

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the Superintendent

March 26, 2014

Legislative File

File ID No.: _____ 14-0524

Introduction Date: ___ 3/12/14

Enactment Date: _____

By: _____

TO: Board of Education

FROM: Gary Yee, Ph.D., Acting Superintendent
Philip Dotson, Compliance Specialist-Office of Charter Schools

SUBJECT: 2014-2015 School Year Facilities Final Offer(s) of **Thurgood Marshall Elementary School Site (In Part)**, a District Facility, to East Bay Innovation Academy, pursuant to requirements of Proposition 39

ACTION REQUESTED:

Adoption by the Board of Education of Resolution No. 1314-1062 - 2014-2015 School Year Facilities Final Offer(s) of **Thurgood Marshall Elementary School Site (In Part)**, a District Facility, to East Bay Innovation Academy, pursuant to requirements of Proposition 39.

SUMMARY:

Following a period of preliminary facility offer considerations, as required under state statute, staff recommends the approval of the Final Facilities Offer under Proposition 39, as outlined in the attached resolution, with the specific facility space allocations included in the attached Final Facilities Offer Letter.

Each Proposition 39 application submitted pursuant to statute requirements was evaluated to determine the specific facilities needs under which the District is obligated to meet. To the extent possible, OUSD has attempted to match charter school facility requests with space available based on the compatibility of the following features:

- The quantity of classroom space requested and the excess classroom space available.
- The grades served by each program when programs are co-located.
- The school program and the site.
- The location requested and the location available.

Following a review of current projected use of District facilities for the academic school year 2014-2015, staff identified the facilities indicated in the attached resolution as the most appropriate and compliant facilities to commit as a Final Facilities Offer pursuant to the school's Proposition 39 facilities request. Statute requires that requesting charter schools receive Final Facility Use Offers by April 1, 2014 and in turn must respond to that offer no later than May 1, 2014. A declined offer finalizes the Proposition 39 Facilities Request process. Should a Final Facilities Offer be accepted, it will be contingent on the terms of the facility use agreement, as well as the expectations established for the equitable sharing of facilities, where applicable, between the school site administrators.

The facility use rate under which the Final Facilities Offer will be made is established at a rate to be \$4.36 per square foot, per year, based on an analysis by Facilities Counsel and the Chief Financial Officer as to the applicable costs associated with statute.

The calculation of square footage allocation to be offered is based on a division of the total facility square footage by a divisor equal to the percentage of total classrooms within the facility being allocated to the charter school. The calculation of teaching stations (classrooms) to be offered to the requesting charter school applies the statutory language where-in the determination must be made using "comparison schools" comprised of the *"school district-operated schools with similar grade levels that serve students living in the high school attendance area ... in which the largest number of students of the charter school reside."*

The attached resolution outlines the total square footage and teaching stations to be included in the Final Facilities Offer under Proposition 39. The attached Final Facilities Letter includes specific space identified for consideration by each requesting school within the statutory timeframe.

BACKGROUND:

Under the California Education Code Section 47614; *"Each school district shall make available, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the charter school's in-district students in conditions reasonably equivalent to those in which the students would have been accommodated if they were attending other public schools of the district."*

Under this statute, the District is obligated to provide facilities to requesting charter schools operating within Oakland Unified attendance boundaries. These facilities offers, if accepted, will be followed by the establishment of a Facility Use Agreement which will define the scope of the facility use terms. The period under which these facilities will be offered by use of the requesting charter school is for **one academic school year only: 2014-2015**. The requesting charter school may submit a subsequent Prop. 39 facilities request for the ensuing school years, pursuant to the requirements of the statute and applicable legislation, which will then be evaluated within the context of the District's continued capacity to provide such facilities.

RECOMMENDATION:

Adoption by the Board of Education of Resolution No. 1314-1062 - 2014-2015 School Year Facilities Final Offer(s) of **Thurgood Marshall Elementary School Site (In Part)**, a District Facility, to East Bay Innovation Academy, pursuant to requirements of Proposition 39.

