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OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

OFFICE OF THE GENERAL COUNSEL

Memo

To Board of Education

From David Montes, Deputy Chief
Jacqueline P. Minor, General Counsel

Board Meeting Date May 27, 2015

Subject **Facilities Use Agreement with Castlemont Primary Academy and Castlemont Junior Charter School**

Action Requested **Approval of Facilities Use Agreement with Castlemont Primary Academy and Castlemont Junior Charter School**

Background and Discussion

Castlemont Primary Academy and Castlemont Junior Charter School were granted five year charters effective July 1, 2015 and will operate in Building 300 on the Castlemont Campus.

The Agreement is for the term from July 1, 2015 to June 30, 2020, at an annual cost of \$88,407 per year, with the amount adjusting after the 2017-18 school year to the then Prop 39 or equivalent rate.

Recommendation **Approval of Facilities Use Agreement**

Fiscal Impact Annual Revenue for 3 fiscal years of \$88,407

Attachment Agreement

**FACILITIES USE AGREEMENT BETWEEN OAKLAND UNIFIED SCHOOL DISTRICT AND CASTLEMONT PRIMARY ACADEMY and CASTLEMONT JUNIOR CHARTER SCHOOL
Located at 8601 MacArthur Boulevard, CA 94605**

FOR USE OF DEDICATED SPACE FOR PURPOSE OF OPERATING CHARTER SCHOOL'S EDUCATIONAL PROGRAM

THIS FACILITIES USE AGREEMENT is made this 1st day of July, 2015, ("Agreement"), by and between the OAKLAND UNIFIED SCHOOL DISTRICT, a California public school district of California ("District") and CASTLEMONT PRIMARY ACADEMY and CASTLEMONT JUNIOR CHARTER SCHOOL ("Charter School"), located at 8601 MacArthur Boulevard, Oakland, CA 94605. The District and Charter School may be referred to herein individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Charter School requires classrooms and facilities for its in-district students for the sole purposes of operating the educational program in accordance with the Charter School's charter ("Program" or "Activities"), as further defined herein; and

WHEREAS, District has available classrooms and facilities as more fully described and depicted in Exhibit "A" ("Dedicated Space") at the District's Castlemont High School at 8601 MacArthur Boulevard, Oakland, CA 94605. ("School Site"); and

WHEREAS, District intends to provide the Dedicated Space to Charter School for purposes of providing educational services for Charter School's Program and as further detailed in this Agreement; and

WHEREAS, District intends to utilize the School Site(s) as an operating school building during the term of this Agreement and Charter School shall not have use of the areas indicated as "N.I.C" in **Exhibit "A,"** because the District shall have exclusive use of those areas of the School Site for its own educational purposes; and

WHEREAS, this Agreement is entered into by the Parties as an "in-lieu" facilities use agreement pursuant to the requirements of California Education Code section 47614 and its implementing regulations ("Proposition 39") for the Charter School to occupy and use the Dedicated Space commencing with the 2015-2016 school year;

WHEREAS, as a condition to entering into this FACILITIES USE AGREEMENT, the District requires charter schools and District schools on a shared campus to execute the attached Memorandum of Understanding, which is attached hereto and incorporated by reference herein, to work cooperatively on the shared campus; and

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, District and Charter School agree as follows:

AGREEMENT

1. Use of Dedicated Space and School Site.

- 1.1. District agrees to allow use of the Dedicated Space at the School Site by Charter School for the sole purpose of operating Charter School's educational program in accordance with all applicable federal, state and local regulations relating to the Dedicated Space, and to the operation of Charter School's educational program, including summer school and programs procured by Charter School through third party entities, e.g. after-school program providers. Charter School shall not use the Dedicated Space for any use other than that specified in this Agreement without the prior written consent of District.
- 1.2. Charter School shall collaborate and coordinate with District staff and programs to ensure safe use of the Dedicated Space. Charter shall provide appropriate site supervision, including, but not limited to, campus supervisors, administrators and police, at a level no less than what the District provides. Charter School's obligation to ensure safe use of the Dedicated Space include all facilities located on the School Site, including, but not limited to, shared spaces as may be provided under the terms of this Agreement.
- 1.3. Charter School shall not commit, or suffer to be committed, any waste upon the Dedicated Space, or allow any sale by auction upon the Dedicated Space, or allow the Dedicated Space to be used for any unlawful purpose, or place any loads upon the floor, walls or ceiling which endanger the structure, or place any harmful liquids in the plumbing, sewer or storm water drainage system of the Dedicated Space. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Dedicated Space except in trash containers designated for that purpose.
- 1.4. Any uses which involve the serving and/or sale of alcoholic beverages are prohibited on the Dedicated Space. Charter School shall comply with District-wide policy prohibiting the use of tobacco products and e-cigarettes on the Dedicated Space at all times.
- 1.5. Charter School shall not use or permit the use of the Dedicated Space or any part thereof for any purpose which is not consistent with for a public educational facility.
- 1.6. Charter School shall require all invitees and guests to use the Dedicated Space only in conformance with the permitted use and with applicable governmental laws, regulations, rules and ordinances. During the Term, Charter School shall comply with the all District policies and procedures regarding the use and occupation of District facilities, including but not limited to Campus Security and Disruptions. The District's most recent policies and procedures can be accessed at <http://www.ousd.k12.ca.us/domain/68>.
- 1.7. Charter School shall not do or permit anything to be done in or about the

Dedicated Space nor bring or keep anything therein which will in any way increase the District's existing insurance rate or affect any fire or other insurance upon the Dedicated Space, or cause a cancellation of any insurance policy covering the Dedicated Space or any part thereof or any of the contents of the Dedicated Space, nor shall the Charter School sell or permit to be kept, used or sold in or about the Dedicated Space any articles which may be prohibited by a standard form policy of fire insurance.

