proceed with the Program because of its ineligibility to receive new work under the Program, or consideration of a Party for debarment or suspension during the pre-award period, because actual debarment or suspension would affect the team's ability to be selected for award;
g. Notification to Subcontractor of the reasonable decision by PRIME not to submit a proposal under the Program.
h. Commencement, voluntary or involuntary, of proceedings in bankruptcy for one of the Parties, including filing under Chapter 11 of the U.S. Bankruptcy Code.

8.2 If this Agreement is terminated, either Party shall be free to pursue its individual technical approach in association with the successful contractor or a third party for work, which is the subject of this Agreement, subject to the provisions that survive termination (Articles 4, 5, 9, and 18).

ARTICLE 9: DISPUTES

9.1 Any claim, controversy, or dispute concerning questions of fact or law arising out of or relating to this Agreement, to performance by either party hereunder, or to the threatened, alleged, or actual breach thereof by either party, which is not disposed of by mutual agreement within a period of thirty (30) days after one party has provided written notice of the dispute to the other, shall be subject to executive level review by the PRIME and AIR. If this review process is not successful within a reasonable period of time, then the dispute shall be arbitrated pursuant to the Commercial Rules of the American Arbitration Association, before an arbitrator mutually agreed to by the parties; provided, however, the discovery rules of the Federal Rules of Civil procedure shall apply in such proceeding. Any such arbitration shall be held in the Washington, D.C. metropolitan area, or elsewhere as mutually agreed to by the parties. The decision of the arbitrator shall be final and conclusive upon the parties. Judgment upon an award rendered by the arbitrator may be entered in any court of competent jurisdiction. Neither party shall institute any action or proceeding against the other party in any court with respect to any dispute which is or could be the subject of a claim or proceeding pursuant to this Article. The sole exception shall be the right of either party to seek injunctive relief from a court of competent jurisdiction in the case of misuse,

misappropriation, or threatened misuse of intellectual property or proprietary information. Nothing in this Article prevents the parties from exercising their right to terminate this Agreement in accordance with Article 8 herein.

9.2 Each Party shall bear its own costs and shall equally share the American Arbitration Association costs attributed to the resolution of the Parties' matter. The Parties further agree that no decision rendered by the arbitrators shall include punitive, special, incidental or consequential damages against either Party.

ARTICLE 10: NOTICES

10.1 All notices, certificates, acknowledgements, or other communications hereunder shall be in writing and shall be deemed properly delivered when duly mailed by first class mail, certified mail, postage prepaid, or delivered by hand to the other Party as specified below.

Notices should be sent to:

American Institutes for Research 1000 Thomas Jefferson St, N.W. Washington, DC 20007-3835	Oakland Unified School District 1000 Broadway Oakland, *CA 94607*
Attn: Nilva da Silva Telephone: 202-403-5086 Fax: 202-403-5414 Email: ndasilva@air.org	Attn: _____ Telephone: _____ Fax: _____ Email: _____

ARTICLE 11: INDEPENDENT CONTRACTOR

11.1 The Parties are independent contractors with respect to each other, and nothing in this Agreement shall constitute, create, or give effect to any employer-employee relationship, association, affiliation, partnership, joint venture, any type of formal business relationship, legal entity, or agency relationship between the Parties. The rights and obligations of the Parties shall be limited to those expressly set forth herein. Neither Party is the agent of the other nor may either party bind the other. The Parties shall not share profits under the Subcontract which may result from this Agreement. Each Party shall be fully responsible for all supervision, performance, activities, and liabilities due to, incurred by, or because of its personnel, and its personnel shall in no sense be considered employees of the other.

ARTICLE 12: PUBLICITY

12.1 No release shall be made to the news media or the general public relating to the Program without prior written consent of both Parties, which consent shall not be unreasonably withheld or delayed. The Parties further agree that news releases made by either Party shall recognize the participation and contributions of the other Party.

ARTICLE 13: FORCE MAJEURE

13.1 Neither Party shall be liable to the other for any loss, claim or damage as a result of any delay or failure in the performance of any obligation hereunder, directly or indirectly caused by or resulting from: acts of God; acts of Clients; acts of terrorism; acts of third persons; strikes, embargoes, delays in the mail, transportation and delivery, power failures and shortages; weather conditions; or other causes beyond the reasonable control of such Party.

