

Board Office Use: Legislative File Info.	
File ID Number	21-0332
Introduction Date	3-10-2021
Enactment Number	21-0294
Enactment Date	3/10/2021 lf



Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Joanna Powell, OUSD Staff Attorney
Tadashi Nakadegawa, Deputy Chief, Facilities Planning and Management

Board Meeting Date March 10, 2021

Subject Short-Form Cooperative Research & Development Agreement – Regents of the University of California Ernest Orlando Lawrence Berkeley National Laboratory – Division of Facilities Planning & Management

Action Requested Ratification by the Board of Education of Short-Form Cooperative Research & Development Agreement between the Oakland Unified School District and Regents of the University of California Ernest Orlando Lawrence Berkeley National Laboratory (“Contractor”) for the latter to prepare plans to safely reopen their k12 classrooms. OUSD is considering the adequacy of their current heating, ventilation, and air conditioning (HVAC) systems, and determining best practices to provide additional ventilation, filtration, and/or air disinfection for risk mitigation. LBNL proposed to provide technical assistance to OUSD in their review of guidance and best practices in reducing aerosol transmission risk. LBNL also plans to work with OUSD in selecting indoor air quality (IAQ) monitors as part of a longer term strategies to ensure adequate ventilation in K12 classrooms, for the Facilities Planning & Management, in the not to exceed amount of \$11,350.00, as the selected Consultant, with a term of January 29, 2021, through March 31, 2021, pursuant to the Agreement.

Discussion This contract will allow LBNL to review school reopening guidance from ASHRAE, California Department of Public Health (CDPH), Cal/OSHA, and other local health jurisdiction. To Identify best practices for selecting controls that have demonstrated effectiveness in mitigating aerosol transmission risk.

LBP (Local Business Participation Percentage) 00.0%

Recommendation Ratification by the Board of Education of Short-Form Cooperative Research & Development Agreement between the Oakland Unified School District and Regents of the University of California Ernest Orlando Lawrence Berkeley National Laboratory (“Contractor”) for the latter to prepare plans to safely reopen their k12 classrooms. OUSD is considering the adequacy of their current heating, ventilation, and air conditioning (HVAC) systems, and determining best practices to provide additional ventilation, filtration, and/or air disinfection for risk mitigation. LBNL proposed to provide technical assistance to OUSD in their review of guidance and best practices in reducing aerosol transmission risk. LBNL also plans to work with OUSD in selecting indoor air quality (IAQ) monitors as part of a longer term strategies to ensure adequate ventilation in K12 classrooms, for the Facilities Planning & Management, in the not to

exceed amount of \$11,350.00, as the selected Consultant, with a term of January 29, 2021, through March 31, 2021, pursuant to the Agreement.

Fiscal Impact

Funds-in, In-kind

Attachments

- Agreement including Statement of work
- Certificate of Completion

DOE Approved 2020

The Department of Energy has opted to utilize the following agreement, which is uniform across the Departmental facilities, for small value transactions. Except for minor modifications to the terms of this agreement made by THE REGENTS, most changes will require approval by the DOE Contracting Officer, WHICH WILL LIKELY DELAY THE START DATE OF THE PROJECT. If substantive changes are required, the DOE Model CRADA may be more appropriate due to the increased flexibility such agreements afford.

STEVENSON-WYDLER (15 USC 3710a)

**SHORT-FORM COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT
(hereinafter "CRADA") NO. FP00012250**

BETWEEN

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

**ERNEST ORLANDO LAWRENCE BERKELEY NATIONAL LABORATORY under its U.S.
Department of Energy Contract No. DE-AC02-05CH11231. (Hereinafter "The Regents")**

AND

OAKLAND UNIFIED SCHOOL DISTRICT (hereinafter "Participant")

both being hereinafter jointly referred to as the "Parties"

ARTICLE I: DEFINITIONS

- A. "Government" means the United States of America and agencies thereof.
- B. "DOE" means the Department of Energy, an agency of the United States of America.
- C. "Contracting Officer" means the DOE employee administering The Regents' DOE contract.
- D. "Generated Information" means information produced in the performance of this CRADA.
- E. "Proprietary Information" means information which is developed at private expense outside of this CRADA, is marked as Proprietary Information, and embodies (i) trade secrets or (ii) commercial or financial information which is considered privileged or confidential under the Freedom of Information Act (5 USC 552 (b)(4)).
- F. "Protected CRADA Information" means Generated Information which is marked as being Protected CRADA Information by a Party to this CRADA and which would have been Proprietary Information had it been obtained from a non-federal entity.

G. "Subject Invention" means any invention of The Regents or Participant conceived of or first actually reduced to practice in the performance of work under this CRADA.

H. "Intellectual Property" means patents, trademarks, copyrights, mask works, Protected CRADA Information and other forms of comparable property rights protected by Federal law and other foreign counterparts.