- 1.8. Charter School agrees to comply with the provisions of the Civic Center Act (Education Code §§ 38130, *et seq.*) to make the Dedicated Space accessible to members of the community. The Parties understand that the Dedicated Space is to be used primarily for educational programs and activities and as such, any use of the Dedicated Space by the Community shall not interfere with Charter School's educational program. Any request received by Charter School for use of the Dedicated Space pursuant to the Civic Center Act shall be promptly forwarded to the District. District shall be responsible for coordinating access to the Dedicated Space under the Civic Center Act, and any fee paid for use of the Dedicated Space under the Civic Center Act shall be paid to the District.

2. Shared Space.

The District hereby grants to the Charter School the right to joint use of the following "Shared Space" solely for the purposes to perform Charter School's Activities on the terms and conditions set forth herein:

- 2.1. **PARKING:** Charter School shall have non-exclusive use of the parking lot located on the School Site. Charter School shall abide by District's policies concerning the use of the parking lot, including the District policy relating to the drop-off and pick-up of students. Charter School's use of the parking lot shall be on a first-come, first-serve basis but shall not unreasonably impact other occupants with similar access rights to the parking lot. Charter School shall not abandon any inoperative vehicles or equipment on any portion of the School Site. District shall not be liable for any personal injury suffered by Charter School or Charter School's visitors, invitees and guests or for any damage to or destruction or loss of any of Charter School's personal property located or stored in the parking lot, street parking, or the School Site or the personal property of Charter School's visitors, invitees and guests, except where such damage is caused by the District's negligence or misconduct. Charter School accepts parking "as is" and Charter School acknowledges that District has not made and is not making any warranties whatsoever with respect to the parking.
- 2.2. **ATHLETIC FACILITIES:** The District shall allow the Charter School to schedule supervised student use of the School Site's gymnasium, locker rooms, and basketball/blacktop area so that the Charter School will provide its own Physical Education programs within the school day using this Shared Space. The Charter School shall coordinate with the District to schedule its use of the athletic facilities for Physical Education.

- 2.3. BATHROOMS: Charter School students and staff shall have equal access to bathrooms located in Shared Space.
- 2.4. COMMON HALLWAYS: The District shall allow Charter School students to use common hallways, as may be necessary, for ingress and egress to the Dedicated Space and Shared Space.
- 2.5. DINING AREA/CAFETERIA: The District shall allow the Charter School to schedule supervised student use of the School Site's dining area as outlined in herein.
- 2.6. COORDINATING SHARED USE: Charter School use of the Shared Space shall be coordinated through the District. The District shall provide the Charter School with appropriate keys to access Shared Space no fewer than seven (7) days prior to the Commencement Date.
- 2.7. STUDENT DISCIPLINE: The District and the Charter School will collaborate to resolve any student disciplinary issues that involve students and/or the personal property of both the Charter School and other District programs. The District shall otherwise have no responsibility as it relates to student discipline of Charter School students.
- 2.8. BELL SCHEDULE/ALARMS/ANNOUNCEMENTS: It is recognized that the Charter School may have a separate bell schedule from the District's programs. If deemed feasible, the Dedicated Space will have a separate intercom and bell system. If not feasible, the principal of the Charter School and the principal of the District School shall collaborate in the development of a plan for modification of the intercom and bell system.

3. Furnishings and Equipment for In-District Students.

- 3.1. The District may provide furnishings and equipment at the Dedicated Space for Charter School's In-District Enrollment ADA as agreed by the Parties. These furnishings and equipment shall remain the property of the District. The District and the Charter School shall develop a mutually agreeable inventory of furnishings and equipment that will be located at the Dedicated Space.

4. Emergency Procedures.

- 4.1. The principal of the Charter School and the principal of the District School shall immediately inform one another or their designees of any health and/or safety emergency as they relate to the safety of the parties located on the School Site. This includes reports of any serious incident that takes place on the School Site where the police, fire department, or paramedics are involved, including, but not limited to, incidents of physical or sexual abuse, bomb threats, weapons on the School Site, and the sale of narcotics on the School Site. Charter School staff, faculty, and students shall cooperate with, and participate in, any lockdowns or exigent security procedures required by the District at the School Site.

- 4.2. The Charter School will be notified two (2) school days in advance of scheduled fire drills and emergency drills on the School Site which may disrupt the Charter School and its operations. Charter School will provide notification two (2) school days in advance to the principal of the District School of scheduled fire drills and emergency drills on the School Site which may disrupt the District School and its operations.
- 4.3. To the extent feasible, fire and other security and emergency alarm testing will be limited to after-school hours or non-teaching/training days. The principal of the Charter School and the principal of the District School shall coordinate with each other to identify appropriate dates and times for these tests.

5. Safety of School Site and Dedicated Space.

- 5.1. The School Site, including the Designated Space, may be monitored by a safety system or protocol implemented, maintained and operated by District ("District's Safety Measures"). However, Charter School specifically acknowledges, understands, and agrees that District is neither responsible for nor has the obligation to supply, provide, establish, maintain, or operate District's Safety Measures for either Charter School or the Designated Space. Charter School further expressly acknowledges and agrees that District shall not be liable for and is hereby released from any and all responsibility for any damage, loss, or injury to Charter School or its personal property resulting or arising out of any criminal activity (including, but not limited to, any damage, loss, or injury resulting from intrusions, petty theft, vandalism, or other similar acts) that may occur on or near the Designated Space, regardless of whether District was able to, actually did, or failed to provide notice to Charter School of a safety incident or situation occurring on the Designated Space which led to the damage, loss, or injury. District makes no warranties or representations as to the safety or security of Charter School, the Designated Space, the School Site, or District's Safety Measures. Unless expressly agreed to by District and Charter School, Charter School shall be responsible, at its sole cost, for supplying, providing, establishing, maintaining, and operating its own safety measures, protocols, personnel, or systems to encourage and ensure the security of Charter School, its agents, officers, employees, licensees and invitees, and the Designated Space ("Charter School's Safety Measures"); provided, however, that Charter School must obtain prior written approval from District prior to employing Charter School's Safety Measures and provided that all of Charter School's Safety Measures are compatible with District's safety system or protocol.