ARTICLE 14: ASSIGNMENT

14.1 Neither Party may assign, transfer, sell, or in any way encumber its interest, in whole or in part, herein without the prior written consent of the other, which consent shall not be unreasonably withheld. For the purpose of this Agreement, any corporate merger, acquisition, or similar change in ownership shall not be considered an assignment.

ARTICLE 15: MODIFICATIONS

15.1 This Agreement shall not be amended or modified unless set forth in a document executed by duly authorized representatives of both Parties.

ARTICLE 16: NONSOLICITATION OF EMPLOYEES

16.1 Without the prior written consent of the other Party, neither Party shall directly recruit or hire any personnel of the other Party who are or have been assigned to perform work on this Program during the duration of this Agreement and any resultant Subcontract (including contract extensions and modifications) between the Parties; provided, however, the foregoing provision will not prevent either Party from hiring any such person: i) who contacts that Party on his or her own initiative without any direct solicitation by or encouragement from or on behalf of the other Party; ii) as a result of placing general advertisements in trade journals, newspapers or similar publications which are not directed at the other Party or its employees; or iii) as a result of the efforts of recruiters who contact such persons on their own initiative without any encouragement or direction from or on behalf of the other Party relating to that Party or its employees.

16.2 The Parties further agree to include this provision in any resulting Subcontract to be awarded under the terms and conditions of the Agreement.

ARTICLE 17: TITLES

17.1 The titles contained in these terms and conditions are for convenience only and are not intended to have any substantive significance in interpreting this Agreement.

ARTICLE 18: INDEMNIFICATION AND LIMITATION OF LIABILITY

18.1 Each Party shall indemnify and hold the other harmless from any and all third party claims, actions, damages and liabilities (including reasonable attorneys' fees) arising directly or proximately out of the indemnifying party's negligence, or willful misconduct resulting in death or bodily injury or damage to any real or tangible personal property.

18.2 EXCEPT FOR LIABILITY ARISING FROM A BREACH OF ARTICLES 4 and 5 (PROPRIETARY INFORMATION AND INTELLECTUAL PROPERTY), IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL (INCLUDING PUNITIVE) OR OTHER INDIRECT DAMAGES THAT ARE CLAIMED TO BE INCURRED BY THE OTHER PARTY WHETHER SUCH CLAIM ARISES UNDER CONTRACT, TORT (INCLUDING STRICT LIABILITY) OR OTHER THEORY OF LAW.

ARTICLE 19: GOVERNING LAW

19.1 The laws of the District of Columbia (without giving effect to its conflicts of law principles) shall govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

ARTICLE 20: SEVERABILITY

20.1 In the event any portion of this Agreement is deemed invalid or unenforceable for any reason by a court of competent jurisdiction, the validity of the remaining portions of this Agreement shall remain in full force and effect. In the event that any part, term or provision of this Agreement is held void, illegal, unenforceable, or in conflict with any law of the Federal, State, or local Government having jurisdiction over this Agreement, the Parties agree, to the extent possible, to include a replacement provision, construed to accomplish its originally intended effect, that does not violate such law or regulation.

ARTICLE 21: JOINTLY DRAFTED

21.1 The terms of this Agreement have been negotiated at arm's length between the Parties and shall be deemed to have been drafted by both parties.

ARTICLE 22: WAIVER

22.1 No waiver of any provision of this Agreement shall be effective, except pursuant to a written instrument signed by the Party waiving compliance, and any such waiver shall be effective only in the specific instance and for the specific purpose stated in such writing.

ARTICLE 23: ENTIRE AGREEMENT

23.1 This Agreement shall constitute the entire, complete, final understanding and agreement between the Parties with respect to the Solicitation. All prior agreements, representations, statements, negotiations, and understandings are superseded. The following exhibits are incorporated into this Agreement:

- Exhibit A -- Scope of Work
- Exhibit B -- Nondisclosure Agreement

ARTICLE 24: SIGNATURES

24.1 Persons who are properly authorized to legally bind their respective organizations have executed this Agreement below. Each Party acknowledges that it has read the Agreement, understands it, and agrees to be bound by its terms.