Attachment: Resolution No. 1314-1062

RESOLUTION OF THE
GOVERNING BOARD OF THE
OAKLAND UNIFIED SCHOOL DISTRICT

Resolution No. 1314-1062

2014-2015 School Year Facilities Final Offer(s) of Thurgood Marshall Elementary School Site (In Part), a District Facility, to East Bay Innovation Academy

WHEREAS, Proposition 39 – School Facilities, adopted by California voters on November 7, 2000, requires a local K-12 school district under specified circumstances to make available District facilities to Charter Schools; and,

WHEREAS, the District has received such a request pursuant to statutory requirements from one or more Charter Schools for the 2014-2015 school year; and,

WHEREAS, District staff has evaluated the requests and has attempted to match charter school facility requirements with available space, if any, within the District; and,

WHEREAS, District staff specifically has attempted to match charter school facility requests with available space based on the compatibility of the following features:

- The quantity of classroom space statutorily required to be provided and the excess classroom space available;
- The grades served by each program when programs are co-located;
- The school program and the site;
- The location requested and the location available; and,

WHEREAS, District staff based on the foregoing and a current projected use of District facilities for the 2014-2015 School Year, has identified facilities that are appropriate and compliant with the requirements of Proposition 39 to make available to Charter Schools; and,

WHEREAS, the District is presently required under statute to make such a Final Facility Offer not later than April 1, 2014; and,

WHEREAS, offers made under Proposition 39 must be responded to by the charter school within 30 calendar days of the date at which the offer is made, or no later than May 1, 2014; and,

WHEREAS, District staff has developed a preliminary Facility Use Agreement that will be required to come before the Governing Board of the District for final approval, should the Facility Offer be accepted by the charter school; and,

WHEREAS, the facility use rate associated with the facility offer proposed here-in considers all applicable costs that may be included in the pro rata facility use rate under statute, and has been reviewed by District legal counsel to ensure alignment with said statute; and,

WHEREAS, the Final Facility Offer detailed herein is for a period of one year only, the 2014-2015 School Year; and,

WHEREAS, the Final Facility Offer letter attached herein includes the following information, limited to those areas required under statute, per District counsel advice;

- The teaching and non-teaching space to be offered for exclusive use and teaching and non-teaching space to be shared
- The arrangements for shared space
- The in-District classroom ADA assumptions for the charter school
- Pro rata share amount and payment schedule; and,

NOW, THEREFORE, BE IT RESOLVED, the District hereby makes said offers, summarized herein, as follows for the 2014-2015 School Year to the Charter School named below:

6-7 grades served (2014-15)	<u>ENROLLMENT:</u> In-District ADA: 228 Total in-district enrollment based on most relevant attendance rate: 96%	<u>RATIO:</u> Ratio applied to in-district enrollment based on an evaluation of equivalent facility allocation to comparison district school students: 25.33	<u>TEACHING STATION ALLOCATION:</u> Total teaching station allocation: 9 teaching stations
<u>FINAL FACILITIES OFFER:</u> Marshall (see map) - 12 teaching stations identified within the attached map - non-teaching stations identified within the attached map - Shared access to shared spaces as identified	<u>PRO RATA SHARE FACILITY USE RATE:</u> Total Square Footage of exclusive use and prorated shared use of the Facility space included in Final Offer: 26,492 sq ft (calculated based on exclusive use and percentage of shared use space) Annual Facility Use Rate \$4.36 per square foot, per year. Total Facility Use Rate pursuant to this offer: \$115,505.00	<u>SHARED ACCESS TO SHARED SPACE:</u> Final Facilities Offer to include shared use of [shared spaces] commensurate with the percentage of total facility space allocated for exclusive use by the charter school (see map).	

BE IT FURTHER RESOLVED that any such offer accepted not later than May 1, 2014 by Charter School shall be formalized by a mutually approved Facility Use Agreement between the District and the Charter School.