6. Condition of Dedicated Space.

- 6.1. District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Dedicated Space except as set forth in this Agreement. District shall, however, remain responsible for compliance with ADA, FEHA and other applicable building code standards but only to the extent that would be required of District without regard to Charter

School's use of the Dedicated Space. By entry and taking possession of the Dedicated Space pursuant to this Agreement, Charter School acknowledges and agrees the Dedicated Space is "reasonably equivalent".

- 6.2. Charter School acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the Dedicated Space for Charter School or Charter School's Program. Any agreements, warranties or representations not expressly contained in this Agreement shall in no way bind the District or Charter School, and District and Charter School expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.
- 6.3. The Parties agree that if the structural elements of the Dedicated Space become damaged to a lesser condition than currently exists, and if the structural damage is due to no fault or negligence of Charter School, then District will repair the damage in order to bring it back to a condition which is similar to the condition which exists at the time Charter School takes possession of the Dedicated Space. District may, however, terminate this Agreement if the cost to repair the Premises exceeds Five Hundred Thousand dollars (\$500,000) per incident. District will pro-rate the Rent during the "repair" period, if the resulting structural damage prohibits Charter School from carrying out its normal daily Activities. If District elects not to perform a repair estimated to cost in excess of One Hundred Fifty Thousand dollars (\$150,000) per incident, Charter School may elect to remain in possession of the Dedicated Space and pay the Rent, unless revised through mutual agreement of the Parties, or Charter School may elect to terminate this Agreement. If necessary and to the extent practicable, , the District shall provide the Charter School temporary housing on the School Site, or another school site that is near to the Dedicated Space for any part of the Charter School program that is displaced by the partial damage and/or the repair work of the same.
- 6.4. As used in the Agreement, the term "structural elements of the building" are defined as and shall be limited to the foundation, footings, floor slab but not flooring, structural walls excluding glass and doors, and the roof excluding skylights. Plumbing, electrical and heating systems shall be considered "structural elements of the building" excluding, however, those repairs and maintenance items which can be completed without wall or floor removal.

7. Title to School Site/Dedicated Space. The Parties acknowledge that title to the School Site/ Dedicated Space is held by District.

8. Term.

- 8.1. The Term shall be five (5) years, for the period from June 30, 2015 to July 1, 2020, subject to earlier termination if Charter School's program ceases to operate after a revocation, nonrenewal or surrender of the charter to the granting agency, and all appeals have been exhausted. If the Parties wish to renew this Agreement after expiration of the Term, this can only be done by a

separate writing executed by the Parties that complies with Education Code section 17534(b) (which requires capital outlay improvements by Charter School to exceed the term beyond five (5) years). The Parties further acknowledge that based upon enrollment growth and space usage, Charter School may have the need for additional space during the term. The Parties agree to meet and confer commencing in the spring of 2016 to evaluate the space needs for the Castlemont campus users, taking into consideration facility development plans.

- 8.2. If the Parties intend to renew this Agreement after the Term, the Parties shall execute a separate writing signed by both Parties.
- 8.3. On the last day of the Term hereof Charter School shall surrender to District the Dedicated Space and improvements in good order, condition and repair, reasonable wear and tear excepted, free and clear of all liens, claims and encumbrances. If the Dedicated Space is not so surrendered, Charter School shall indemnify District against loss or liability resulting from delay by Charter School in so surrendering the Dedicated Space including, without limitation, any claims made by any succeeding tenant or loss to District due to lost opportunities.

9. Facility Use Fee

- 9.1. For 2015-16, 2016-17 and 2017-18, the Facility Use Fee is the Prop 39 rate of \$3.80 per square foot, based upon 23,265 square feet or \$88,407. After the 2017-18 fiscal year, the use fee shall be the Prop 39 rate or equivalent then in effect.
- 9.2. Rent for the first month shall be due on or before the Commencement Date. Thereafter, Rent shall be due on the first of each month during the Term, without deduction, setoff, prior notice or demand.
- 9.3. Charter School acknowledges that late payment by Charter School to District of the Rent and other sums due hereunder will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of rent or any other sum due from Charter School by 4:00 p.m. within ten (10) days after such amount is due, Charter School shall pay to District, as additional rent, a late charge equal to five percent (5%) of such overdue amount or the maximum amount allowed by law, whichever is less. The parties hereby agree that such late charges represent a fair and reasonable estimate of the costs District will incur by reason of late payment by Charter School. Acceptance of such late charge by District shall in no event constitute a waiver of Charter School's default with respect to such overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.
- 9.4. Taxes, costs, expenses, assessments, levies, possessory interest taxes, late charges, and other charges and governmental fees, general and special, ordinary

and extraordinary, unforeseen, as well as foreseen, of any kind or nature whatsoever, which prior to or during the Term of this Agreement, assessed, levied, or imposed upon or become due and payable which Charter School is required to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Charter School's failure to pay such amounts, and all reasonable damages, costs, and attorneys' fees and expenses which District may incur by reason of any default of Charter School or failure on Charter School's part to comply with the terms of this Agreement, shall be deemed to be additional rent ("Additional Rent") and, in the event of nonpayment by Charter School, District shall have all of the rights and remedies with respect thereto as District has for the nonpayment of the Rent. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

- 9.5. Any amount due to District not paid when due shall bear interest at one and one-half percent (1.5%) per month commencing thirty (30) days after the due date, but not to exceed the maximum rate permitted by law. Payment of interest shall be in addition to any late charges owing pursuant to this Agreement and shall not excuse or cure any default by Charter School under this Agreement.