Subcontractor size classification: (__) Large (__) Small (__) Other: _____
Specify

American Institutes for Research

_____
Signature

Nilva da Silva
Name

Senior Contract Officer
Title

_____
Date

Oakland Unified School District

Jent, Board of Education
Signature

Name

Title

5/24/17
Devin Dillon, Ph.D.
Interim Secretary, Board of Educati
Date

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE
By: _____ Attorney at Law

Exhibit A
Scope of Work

AIR shall provide Oakland USD the services in support of the Program as expressly set forth below. In addition, the Proposal of the Prime Contractor, as initially submitted and as revised, is specifically incorporated herein to interpret the specific Scope of Work of AIR.

Conduct an independent evaluation of the activities supported by the EIR grant to Oakland Unified School District (OUSD). The evaluation will include studies of implementation and impact. The study of implementation will use mixed methods and will address fidelity of implementation. The impact evaluation will examine effects on student outcomes using a quasi-experimental design.

Exhibit B
Nondisclosure Agreement

EXHIBIT B

AIR®
AMERICAN INSTITUTES FOR RESEARCH®

Mutual Confidentiality and Non-Disclosure Agreement

This AGREEMENT (the "Agreement") is made and entered into **February 23, 2017**("Effective Date"), by and between American Institutes for Research (AIR), a non-profit organization with principal offices located at 1000 Thomas Jefferson Street, NW, Washington DC 20007, and **Oakland Unified School District** ("Company"), with principal offices located at **1000 Broadway, Oakland, CA 94607** For purposes of this Agreement, the Party disclosing or otherwise providing Confidential Information shall be referred to as the "Disclosing Party" and the Party receiving such Confidential Information shall be referred to as the "Receiving Party/Recipient." Both AIR and Company are sometimes referred to collectively herein as the "Parties" and individually as a "Party."

The Parties hereto desire to participate in discussions regarding **CFDA Number: 84.411C – Early Phase EIR Grant** (the "Project"). During these discussions, Disclosing Party may share certain proprietary information with the Recipient. Therefore, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. **Definition of Confidential Information.**

For purposes of this Agreement, **"Confidential Information"** means any data or information disclosed by either Party that is proprietary and not generally known to the public, whether in tangible or intangible form, whenever and however disclosed, including, but not limited to; (i) any marketing strategies, plans, financial information, or projections, operations, sales estimates, business plans and performance results relating to the past, present or future business activities of such Party, its affiliates, subsidiaries and affiliated companies; (ii) plans for products or services, and customer or supplier lists; (iii) any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method; (iv) any concepts, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets; and (v) any information that, under the circumstances surrounding disclosure, a reasonable person would regard as confidential. Confidential Information need not be novel, unique, patentable, copyrightable or constitute a trade secret in order to be designated Confidential Information. Both Parties acknowledge that the Confidential Information is proprietary to the Disclosing Party and has been developed and obtained through great efforts by the Disclosing Party.

Notwithstanding anything in the foregoing to the contrary, Confidential Information shall not include information which (i) was known by the Receiving Party prior to receiving the Confidential Information from the Disclosing Party; (ii) becomes rightfully known to the Receiving Party from a third-party source not known (after diligent inquiry) by the Receiving Party to be under an obligation to Disclosing Party to maintain confidentiality; (iii) is or becomes publicly available through no fault of or failure to act by the Receiving Party in breach of this Agreement; (iv) is required to be disclosed in a judicial or administrative proceeding, or is otherwise requested or required to be disclosed by law or regulation, although the requirements of paragraph 4 hereof shall apply prior to any disclosure being made; and (vi) is or has

been independently developed by employees, consultants or agents of the Receiving Party without violation of the terms of this Agreement or reference or access to any Confidential Information.

2. Disclosure of Confidential Information.

From time to time, the Disclosing Party may disclose Confidential Information to the Receiving Party. The Receiving Party shall not disclose Confidential Information except to the Recipient's directors, officers, employees, agents or representatives (collectively "Representatives") provided each such person; (i) has a need to know such Confidential Information; (ii) has been advised of the confidential nature of such Confidential Information, and (iii) is under a contractual obligation or professional duty to protect Confidential Information under terms no less restrictive than those under this Agreement. The Receiving Party shall protect the Discloser's Confidential Information using the same degree of care it uses to protect its own Confidential Information of a similar nature, but using no less than a reasonable degree of care. Recipient is liable for any unauthorized use or disclosure of the Confidential Information by its Representatives.