Passed by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

I hereby certify that the foregoing is a full, true and correct copy of a Resolution adopted at a Regular Meeting of the Governing Board of the Oakland Unified School District held March 26, 2014.

Gary Yee, Ed.D.
Secretary, Board of Education

April 1, 2014

Rochelle Benning and Laurie Jacobson Jones
East Bay Innovation Academy (EBIA)
774 Calmar
Oakland, California 94610

Certified Mail & Fax

**RE: Proposition 39 Final Facility Offer 2014-2015
Thurgood Marshall Elementary School-3400 Malcolm Avenue Oakland, California
94605**

Dear Rochelle and Laurie:

On November 7, 2000, California voters passed Proposition 39. A portion of this initiative amended Education Code section 47614 to mandate that school districts make excess facility space available to in-district charter school students, if certain conditions are met, in a manner that is fair to all public school students. The California Department of Education has also promulgated implementing regulations, most of which took effect on August 29, 2002.

To the extent possible, Oakland Unified School District has attempted to match charter school facility requests with space available based on the compatibility of the following features:

- The quantity of classroom space requested and the excess classroom space available.
- The grades served by each program when programs are co-located.
- The school program and the site.
- The location requested and the location available.

On February 1, 2014, the District provided your charter school a Proposition 39 preliminary facility offer to occupy space for one year only at Howard, East Oakland Pride and Markham Campuses, as required by the California Code of Regulations, Title 5. Education, Division 1. California Department of Education, Chapter 11. Special Programs, Subchapter 19, Charter Schools, Article 3. Facilities for Charter Schools, Section 11969.9 (5 CCR s 11969.9 Cal. Admin. Code Tit. 5, s 11969.9).

This letter constitutes a Final Offer of facility space as required by the California Code of Regulations, Title 5. Education, Division 1. California Department of Education, Chapter 11. Special Programs, Subchapter 19, Charter Schools, Article 3. Facilities for Charter Schools, Section 11969.9 (5 CCR §11969.9).

Response to Charter School Concerns or Counter-Proposal

As described in 5 CCR §11969.9(g), the charter school responded in writing to the District's

preliminary facilities proposal. The following constitutes the District's response to the charter school's concerns and/or counter proposals.

**2014-2015 Proposition 39 Final Facility Offer
From Oakland Unified School District
To East Bay Innovation Academy
For the 2014-2015 School Year Only**

- Exclusive use of 12 rooms classrooms at Thurgood Marshall Campus, 3400 Malcolm Avenue Oakland, California 94605
- Exclusive use of non-teaching spaces within Thurgood Marshall
- Use of the cafeteria and playgrounds

This offer is based on an in-district classroom ADA assumption of 237 students in grades 6 and 7 at East Bay Innovation Academy.

The District and the charter school shall negotiate a Facilities Use Agreement regarding use of and payment for the space. The agreement shall contain: for shared space, the arrangements for sharing; specific location(s) of the space; all conditions pertaining to the space; the pro rata share amount; and the payment schedule. (A draft of a Facilities Use Agreement including these terms was provided with the preliminary offer.)

The space allocated by the school district will be furnished with desks and chairs, equipped with dry erase boards, and available for occupancy by the charter school seven days prior to the charter school's first day of instruction in 2014-2015.

The charter school must report actual ADA to the school district every time that the charter school reports ADA for apportionment purposes. The reports must include in-district and total ADA and in-district and total classroom ADA. The charter school must maintain records documenting the data contained in the reports. These records shall be available on request by the school district.

The charter school and the District may negotiate separate agreements and/or reimbursement arrangements for specific services not considered part of facilities costs as defined in Section 11969.7. Such services may include, but are not limited to, the use of additional space and operations, maintenance, and security services.

ANNUAL PRO RATA SHARE & PAY SCHEDULE

All charter schools that choose to accept the Proposition 39 offer to occupy District facilities will be charged a facilities use rate that represents the charter school's pro rata share of general

fund expenditures for the last fiscal year for costs for building and grounds deferred maintenance, as allowed by statute and regulations.