10. Utilities.

- 10.1. District shall furnish or cause to be furnished to the Dedicated Space the utilities necessary for Charter School's Activities. For purposes of this Agreement, utilities include electrical, natural gas, sewer, waste disposal/recycling and water services ("Utilities"). The District's failure to furnish or cause to be furnished Utilities when the failure is caused by (i) acts beyond the reasonable control of the District; (ii) strikes, lockouts, labor disturbances or labor disputes of any kind; (iii) any laws, rules, orders, ordinances, regulations, requirements or any other action by federal, state, county or municipal authority; or (iv) any other unavoidable delay, shall not cause the District to be in default of this Agreement and shall not result in any liability of the District. Charter School shall comply with all District energy conservation policies relating to use of the Dedicated Space.
- 10.2. The Charter School shall pay the District's costs to provide the Utilities in an amount equal to the percentage of the Charter School's use of the School Site ("Use Percentage") multiplied by the total cost of Utilities provided to the School Site. The Use Percentage shall be calculated based on the square footage of the Dedicated Space plus the Charter School's proportional use of Shared Space, if applicable, as shown in Exhibit "A". Charges for Utilities shall be paid by Charter School on a quarterly basis as billed by the District.
- 10.3. The Charter School shall obtain its own internet service and telephone provider and shall assume sole responsibility for upkeep and maintenance of all telephone systems, data lines, and related equipment, software and hardware. Charter School may use any pre-existing T-1 Line located in the Dedicated Space, if any. In the event Charter School uses a pre-existing T-1 Line, Charter School shall transfer billing of the line to Charter School upon approval from the District's

Technology Services Department.

11. Taxes and Assessments.

- 11.1. With the exception of assessments related to any improvements completed by District prior to the Commencement Date, Charter School shall pay a proportional share of any assessment on the Dedicated Space, including any Improvements which Charter School constructs or causes to be constructed on the Dedicated Space, whether real estate, general, special, ordinary or extraordinary, or rental levy or tax, improvement bond, and/or fee imposed upon or levied against the Dedicated Space or Charter School's legal or equitable interest created by this Agreement, and the taxes assessed against and levied upon Charter School's alterations and utility installations that may be imposed by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Dedicated Space's address and where the proceeds so generated are applied by the city, county or other local taxing authority having jurisdiction. The provisions of this Section shall survive the expiration or earlier termination of this Agreement. Nothing in this provision shall be construed to override the requirement in this Agreement that Charter School obtain the express written consent of the District to perform any improvements on the Designated Space or School Site, unless expressly permitted by this Agreement.

12. Maintenance and Repairs.

- 12.1. District shall maintain the Dedicated Space in a good condition consistent with the condition of the Dedicated Space existing on the Commencement Date, including pest abatement. Except as provided in Section 13 below, Charter School acknowledges and accepts that the Dedicated Space are leased in "AS IS" condition. District shall keep and maintain the structural elements of the buildings, as hereinafter defined, on the Dedicated Space in the condition existing at the time Charter School takes possession of the Dedicated Space excepting normal wear, tear and damage by casualty.
- 12.2. Except as provided in Section 13 below, District shall have no maintenance or repair obligations with respect to the Dedicated Space except as expressly provided in this Section. Charter School hereby expressly waives the provisions of California Civil Code sections 1932(1), 1941 and 1942, and all rights to make repairs at the expense of District as provided in Civil Code section 1942.
- 12.3. If Charter School intends to have any improvements, alterations, work, or other services performed on the Dedicated Space that are not part of the maintenance or repair services indicated herein, Charter School shall request that work via the attached Work Order form in **Exhibit "C,"** attached hereto and made a part of this Agreement.

12.3.1. The type of work that would be subject to this provision includes, for example, painting that is requested that is neither repainting nor painting to bring the facility to its original condition, new room dividers, installing or removing casework, whiteboards, or other fixtures, and similar Charter School-requested improvements.

12.3.2. The District shall prepare and provide to Charter School an estimate for that work. If Charter School accepts that estimate, the District shall perform that work as indicated in the estimate and Charter School shall pay for that work as indicated in the estimate, which shall be due and owing with the next month's Rent, unless otherwise agreed to in writing by the Parties.

- 12.4. **After-hours Emergencies.** For after-hours emergencies contact Buildings & Grounds at (510) 448-6991 or Custodial Services at (510) 448-6991. For all non-emergencies contact the Work Control Desk at (510) 879-8400.
- 12.5. **Environmental Concerns.** To report an environmental concern, please complete an Environmental Assessment Form and fax to the Risk Management Office at (510) 879-1837.
- 12.6. **Custodial Services.** Charter School at its option may use OUSD Custodial Services or participate in the Youth Uprising Custodial Workforce Development Program. If Charter School uses OUSD Custodial Services, Charter School shall agree to the recommended level of custodial service identified by the District's Custodial Services Director; the recommended number of FTE, which includes custodial supplies, shall be comparable to that of other District school sites with the same or similar square footage. Throughout the term of this Agreement, unless subsequently modified, if Charter School uses OUSD Custodial Services, it shall maintain the agreed number of custodians, who shall be District employees, and their salaries and benefits shall be reimbursed by Charter School to the District. Substitutes for illness and other District Leave, such as vacation and personal leaves, and emergency cleaning shall be provided by the District but shall be paid for by Charter School.

13. Tenant Improvements

The Parties have identified certain maintenance and repairs that are necessary to make the premises usable by Charter School for its intended purpose. The repairs are delineated on Exhibit __, which is incorporated into this Agreement. With respect to the repairs on Exhibit __, the Parties agree as follows:

- a) The District will agree to deduct from the 2015-16 Facility Use Fee an amount not to exceed \$55,500 for the costs of improvements identified by Charter School as necessary to make the Premises usable by Charter School (the "credit").
- b) The District has identified on Exhibit __ certain work that the District is responsible for undertaking.

