

MEMORANDUM OF UNDERSTANDING
(PLANNING FOR INSTALLATION OF CHARTER SCHOOL PORTABLES
ON DISTRICT PROPERTY)

This Memorandum of Understanding ("Agreement") is entered into as of January 7, 2016 ("Effective Date"), by and between the San Juan Unified School District ("District") and California Montessori Project, a non-profit public benefit corporation ("Charter School") operating a public charter school known as "CMP Orangevale Campus (former Coleman School)". The Charter School and the District shall be collectively referred to herein as the "Parties."

RECITALS

A. Charter School leases real property of the District located at 6545 Beech Ave., Orangevale, 95662, Sacramento, California (the "Leased Property"); and

B. The Charter School intends to purchase certain portable buildings ("Portables") directly from a third party vendor, which Portables will be installed on the Leased Property.

C. To facilitate the planning for installation of such Portables, the Charter School agrees to bear all costs in connection with the planning, design, construction, and installation of the Portables; and

D. This Agreement is intended to outline the parties' agreements governing the planning, design and installation of the Portables on the District's property to be paid for, owned, and used by the Charter School in the furtherance of its Charter program; and

E. It is the Parties' intent that additional terms related to the installation and use of the Portables will be the subject of the subsequent "Definitive Agreement" (as defined in Section 3 (b)) to be negotiated by the Parties, but it is the Parties' intent that notwithstanding the execution of such Definitive Agreement, the Parties will be bound by the terms of this Agreement related to the planning and design of the Portables and their installation.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein set forth, including the recitals hereof, the Charter School and the District do hereby agree as follows:

1. Term and Termination. This Agreement shall commence on the Effective Date and, except as provided herein, terminate only upon entry into a further Definitive Agreement (as defined in Section 3(b)), that calls for such termination. The Agreement is subject to early termination only as set forth in this Agreement or as otherwise permitted by law.

2. Procurement and Installation of Portables on Leased Property. The District and the Charter School each agree to use its best efforts to work collaboratively to plan and design the installation of the Portables on the Leased Property (“Project”). The District shall contract with one or more architects to design the Project in accordance with California law, including any necessary permitting associated with the Project. Notwithstanding the foregoing, the District shall incur no liability whatsoever in connection with the Project, including, without limitation, liability for any (i) costs of the Project, (ii) Project cost overruns, (iii) delays in Project schedule, (iv) termination of the Project prior to completion or (v) challenge to the procurement methods for the design and planning work, acquisition or installation of the Portables.

3. Payment of Costs; Definitive Agreement.

(a) The Charter School hereby agrees to pay for all costs of the Project including, without limitation, costs of planning, design, construction, and installation. Such amounts shall be due and payable by the Charter School to the District upon written demand by the District.

(b) The District and the Charter School intend to be bound by the terms of this Agreement concerning the subject matter and during the term hereof; provided that the parties shall negotiate, agree to, execute and deliver a further definitive agreement to govern specific aspects of the planning, installation, design, and installation of the Project (a “Definitive Agreement”) prior to the Charter School installing the Portables on the Leased Property.

4. Indemnification. The Charter School shall indemnify, defend, and hold harmless the District, its officers, directors, and employees, attorneys, agents, representatives, volunteers, successors and assigns (collectively hereinafter the “indemnified parties”) from and against any and all actions, suits, claims, demands, losses, costs, penalties, obligations, errors, omissions, or liabilities, including legal costs, attorney’s fees, and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered is against the indemnified parties, that may be asserted or claimed by any person, firm or entity arising out of, or in connection with, the Project and the Charter School’s performance under this Agreement, including, but not limited to, any acts or errors or omissions by the Charter School, its governing body, administrators, employees, agents, representatives, volunteers, successors and assigns, unless caused wholly by the negligence or willful misconduct of any of the indemnified parties.

The Charter School represents that because it is paying for the Project and is operated by a non-profit public benefit corporation, the planning, design and installation of the Portables is not a public works project subject to procurement methods otherwise applicable to school districts. The Charter School shall indemnify, defend, and hold harmless the District, its officers, directors, and employees, attorneys, agents, representatives, volunteers, successors and assigns (collectively hereinafter the “indemnified parties”) from and against any and all actions, suits, claims, demands, losses, costs, penalties, obligations, errors, omissions, or liabilities, including legal costs, attorney’s fees, and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered is against the indemnified parties, that may be asserted or claimed by any person, firm or entity arising out of, or in connection with the procurement methods utilized to

plan, design and install the Project.

This section shall survive the termination of this Agreement.

5. Amendments to Agreement. Any modification of this Agreement must be in writing and executed by duly authorized representatives of both parties specifically indicating the intent of the parties to modify this Agreement. No such modification or amendment shall be effective absent approval or ratification by the governing boards of both parties.

6. Severability. If any provision or any part of this Agreement is for any reason held to be invalid or unenforceable or contrary to law, the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

7. Governing Law. This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of California.

8. Venue. The parties agree that any legal action to enforce the terms of this Agreement shall be brought in the appropriate court in Sacramento County, California.

9. Notices. All notices, requests, and other communications under this Agreement shall be in writing and submitted in writing to the addresses set forth below. Notice shall be deemed given on the second day following the mailing of notice by certified mail.

To the District at:

San Juan Unified School District
5320 Hemlock Street
Sacramento, California 95841
Attn: David Burke,
Director of Planning and Property
Management

To the Charter School at:

California Montessori Project
Gary Bowman
Executive Director
5330-A Gibbons Dr, Suite 700
Carmichael, CA 95608

10. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters covered hereby, and supersedes any oral or written understandings or agreements between the parties with respect to the subject matter of this Agreement.

11. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original. Facsimile copies of signature pages transmitted to other parties to this Agreement shall be deemed equivalent to original signatures on counterparts.

12. Enforceability Subject to Governing Board Approval. This Agreement shall be enforceable only following execution by both parties and ratification or approval by the governing boards of each of the parties.

IN WITNESS WHEREOF, the undersigned authorized representatives have executed this Agreement as of the Effective Date.

SAN JUAN UNIFIED SCHOOL DISTRICT

By: _____
Kent Kern, Superintendent

CALIFORNIA MONTESSORI PROJECT

By: _____
Gary Bowman, Executive Director