ARTICLE II: STATEMENT OF WORK, TERM, FUNDING AND COSTS

A. Appendix A is the Statement of Work.

B. The effective date of this CRADA shall be the latter date of (1) the date on which it is signed by the last of the Parties or (2) the date on which it is approved by DOE. The work to be performed under this CRADA shall be completed within 4 months/years from the effective date.

C. The Participant's estimated contribution is \$1,350 which includes \$0 funds-in and \$1,350 in-kind. The Government's estimated contribution, which is provided through The Regents' contract with DOE, is \$ 10,000, subject to available funding.

ARTICLE III: PERSONAL PROPERTY

Any tangible personal property produced or acquired in conducting the work under this CRADA shall be owned by the Party paying for it. There will be no jointly funded personal property. Personal property shall be disposed of as directed by the owner at the owner's expense.

ARTICLE IV: DISCLAIMER:

THE GOVERNMENT, THE PARTICIPANT, AND THE REGENTS MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS CRADA, OR THE OWNERSHIP, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT. NEITHER THE GOVERNMENT, THE PARTICIPANT, NOR THE REGENTS SHALL BE LIABLE FOR SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES.

ARTICLE V: PRODUCT LIABILITY

Except for any liability resulting from any negligent acts, or willful misconduct or omissions of The Regents or Government, Participant agrees to hold harmless the Government and The Regents for all damages, cost and expenses, including attorney's fees, arising from personal injury or property damage as a result of the making, using, or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees, which was derived from the work performed under this CRADA.

ARTICLE VI: RIGHTS TO SUBJECT INVENTIONS

The Parties agree to promptly disclose in writing to each other every Subject Invention in sufficient detail to comply with the provisions of 35 USC §112 well before any statutory bars may arise under 35 USC §102. Each Party shall have the first option to retain title to any of its Subject Inventions. If a Party elects not to retain title to any of its Subject Inventions, then the other Party shall have the option for a period of 6 months after disclosure of electing to retain title to such Subject Inventions under this CRADA. The Participant has the option to choose an exclusive license, for reasonable compensation, in a pre-negotiated field of use to The Regents' Subject Inventions.

The Parties acknowledge that the DOE may obtain title to each Subject Invention reported under this Article for which a patent application is not filed, a patent application is not prosecuted to issuance, or any issued patent is not maintained by either Party to this CRADA. The Government shall retain a nonexclusive, non-transferable, irrevocable, paid-up license to practice, or to have practiced, for or on its behalf all Subject Inventions throughout the world.

For Subject Inventions conceived or first actually reduced to practice under this CRADA which are joint Subject Inventions made by The Regents and the Participant, title to such Subject Inventions shall be jointly owned by The Regents and the Participant.

The Parties acknowledge that the DOE has certain march-in rights to any Subject Inventions in accordance with 48 CFR 27.304-1(g) and 15 USC 3710a(b)(1)(B) and (C).

ARTICLE VII: RIGHTS IN DATA

A. The Parties and the Government shall have unlimited rights and each of them shall have a right to use all Generated Information produced by, or information provided to, the Parties under this CRADA which is not marked as being Protected CRADA Information or Proprietary Information.

B. Proprietary Information:

Each Party agrees to not disclose properly marked Proprietary Information provided by the other Party to anyone other than the providing Party without the written approval of the providing Party, except to Government employees who are subject to 18 USC 1905.

C. Protected CRADA Information:

Each Party may designate and mark as Protected CRADA Information (PCI) any qualifying Generated Information produced by its employees. However, The Regents do not intend to mark any of its Generated Information as PCI (see Article IX: Export Control.) For a period of 5 years from the date it is produced, the Parties agree not to further disclose such PCI except as necessary to perform this CRADA or as requested by the DOE Contracting Officer to be provided to other DOE facilities for use only at those DOE facilities with the same protection in place and marked accordingly. Government employees who are subject to 18 USC 1905 may have access to PCI.

D. Cessation of Obligations Regarding PCI and Proprietary Information:

The obligations relating to the disclosure or dissemination of Protected CRADA Information and

Proprietary Information shall end if any such information becomes known without fault of either party, or if such information is developed independently by a Party's employees who had no access to the PCI or Proprietary Information.

E. Copyright:

The Parties may assert copyright in any of their Generated Information. The Parties hereby acknowledge that the Government or others acting on its behalf shall retain a nonexclusive, royalty-free, worldwide, irrevocable, non-transferable license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, all copyrightable works produced in the performance of this CRADA, subject to the restrictions this CRADA places on publication of Proprietary Information and Protected CRADA Information.

ARTICLE VIII: U.S. COMPETITIVENESS

The Parties agree that a purpose of this CRADA is to provide substantial benefit to the U.S. economy.