- c) All improvement work undertaken and completed by Charter School against the credit shall be with licensed contractors, selected by Charter School and/or by supervised by licensed contractors and performed according to applicable California law. Under all circumstances, Charter School must seek and receive approval from the Division of the State Architect for all of Charter School's improvements to the extent such approval is required by law.
- d) All construction must meet code requirements, including fire.

14. Title to and Removal of Charter School's Improvements / Facilities.

- 14.1. Charter School shall not construct or cause to be constructed on the Dedicated Space any improvements ("Charter School's Improvements") without express prior written consent from District. Charter School's Improvements must be deemed by Charter School as necessary to the operation of its Activities.
- 14.2. Charter School shall at its own expense obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California Environmental Quality Act ("CEQA"), any necessary approvals from any local authority including any Site(s), grading, zoning, design review and other required permits or approvals, if applicable, prior to commencing construction and shall provide District with evidence of approval by all applicable governmental agencies.
- 14.3. Any modifications to Dedicated Space or School Site must be approved in writing in advance by District. Charter School's Contractor must also be approved in advance by District. Any contractor and/or subcontractor used by Charter School, shall be duly licensed in the State of California. Charter School shall be solely responsible for maintaining the Dedicated Space and Charter School's Improvements installed thereon during the Term of this Agreement, including any renewals or extensions, and for compliance with all applicable laws or ordinances, rules and regulations.
- 14.4. As required by law, Charter School must seek and receive approval from the Division of the State Architect for all of Charter School's Improvements.
- 14.5. Title to removable furniture, equipment and/or other personal property placed by Charter School onto the Dedicated Space, but not affixed thereto, shall be held solely by Charter School. These items shall remain the personal property of Charter School and shall not be treated as real property or become a part of the School Site(s) unless District accepts or Charter School abandons any of this personal property at the end of the Term.
- 14.6. On or before the expiration of this Agreement, or within thirty (30) days after any earlier termination of this Agreement, Charter School shall remove Charter School's Improvements, at its sole expense. Charter School shall repair any damage to the School Site and/or the Dedicated Space, caused by removal of Charter School's Improvements and restores the School Site and the Dedicated

Space to good condition, less ordinary wear and tear. In the event that Charter School fails to timely remove Charter School's Improvements, District, upon fifteen (15) days written notice, may either (1) accept ownership of Charter School's Improvements with no cost to District, or (2) remove Charter School's Improvements at Charter School's sole cost. In the event that District chooses to accept ownership of Charter School's Improvements, Charter School shall execute any necessary documents to effectuate the change in ownership of Charter School's Improvements. In the event that District removes Charter School's Improvements, Charter School shall pay all invoices for the removal of Charter School's Improvements within thirty (30) days of receipt of such invoices.

15. Signage.

Charter School may install signage at the School Site including one sign at the Charter School's main entrance stating the Charter School name and other pertinent information, a sign indicating the main office of the Charter School, and other directional signs as appropriate. The signage shall not require any Improvement to the School Site in order to erect such signage. Any signage shall be in compliance with any District standards previously made available to Charter School and Charter School's receipt of any applicable permits and approvals required under any municipal or other governmental laws, ordinances, rules or regulations; provided, that in the event of any conflict between the District's standards and any applicable municipal or governmental permit and/or approval, the terms and conditions of the municipal or governmental permit and/or approval shall prevail. At the termination of this Agreement, Charter School shall remove any signs which it has placed on the School Site and shall repair any damage caused by the installation or removal of those signs.

16. Fingerprinting and Criminal Background Verification.

The Charter School shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1.

17. Drug-Free Workplace.

Charter School's employees shall comply with the District's policy of maintaining a drug free workplace. Neither Charter School nor Charter School's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at the Site. If Charter School or any employee of Charter School is convicted or pleads nolo contendere to a criminal drug statute violation occurring at the Site, Charter School within five (5) days thereafter shall notify the District.

18. Inspection of Dedicated Space.

District agrees to provide Charter School with a set of keys for the Dedicated Space. The District and its authorized representatives shall have the right, after forty-eight (48) hours prior written notice to the Charter School, to enter the Dedicated Space during normal business

hours for the purpose of inspection and audit; or to perform Repairs and Maintenance in or on the Dedicated Space. Nothing in this section shall prevent the District from entering the Dedicated Space to address an emergency nor shall this provision restrict the District's authority to enter the Dedicated Space without advanced notice to perform its general oversight responsibilities pursuant to applicable law. An "emergency" shall be defined to include circumstances that risk the health and safety of students, personnel or other persons on the Dedicated Space and/or Site, or circumstances that risk further imminent damage or destruction to the Dedicated Space and/or Site, or otherwise jeopardizes the operation of the Site including, but not limited to, the safety and sanitary condition of the Dedicated Space.

19. Termination.

19.1. **Termination for Cause.** Either Party may terminate this Agreement immediately for cause. Cause shall include, without limitation:

19.1.1. The failure of Charter School to pay any charges or fees due and payable hereunder;

19.1.2. The failure of Charter School to observe or perform any of its covenants or obligations hereunder. The District shall provide Charter School with written notice of default and Charter School shall have ten (10) business days to provide a response to the District either evidencing compliance with the terms of this Agreement or a plan to cure the default and a reasonable timeline acceptable by the District within which Charter School will diligently prosecute the same to completion. In no event shall such default continue for more than ninety (90) days after written notice thereof by the District to Charter School without prior written agreement by the District;

19.1.3. Charter School's abandonment of the Dedicated Space for a period of thirty (30) consecutive days, it being agreed that the fact that any of Charter School's property remains in the Dedicated Space shall not be evidence that Charter School has not vacated or abandoned the Dedicated Space; provided, however, any normal school holidays including summer and inter-term breaks shall not constitute abandonment of the Dedicated Space;