The charter school's annual rate includes the charter school's contribution for use of classrooms and administration space, shared access to special classrooms and non-classroom space. There may be additional pro rata charges for required services to the entire facility, such as custodial services, sewer charges, and gas, water and electricity. These terms and rates will be part of the final Facilities Use Agreement.

The charter school will be charged, at the actual cost, for any extra or extended services provided by OUSD to the charter school. The charter school will be responsible for acquiring its own basic and long distance telephone service and Internet connectivity. The charter school will not be part of Oakland Unified School District's e-mail network or its '879-xxxx' telephone system. This access will be separately acquired by the charter school after consulting with OUSD facility staff regarding its installation at the site.

The pro rata share amount that the charter school will pay for this space will be **\$115,505.00**.

The payment schedule for the pro rata share amount, which takes into account the timing of revenues from the state and from local property taxes, is as follows:

- 25% by October 1;
- 25% by December 1;
- 25% by April 1; and
- 25% by July 1.

RESPONSE

The charter school must notify the school district in writing whether or not it intends to occupy the offered space. This notification must occur no later than 5:00 p.m., Thursday, May 1, 2014 or within 30 days after District notification, whichever is later. The charter school's notification can be withdrawn or modified before this deadline as the District and charter school negotiate terms of the Facilities Use Agreement. After the deadline, if the charter school has notified the District that it intends to occupy the offered space, the charter school is committed to paying the pro rata share amount as identified. If the charter school does not notify the District by this deadline that it intends to occupy the offered space, then the space shall remain available for school district programs and the charter school shall not be entitled to use facilities of the school district in 2014-2015.

Respond to this final facility offer by mail, or personal delivery, to be **received by 5:00 p.m., Thursday, May 1, 2014** at the following address:

Oakland Unified School District
Office of Charter Schools

4551 Steele St. Rm9
Oakland, CA 94519
Attention: Philip Dotson

HAND DELIVERY:

Tilden School
4551 Steele Street, Rm. 9
Oakland, CA 94619

FAX:

510-482-6774

Please do not contact the principal currently operating at the offered campus. Contact the Office of Charter Schools to schedule a meeting to discuss any terms and conditions that would apply to the specific District site offered. These specific terms and conditions will be included in the Facilities Use Agreement. If you would like to schedule another viewing the site or if you have any questions, please contact me at (510) 336-7576 or at Philip.dotson@ousd.k12.ca.us.

Sincerely,

Philip J. Dotson
Office of Charter Schools, Coordinator

Cc: Jacqueline Minor, OUSD General Counsel
Cate Boskoff, OUSD Facilities Counsel
Gary Yee, ED.D, Acting Superintendent
Timothy White, Assistant Superintendent, Facilities, Planning & Management
Tadashi Nakadegawa, Director of Facilities Management
David Montes de Oca, Associate Superintendent

Enclosure: Plan of [campus]

4551 Steele St. Rm9
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Attention: Philip Dotson

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Sincerely,

Philip J. Dotson
Office of Charter Schools, Coordinator

Cc: Jacqueline Minor, OUSD General Counsel
Cate Boskoff, OUSD Facilities Counsel
Gary Yee, ED.D, Acting Superintendent
Timothy White, Assistant Superintendent, Facilities, Planning & Management
Tadashi Nakadegawa, Director of Facilities Management
David Montes de Oca, Associate Superintendent

Enclosure: Plan of [campus]



EXHIBIT "A"
CHARTER SCHOOL REQUEST FOR FACILITIES



REQUEST FOR FACILITIES FOR THE 2014-2015 SCHOOL YEAR UNDER EDUCATION CODE §47614 (Proposition 39)

SUBJECT TO REVISION

- Facilities request will only be accepted if submitted on this form.¹
- Include only information requested on this form; please refrain from including extraneous information.
- Facilities request must be received by 5:00 pm on Friday, November 1, 2013
- A new or proposed new charter school may make a facilities request only if it submitted its charter petition on or before November 1 of the fiscal year preceding the year for which facilities are requested, and only if it receives approval of the petition before March 15 of the fiscal year preceding the year for which facilities are requested.