A. In exchange for the benefits received under this CRADA, the Participant therefore agrees to the following:

1. Products embodying Intellectual Property developed under this CRADA shall be substantially manufactured in the United States, and

2. Processes, services, and improvements thereof which are covered by Intellectual Property developed under this CRADA shall be incorporated into the Participant's manufacturing facilities in the United States either prior to or simultaneously with implementation outside the United States. Such processes, services, and improvements, when implemented outside the United States, shall not result in reduction of the use of the same processes, services, or improvements in the United States.

B. The Regents agree to a U.S. Industrial Competitiveness clause in accordance with its prime contract with respect to any licensing and assignments of its Intellectual Property arising from this CRADA, except that any licensing or assignment of its intellectual property rights to the Participant shall be in accordance with the terms of paragraph A of this Article.

ARTICLE IX: EXPORT CONTROL

EACH PARTY IS RESPONSIBLE FOR ITS OWN COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS. EXPORT LICENSES OR OTHER AUTHORIZATIONS FROM THE U.S. GOVERNMENT MAY BE REQUIRED FOR THE EXPORT OF GOODS, TECHNICAL DATA OR SERVICES UNDER THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT EXPORT CONTROL REQUIREMENTS MAY CHANGE AND THAT THE EXPORT OF GOODS, TECHNICAL DATA OR SERVICES FROM THE U.S. WITHOUT AN EXPORT LICENSE OR OTHER APPROPRIATE GOVERNMENTAL AUTHORIZATION MAY RESULT IN CRIMINAL LIABILITY.

Participant acknowledges that The Regents has many foreign employees and students. Participant further acknowledges that The Regents will conduct this project as fundamental research with no

restrictions on publication. Accordingly, The Regents does not intend to mark any of its Generated Information as Protected CRADA Information and the Participant agrees not to direct The Regents to create export controlled information and not to transfer to Principal Investigator or to other employees or students of The Regents any Proprietary Information or Protected CRADA Information that is export controlled or to direct Contractor to engage in any transactions that are subject to U.S. sanctions.

ARTICLE X: REPORTS AND ABSTRACTS

The Parties agree to produce the following deliverables: an initial abstract suitable for public release; and a final report, to include a list of Subject Inventions. It is understood that The Regents has the responsibility to provide this information at the time of its completion to the DOE Office of Scientific and Technical Information. The Participant agrees to provide the above information to The Regents to enable full compliance with this Article.

The Parties agree to submit, for a period of five years from the expiration of this CRADA and, upon request of DOE, a non-proprietary report no more frequently than annually on the efforts to utilize any Intellectual Property arising under the CRADA.

Use of the name of a Party or its employees in any promotional activity, with reference to this CRADA, requires written approval of the other Party.

ARTICLE XI: FORCE MAJEURE

Neither Party will be liable for unforeseeable events beyond its reasonable control.

ARTICLE XII: DISPUTES

The Parties shall attempt to jointly resolve all disputes arising from this CRADA. In the event a dispute arises under this CRADA, the Participant is encouraged to contact The Regents' Technology Partnership Ombudsman in order to further resolve such dispute before pursuing third-party mediation or other remedies. If the Parties are unable to jointly resolve a dispute within a reasonable period of time, they agree to submit the dispute to a third-party mediation process that is mutually agreed upon by the Parties. To the extent that there is no applicable U.S. Federal law, this CRADA and performance thereunder shall be governed by the laws of the State of California, without reference to that state's conflict of laws provisions.

ARTICLE XIII: ENTIRE CRADA, MODIFICATIONS AND TERMINATION

This CRADA with its annexes contains the entire agreement between the Parties in performing the research described in the Statement of Work (Annex A) and becomes effective on the later date of either the date the last Party signs the document or receipt of advance funding, if any. Any agreement to materially change any terms or conditions of the CRADA and annexes shall be valid only if the change is made in writing, executed by the Parties hereto, and approved by DOE.

This CRADA may be terminated by either Party with sixty days written notice to the other Party. If

Article II provides for advance funding, this CRADA may also be terminated by The Regents in the event of failure by the Participant to provide the necessary advance funding. Each Party will be responsible for its own costs arising out of or as a result of this termination. The obligations of any clause of this CRADA that were intended to survive the expiration of the period of performance, for example, confidentiality, use and/or non-disclosure obligations, shall also survive any termination of this CRADA.

**THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA
AS MANAGEMENT AND
OPERATING CONTRACTOR
FOR THE ERNEST ORLANDO
LAWRENCE BERKELEY
NATIONAL LABORATORY**

OAKLAND UNIFIED SCHOOL DISTRICT

By: DocuSigned by:
Todd Pray
Name : Todd Pray
Title: Chief Strategic Partnerships Officer
Date: 1/29/2021

By: DocuSigned by:
Tadashi Nakadegawa
Name: Tadashi Nakadegawa
Title: Deputy Chief of Facilities
Date: 1/29/2021

Approved as to form by OUSD Staff Attorney
Joanna Powell on 1/29/2021.