19.1.4. The making by Charter School of any general assignment or general arrangement for the benefit of creditors; the filing by or against Charter School of a petition to have Charter School adjudged bankrupt or a petition for reorganization or arrangement under any law relation to bankruptcy (unless the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of the Charter School's assets located at the Dedicated Space, or of Charter School's interest in this Agreement, where possession is not restored to Charter School within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Charter School's assets located at the Dedicated Space or of Charter

School's interest in this Agreement, where such seizure is not discharged within thirty (30) days;

- 19.1.5. The cessation of the Charter School's program after a revocation, nonrenewal or surrender of the charter to the granting agency. However, the Charter School shall not be in default of this Agreement until after the Charter School has exhausted all appeals subsequent to the revocation or nonrenewal of its charter; or
- 19.2. Upon receipt of District's notice of termination, Charter School shall surrender and vacate the Dedicated Space in the condition required under this Agreement, and District may re-enter and take possession of the Dedicated Space and all the remaining improvements or property and eject Charter School or any of Charter School's assignees or other person or persons claiming any right under or through Charter School or eject some and not others or eject none. This Agreement may also be terminated by a judgment specifically providing for termination. Any termination under this Section shall not release Charter School from the payment of any sum then due District or from any claim for damages or rent previously accrued or then accruing against Charter School.
- 19.3. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District and/or Charter School.

20. Indemnification.

To the fullest extent permitted by California law, Charter School shall defend, indemnify, and hold harmless District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, on account of, connected with, or resulting from, the operation, condition, use or occupancy of the Dedicated Space, all improvements thereon, and all areas appurtenant thereto; and in case any action or proceeding be brought against District, Charter School shall defend the same at Charter School's sole expense. This Agreement is made on the express condition that District shall not be liable for, or suffer loss by reason of, injury to person or property, from whatever cause in any way connected with the condition, use or occupancy of the Dedicated Space specifically including, without limitation, any liability for injury to the person or property of the Charter School, its agents, officers, employees, licensees and invitees. Charter School shall keep the School Site and Dedicated Space clear of all liens, encumbrances and/or clouds on District's title to any portion of the School Site and Dedicated Space.

21. Insurance.

- 21.1. Insurance is to be placed with insurers with a current A.M. Best Insurance rating of no less than A-minus: VII and subject to the approval of District. Charter School shall furnish District with the original certificates and amendatory endorsements effecting coverage required.

- 21.2. Charter School acknowledges that the insurance to be maintained by District on the Dedicated Space will not insure any of Charter School's property or improvements made by Charter School.
- 21.3. Charter School shall, at Charter School's expense, obtain and keep in force during the term of this Agreement a policy of commercial general liability insurance and a comprehensive auto liability policy insuring District and Charter School against claims and liabilities arising out of the operation, condition, use, or occupancy of the Dedicated Space and all areas appurtenant thereto, including parking areas. Charter School's comprehensive auto liability policy shall insure all vehicle(s), whether hired, owned or non-owned. Charter School's commercial general insurance shall be at least as broad as the Insurance Service Office (ISO) CG 00-01 form and in an amount of not less than One Million dollars (\$1,000,000) for bodily injury or death and property damage as a result of any one occurrence and a Two Million dollar (\$1,000,000) general aggregate policy limit. In addition, Charter School shall obtain a products/completed operations aggregate policy in the amount of One Million dollars (\$1,000,000). The insurance carrier, deductibles and/or self insured retentions shall be approved by District, which approval shall not be unreasonably withheld. Prior to the Commencement Date Charter School shall deliver to District a certificate of insurance evidencing the existence of the policies required hereunder and copies of endorsements stating that such policies shall:
- 21.3.1. Not be canceled or altered without thirty (30) days prior written notice to District;
 - 21.3.2. State the coverage is primary and any coverage by District is in excess thereto;
 - 21.3.3. Contain a cross liability endorsement; and
 - 21.3.4. Include a separate endorsement naming District as an additional insured.

At least thirty (30) days prior to the expiration of each certificate, and every subsequent certificate, Charter School shall deliver to District a new certificate of insurance consistent with all of the terms and conditions required in connection with the original certificate of insurance as described above.

- 21.4. During the Term of this Agreement, District shall maintain at its cost a policy of standard fire and casualty insurance limited to the value of the buildings and improvements located on the School Site as of the Commencement Date. In the event of loss or damage to the School Site, the buildings, the Dedicated Space or any contents, the Parties hereto, and all persons claiming under each of the Parties, shall look first to any insurance in its favor before making any claim against the other Party, and to the extent possible without adding additional costs, each party shall obtain for each policy of insurance provisions permitting waiver of any claim against the other Party for loss or damage within the scope

of the insurance and each Party, to the extent permitted, for itself and its insurers, waives all such insurance claims against the other Party.

- 21.5. During the Term of this Agreement, Charter School shall comply with all provisions of law applicable to Charter School with respect to obtaining and maintaining workers' compensation insurance. Prior to the Commencement Date and any renewal of this Agreement and Charter School's occupancy of the Dedicated Space, Charter School shall provide District, as evidence of this required coverage, a certificate in a form satisfactory to District on or before the Commencement Date or any renewal or extension thereof, providing that insurance coverage shall not be canceled or reduced without thirty (30) days prior written notice to District

22. Surrender of Agreement Not Merger. The voluntary or other surrender of this Agreement by Charter School, or a mutual cancellation thereof, shall not work a merger and shall, at the option of District, terminate all or any existing subleases or subtenancies, or operate as an assignment to District of any or all subleases or subtenancies.

23. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

District:

Tadashi Nakadegawa, Facilities Director
Department of Facilities Planning and Management
Oakland Unified School District
955 High Street
Oakland, CA 94604

And

OUSD Office of Charter Schools
Silke Bradford
Silke.Bradford@ousd.k12.ca.us

Charter School:

[insert by charter school]

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by certified or registered mail shall be effective three (3) days after deposit in the United States mail.