3. Use of Confidential Information.

The Receiving Party agrees to use the Confidential Information solely in connection with the current or contemplated business relationship between the Parties and not for any purpose other than as authorized by this Agreement without the prior written consent of an authorized representative of the Disclosing Party. No other right or license, whether expressed or implied, in the Confidential Information is granted to the Receiving Party under any intellectual property right. As between the Parties, the Disclosing Party retains ownership of its Confidential Information. All use of Confidential Information by the Receiving Party shall be for the benefit of the Disclosing Party and any modifications and improvements thereof by the Receiving Party shall be the sole property of the Disclosing Party.

4. Compelled Disclosure of Confidential Information.

Notwithstanding anything in the foregoing to the contrary, the Receiving Party may disclose Confidential Information pursuant to any governmental, judicial, or administrative order, subpoena, discovery request, regulatory request or similar method, provided that the Receiving Party promptly notifies, to the extent practicable, the Disclosing Party in writing of such demand for disclosure so that the Disclosing Party, at its sole expense, may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information; provided in the case of a broad regulatory request with respect to the Receiving Party's business (not targeted at Disclosing Party), the Receiving Party may promptly comply with such request provided the Receiving Party give (if permitted by such regulator) the Disclosing Party prompt notice of such disclosure. The Receiving Party agrees that it shall not oppose and shall cooperate with efforts by, to the extent practicable, the Disclosing Party with respect to any such request for a protective order or other relief. Notwithstanding the foregoing, if the Disclosing Party is unable to obtain or does not seek a protective order and the Receiving Party is legally requested or required to disclose such Confidential Information, disclosure of such Confidential Information may be made without liability.

5. Term.

Notwithstanding any expiration or termination of this Agreement, each Party's obligations of confidentiality with respect to the other's Confidential Information will continue for five (5) years from the date of disclosure of that information. However, to the extent Confidential Information constitutes a trade secret, the Recipient's obligations of confidentiality with respect to that information will continue indefinitely.

6. Remedies.

Recipient acknowledges that any breach of this Agreement may cause Discloser to suffer irreparable harm, and that money damages may not be an adequate remedy for such breach. Discloser may seek specific performance, injunctive relief or other equitable relief for any breach or threatened breach of this Agreement. Such injunctive relief may be in addition to any other remedies available hereunder, whether at law or in equity. The Disclosing Party shall be entitled to recover its costs and fees, including reasonable attorneys' fees, incurred in obtaining any such relief.

7. Return of Confidential Information.

The Recipient shall immediately return and redeliver to the other all tangible material embodying the Confidential Information provided hereunder and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information deriving there from and all other documents or materials ("Notes") (and all copies of any of the foregoing, including "copies" that have been converted to computerized media in the form of image, data or word processing files either manually or by image capture) based on or including any Confidential Information, in whatever form of storage or retrieval, upon the earlier of (i) the completion or termination of the dealings between the Parties contemplated hereunder; (ii) the termination of this Agreement; or (iii) at such time as the Disclosing Party may so request; provided however that the Receiving Party may retain such of its documents as is necessary to enable it to comply with its document retention policies. Alternatively, the Receiving Party, with the written consent of the Disclosing Party may (or in the case of Notes, at the Receiving Party's option) immediately destroy any of the foregoing embodying Confidential Information (or the reasonably non-recoverable data erasure of computerized data) and, upon request, certify in writing such destruction by an authorized representative of the Receiving Party supervising the destruction.

8. Notice of Breach.

Recipient shall immediately notify the Disclosing Party of any unauthorized use or disclosure of the Discloser's Confidential Information, whether known or suspected, and shall make all reasonable efforts to mitigate any harm that may be caused by such unauthorized use or disclosure. The Recipient shall cooperate with the Disclosing Party in any effort to preserve the confidentiality of the Confidential Information and prevent its further unauthorized use.