Joanna J. Powell

Shanthy Gonzales 3/11/2021
Shanthy Gonzales
President, Board of Education

Kyla Johnson Trammell 3/11/2021
Kyla Johnson Trammell
Secretary, Board of Education

ANNEX A

STATEMENT OF WORK

Technology Assessment Reducing Aerosol Transmission Risk in K12 Classrooms

EXPECTED ACCOMPLISHMENTS AND GOALS

Oakland Unified School District (OUSD) is preparing a plan to safely reopen their K12 classrooms. OUSD is considering the adequacy of their current heating, ventilation, and air conditioning (HVAC) systems, and determining best practices to provide additional ventilation, filtration, and/or air disinfection for risk mitigation. LBNL proposed to provide technical assistance to OUSD in their review of guidance and best practices in reducing aerosol transmission risk. LBNL also plans to work with OUSD in selecting indoor air quality (IAQ) monitors as part of a longer term strategies to ensure adequate ventilation in K12 classrooms.

TECHNICAL OBJECTIVES

- Review school reopening guidance from ASHRAE, California Department of Public Health (CDPH), Cal/OSHA, and other local health jurisdiction.
- Identify best practices for selecting controls that have demonstrated effectiveness in mitigating aerosol transmission risk.
- Formulate longer term solutions to ensure adequate ventilation in K12 classrooms while achieving energy efficiency goals.

TASKS, RESPONSIBILITIES, AND SCHEDULE

Task	Work Done By:		2021		
	LBNL	OUSD	Feb	Mar	Apr
Review guidance	X				
Identify best practices for effective controls for K12 classrooms	X	X			
Formulate longer-term energy-efficient ventilation solutions	X	X			

DELIVERABLES

Description	Completion Date
Technical memo to summarize K12 reopening guidance to mitigate aerosol transmission risk	2021-02-15
Presentation to summarize ventilation, filtration, and air cleaning best practices for K12 classrooms	2021-03-31

The Parties agree to complete and submit a final report, as stated in Article X of the CRADA.	Prior to the project's end-date or termination
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TOTAL FUNDING SUMMARY

Funding	Year 1		Year 2		Year 3		Totals
	Funds-in	*In-kind	Funds-in	*In-kind	Funds-in	*In-kind	
Participant 1		1,350					1,350
Participant 2							
Dept. of Energy	10,000						10,000
Totals	11,350						11,350
**FAC							

**Note: If applicable, the contractor has reviewed the Participant(s) proposed in-kind-contribution and based on experience, financial analysis, and/or sound business judgement has determined the estimated in-kind contribution(s) is/are reasonable.*

***Federal Administrative Charge—state amount if included in Funds-in amount above. If FAC is waived, put amount in parentheses. See DOE Order 522.1 for more information on FAC*

ANNEX B - BACKGROUND INTELLECTUAL PROPERTY

Each Party may use the other Party's Background Intellectual Property identified hereunder solely in performance of research under the Statement of Work. This CRADA does not grant to either Party any option, grant, or license to commercialize, or otherwise use the other Party's Background Intellectual Property. Licensing of Background Intellectual Property, if agreed to by the Parties, shall be the subject of separate licensing agreements between the Parties.

The Regents Background Intellectual Property: NONE

Participant's Background Intellectual Property: NONE

Each Party has used reasonable efforts to list all relevant Background Intellectual Property, but Intellectual Property may exist that is not identified. Neither Party shall be liable to the other Party because of failure to list Background Intellectual Property.

Certificate Of Completion

Envelope Id: 5BE696D4B4344951AA5D5AB9FECB3CED	Status: Completed
Subject: Please DocuSign: FP12250-Oakland Unified School District_Chan_Short Form CRADA-form approved.pdf	
Source Envelope:	
Document Pages: 9	Signatures: 2
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Disabled	Joanna Santoro
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	1860 Michael Faraday Dr. Suite 100
	Reston, VA 20190
	JLSantoro@lbl.gov
	IP Address: 131.243.156.223

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1/29/2021 12:06:07 PM	JLSantoro@lbl.gov	

Signer Events

Tadashi Nakadegawa
 tadashi.nakadegawa@ousd.org
 Deputy Chief of Facilities
 Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:

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 ID: d76cab28-a119-43f9-9711-1a0a42b8420b

Todd Pray
 tpray@lbl.gov
 Chief Strategic Partnerships Officer
 Security Level: Email, Account Authentication (None)

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Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Certified Delivered	Security Checked	1/29/2021 12:56:56 PM
Signing Complete	Security Checked	1/29/2021 12:57:27 PM
Completed	Security Checked	1/29/2021 12:57:27 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> •Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

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