24. Subcontract, Assignment and Sublease. Neither Party shall assign its rights, duties or privileges under this Agreement, nor shall either Party attempt to confer any of its rights,

duties or privileges under this Agreement on any third party, without the written consent of the other Party. Charter School shall not sublease any portion of the Dedicated Space without the prior written consent of the District.

25. Joint and Several Liability. If Charter School is more than one person or entity, each such person or entity shall be jointly and severally liable for the obligations of Charter School hereunder.

26. Independent Contractor Status. This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

27. Entire Agreement of Parties. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

28. California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in county in which the District's administrative offices are located.

29. Compliance with All Applicable Laws.

29.1. Charter School shall at Charter School's expense comply with all requirements of all governmental authorities, in force either now or in the future, affecting the Dedicated Space, and shall faithfully observe in Charter School's use of the Dedicated Space all laws, regulations and ordinances of these authorities, in force either now or in the future including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality, hazardous material, waste disposal, air emission and other environmental matters (including the California Environmental Quality Act ("CEQA") and its implementing regulations in its use of the Dedicated Space), and all District policies, rules and regulations, including those indicated herein in **Exhibit "D,"** attached hereto and made a part of this Agreement. Specifically, Charter School shall comply with the restriction on chemical usage indicated in **Exhibit "D."**

29.2. A judgment of a court of competent jurisdiction, or Charter School's admission in an action or a proceeding against Charter School, whether District be a party to it or not, that Charter School has violated any law or regulation or ordinance in Charter School's use of the Dedicated Space shall be considered conclusive evidence of that fact as between District and Charter School. If Charter School fails to comply with any such law, regulation or ordinance, District reserves the right to take necessary remedial measures at Charter School's expense, for which Charter School agrees to reimburse District on demand.

- 29.3. Charter School shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Dedicated Space and any improvements by Charter School or its agents, employees, contractors, subtenant, or invitees, except for limited quantities of standard office, classroom and janitorial supplies (which shall be used and stored in strict compliance with Environmental Laws). Charter School shall comply with all Environmental Laws. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, section 66261.30 et seq. (ii) defined as a "hazardous waste" pursuant to section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.
- 29.4. **Notice.** Charter School will promptly notify District in writing if Charter School has or acquires notice or knowledge that any Hazardous Substance has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, or under or from the Dedicated Space or School Site in violation of Environmental Laws. Charter School shall promptly provide copies to District of all written assessments, complaints, claims, citations, demands, fines, inquiries, reports, violations or notices relating to the conditions of the Dedicated Space or compliance with Environmental Laws. Charter School shall promptly supply District with copies of all notices, reports, correspondence, and submissions made by Charter School to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other local, state, or federal authority that requires submission of any information concerning environmental matters or Hazardous Substances pursuant to Environmental Laws. Charter School shall promptly notify District of any liens threatened or attached against the Dedicated Space pursuant to any Environmental Laws.
- 29.5. **Inspection.** District and District's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by District, may (but without the obligation or duty to do so), at any time and from time to time, on not less than ten (10) business days' notice to Charter School (except in the event of an emergency, in which case, no notice will be required), inspect the Dedicated Space to determine whether Charter School is complying with Charter School's obligations set forth in this Section,

and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as District and Charter School may agree.

29.6. The Charter School's obligations under this Section do not extend to addressing, remedying or otherwise cleaning up any Hazardous Material not generated, brought onto, used, stored, or disposed of in or about the Dedicated Space by the Charter School or its agents or invitees.

29.7. **Indemnification.** Charter School's indemnification and defense obligations in this Agreement shall include any and all Claims arising from any breach of Charter School's covenants under this Section.

30. Waiver. The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

31. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

32. Counterparts. This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

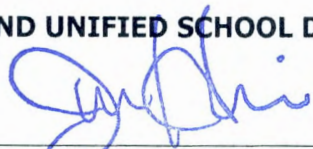
33. Captions. The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.

34. Severability. Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.

35. Incorporation of Recitals and Exhibits. The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

ACCEPTED AND AGREED on the date indicated below:

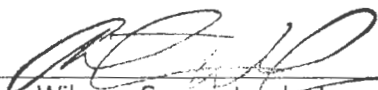
OAKLAND UNIFIED SCHOOL DISTRICT



James Harris, President, Board of Education

5/28/15

Date



Antwan Wilson, Superintendent and Secretary, Board of Education

5/28/15

Date

CHARTER SCHOOL

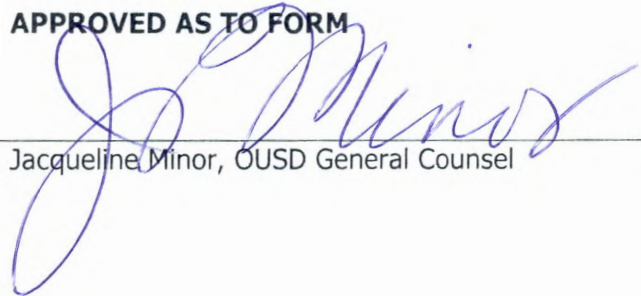


By:
Its:

5/6/15

Date

APPROVED AS TO FORM



Jacqueline Minor, OUSD General Counsel

5/7/15

Date

File ID Number: 15-0944
Introduction Date: 5/27/15
Enactment Number: 15-0736
Enactment Date: 5/27/15
By: BR

Exhibit "A"
Description of Dedicated Space and Sites

The Dedicated Space that are being lease to Charter School are the following rooms and areas as described below and as indicated on the attached Site maps:

Site:

Charter School shall not have use of the areas indicated as "N.I.C." as the District shall be using those areas of the School Site.