9. No Binding Agreement for Project.

The Parties agree that neither Party will be under any legal obligation of any kind whatsoever with respect to the Project by virtue of this Agreement, except for the matters specifically agreed to herein. The Parties further acknowledge and agree that they each reserve the right, in their sole and absolute discretion, to reject any and all proposals and to terminate discussions and negotiations with respect to the Project at any time. This Agreement does not create a joint venture or partnership between the Parties. If the Project goes forward, the non-disclosure provisions of any applicable Project documents entered into between the Parties (or their respective affiliates) for the Project shall supersede this Agreement. In the event such provision is not provided for in said Project documents, this Agreement shall control.

10. Warranty.

Each Party warrants that it has the right to make the disclosures under this Agreement. NO OTHER OR ADDITIONAL WARRANTIES ARE MADE BY EITHER PARTY UNDER THIS AGREEMENT WHATSOEVER. The Parties acknowledge that although they shall each endeavor to include in the Confidential Information all information that they each believe relevant for the purpose of the evaluation of the Project, the Parties understand that no representation or warranty as to the accuracy or completeness of the

Confidential Information is being made by either Party as the Disclosing Party. Further, neither Party is under any obligation under this Agreement to disclose any Confidential Information it chooses not to disclose. Neither Party hereto shall have any liability to the other Party nor to the other Party's Representatives resulting from any use of the Confidential Information except with respect to disclosure of such Confidential Information in violation of this Agreement.

11. Miscellaneous.

(a) This Agreement constitutes the entire understanding between the Parties and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the Parties, with respect to the subject matter hereof. This Agreement can only be modified by a written amendment signed by the Party against whom enforcement of such modification is sought.

(b) Neither party shall use directly or by implication the names of the other party, nor any of the other Party's affiliates or contractors, nor any abbreviations thereof, or employee of the other Party in connection with any products, publicity, promotion, financing, advertising, or other public disclosure without the prior written permission of the other Party.

(c) The validity, construction and performance of this Agreement shall be governed and construed in accordance with the laws of the District of Columbia without giving effect to any conflict of laws provisions thereof. The Federal and state courts located in District of Columbia shall have sole and exclusive jurisdiction over any disputes arising under the terms of this Agreement.

(d) Any failure by either Party to enforce the other Party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

(e) Although the restrictions contained in this Agreement are considered by the Parties to be reasonable for the purpose of protecting the Confidential Information, if any part, term or provision of this Agreement is held by a court of competent jurisdiction to be void, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

(f) Any notices or communications required or permitted to be given hereunder may be delivered by hand, deposited with a nationally recognized overnight carrier, electronic-mail, or mailed by certified mail, return receipt requested, postage prepaid, in each case, to the address of the other Party first indicated above (or such other addressee as may be furnished by a Party in accordance with this paragraph). All such notices or communications shall be deemed to have been given and received (i) in the case of personal delivery or electronic-mail, on the date of such delivery, (ii) in the case of delivery by a nationally recognized overnight carrier, on the third business day following dispatch and (iii) in the case of mailing, on the seventh business day following such mailing.

(g) This Agreement and the rights and obligations hereunder may not be assigned or otherwise transferred by either Party without the prior written consent of the other Party, which shall not be unreasonably withheld, delayed or conditioned, except that either Party (without consent) may assign its rights and obligations hereunder to any of its affiliates or to any successor to all or substantially all of its business that concerns this Agreement (whether by

sale of assets, merger, consolidation or otherwise. Any attempted transfer in violation hereof will be void and of no effect. This Agreement will be binding upon, and inure to the benefit of, the successors, representatives, and permitted assigns of the Parties.

(h) Paragraph headings used in this Agreement are for reference only and shall not be used or relied upon in the interpretation of this Agreement.

IN WITNESS WHEROF, the Parties have caused their duly authorized representative to execute this Agreement as of the date first above written. Persons who are properly authorized to legally bind their respective organizations have executed this Agreement below. Each Party acknowledges that it has read the Agreement, understands it, and agrees to be bound by its terms.

Oakland Unified School District	**American Institutes for Research (AIR)**
Signature 5/25/17	Signature
James Harris President, Board of Education Typed/Printed Name	Nilva da Silva Typed/Printed Name
Title 5/25/17	Senior Contract Officer Title
Devin Dillon, Ph.D. Interim Secretary, Board of Education Date	Date

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE
By: Attorney at Law