[ATTACH SITES MAP OR AERIAL OR DRAWINGS AND SPECIFICALLY INDICATE PORTION OF SITE(S) THAT IS PART OF "DEDICATED SPACE" UNDER THE JOINT USE AGREEMENT.]

EXHIBIT "B"

Description of Charter School's Program and Activities

EXHIBIT "C"

District's Form of Work Order

EXHIBIT "D"

Integrated Pest Management Program (Administrative Regulation 3514.2)

OAKLAND UNIFIED SCHOOL DISTRICT Administrative Regulation

AR 3514.2

Business and Noninstructional Operations

Integrated Pest Management

The Superintendent or Deputy Superintendent of Business Services shall develop and implement an integrated pest management program that incorporates effective least toxic pest management practices.

Integrated pest management is a strategy that focuses on long-term prevention or suppression of pest problems through a combination of techniques such as monitoring for pest presence and establishing treatment threshold levels, using nonchemical practices to make the habitat less conducive to pest development, improving sanitation, and employing mechanical and physical controls. (Food and Agricultural Code 13181)

Procedures

In the control and/or management of pests at district facilities, the Superintendent or Deputy Superintendent of Business Services shall:

1. Carefully monitor and identify the pest and the site of infestation. Strategies for managing the pest shall be influenced by the pest species and whether that species poses a threat to people, property or the environment.
2. Consider a full range of possible alternatives. Such alternatives include not taking any action or controlling the pest by physical, mechanical, chemical, cultural or biological means.
3. Select nonchemical pest management methods over chemical methods, whenever they are effective to provide the desired control. Cost or staffing considerations alone will not be adequate justification for use of chemical control agents.
4. Use the least toxic material when it is determined that a chemical method of pest management must be used. The least toxic material shall be chosen and applied in accordance with law.
5. Limit pesticide purchases to amounts needed for the year. Pesticides shall be stored at a secure location that is not accessible to students and unauthorized staff, and they shall be stored and disposed of in accordance with state regulations and label directions registered with the Environmental Protection Agency.

(cf. 3514.1 - Hazardous Substances)

6. Ensure that persons applying pesticides follow label precautions and are trained in the principles and practices of integrated pest management.

(cf. 4231 - Staff Development)

Notification

The Superintendent or Deputy Superintendent of Business Services shall annually notify staff and parents/guardians of students enrolled at a school site, in writing, regarding pesticide products expected to be applied at the school facility in the upcoming year. The notification shall include at least the following: (Education Code 17612)

1. The Internet address used to access information on pesticides and pesticide use reduction developed by the Department of Pesticide Regulation pursuant to Food and Agricultural Code 13184.
2. The name of each pesticide product expected to be applied in the upcoming year and the active ingredient(s) in it.
3. An opportunity for interested persons to register to receive notification of individual pesticide application at the school site. The Superintendent or Deputy Superintendent of Business Services shall notify such registered persons of individual pesticide applications at least 72 hours prior to the application.
4. Other information deemed necessary by the Superintendent or Deputy Superintendent of Business Services.

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

(cf. 5145.6 - Parental Notifications)

If a pesticide product not included in the annual notification is subsequently intended for use at the school site, the Superintendent or Deputy Superintendent of Business Services shall provide written notification of its intended use to staff and parents/guardians of students enrolled at the school, at least 72 hours prior to the application. (Education Code 17612)

Posting of Warning Signs

The Superintendent or Deputy Superintendent of Business Services shall post a warning sign at each area of the school site where pesticides will be applied, at least 24 hours prior to the application and until 72 hours after the application. The warning sign shall display the following: (Education Code 17612)

1. The term "Warning/Pesticide Treated Area"

2. The product name, manufacturer's name, and the Environmental Protection Agency's product registration number
3. Intended areas and dates of application
4. Reason for the pesticide application

Notification During Emergency Conditions

Whenever the Superintendent or Deputy Superintendent of Business Services deems that the immediate use of a pesticide is necessary to protect the health and safety of students, staff, or other persons, or the school site, he/she shall make every effort to provide the required notifications prior to the application of a pesticide. In such a case, the warning sign shall be posted immediately upon application and shall remain posted until 72 hours after the application. (Education Code 17609, 17612)

(cf. 3514 -Environmental Safety)

Records

Each school site shall maintain records of all pesticide use at the school for four years, and shall make the information available to the public, upon request, in accordance with the California Public Records Act. Such records may be maintained by retaining a copy of the warning sign posted for each pesticide application with a recording of the amount of the pesticide used. (Education Code 17611)

(cf. 3580 - District Records)

Legal Reference:

EDUCATION CODE

17608-17613 Healthy Schools Act of 2000

17366 Legislative intent (fitness of buildings for occupancy)

48980.3 Notification of pesticides

FOOD AND AGRICULTURAL CODE

11401-12408 Pest control operations and agricultural chemicals

13180-13188 Healthy Schools Act of 2000

GOVERNMENT CODE

3543.2 Scope of representation; right to negotiate safety conditions

6250-6277 California Public Records Act

CODE OF REGULATIONS, TITLE 8

340-340.3 Employer's obligation to provide safety information

5142 Heating, ventilating and air conditioning systems; minimum ventilation

5143 Mechanical ventilating systems; inspection and maintenance

UNITED STATES CODE, TITLE 7

136-136y Insecticide, Fungicide and Rodenticide Act

CODE OF FEDERAL REGULATIONS, TITLE 40

763.93 Management plans

763.94 Record keeping

Management Resources:

CDE PUBLICATIONS

Indoor Air Quality, A Guide for Educators, 1995

U.S. ENVIRONMENTAL PROTECTION AGENCY

Pest Control in the School Environment: Adopting Integrated Pest Management, 1993

WEB SITES

CDE: <http://www.cde.ca.gov>

California Department of Pesticide Regulation: <http://www.cdpr.ca.gov>

U.S. EPA: <http://www.epa.gov>

8/25/04