Office Use Only

Date Submitted:
Initials:

Charter School Name: East Bay Innovation Academy (EBIA)

Contact Information

Name: Rochelle (Shelley) Benning and Laurie Jacobson Jones

Phone: 510-363-6761

Email: shelley@eastbayia.com and laurie@eastbayia.com

Fax: n/a

Mailing Address: 774 Calmar, Oakland, CA 94610

Soft copy available at www.ousdcharters.net under the 'Accountability' tab.

1. Please complete the following tables:

In accordance with Education Code Section 47614(b)(2), the District is required to allocate school facilities to the Charter School for the following year based upon a projection of average daily classroom attendance provided by the Charter School.

As described in the EBIA Charter School petition approved by OUSD on October 23, 2013, EBIA's Board of Directors has determined that a reasonable projection of the Charter School's in-District average daily classroom attendance for the 2014-2015 school year is 228.

Please see completed tables below. As an initial point of reference, please note, in Year 1, EBIA will serve only 6th and 7th grade students. Each subsequent year, the school will add an additional grade until full-build out to 12th grade in 2020. Please see the EBIA Enrollment Projections by Year and Grade Level table, pulled directly from Page 49 of EBIA Charter Petition, and the required OUSD tables for this Prop 39 request.

¹ 5 CCR § 11969.9(c)(3) School districts may require the charter school to submit its facilities request containing the information specified in paragraphs (1) and (2) on...another form specified by the school district.



OFFICE OF CHARTER SCHOOLS

EBIA Enrollment Projections by Year and Grade Level

Student Population

	6 th	7 th	8 th	9 th	10 th	11 th	12 th	Total
Y1	150	90						240
Y2	110	150	90					350
Y3	110	110	150	90				460
Y4	110	110	110	150	90			570
Y5	110	110	110	110	150	90		680
Y6	110	110	110	110	110	150	90	790
Y7	110	110	110	110	110	110	150	810
Y8	110	110	110	110	110	110	110	770
Y9	110	110	110	110	110	110	110	770

Table 1: Total ADA Projections

A	B	C	D
Grade Level	Actual Total Prior Year (P-2)	Projected Total Current Year	Projected Total Request Year (2014-2015)
6	-	-	142.5
7	-	-	85.5
Total	-	-	228.0

Table 2: Total In-District ADA Projections

A	B	C	D
Grade Level	Actual Total Prior Year (P-2)	Projected Total Current Year	Projected Total Request Year (2014-2015)
6	-	-	142.5
7	-	-	85.5
Total	-	-	228.0



OFFICE OF CHARTER SCHOOLS

The following is a list of the projected in-District ADA (from Table 2 above) by grade-level and the District school the student would otherwise attend:

School Name/Grade	K	1	2	3	4	5	6	7	8	9	10	11	12
Bret Harte	-	-	-	-	-	-	16	2	-	-	-	-	-
Claremont Middle	-	-	-	-	-	-	10	2	-	-	-	-	-
Edna Brewer	-	-	-	-	-	-	52	17	-	-	-	-	-
Elmhurst Alliance	-	-	-	-	-	-	27	1	-	-	-	-	-
Frick	-	-	-	-	-	-	12	2	-	-	-	-	-
Hillcrest	-	-	-	-	-	-	3	1	-	-	-	-	-
James Madison	-	-	-	-	-	-	33	2	-	-	-	-	-
Montera	-	-	-	-	-	-	28	2	-	-	-	-	-
Roosevelt	-	-	-	-	-	-	1	1	-	-	-	-	-
Roots/Coliseum	-	-	-	-	-	-	5	1	-	-	-	-	-
UFS/UPA/Ascend	-	-	-	-	-	-	2	1	-	-	-	-	-
Unknown (Women's Shelter)	-	-	-	-	-	-	-	2	-	-	-	-	-
West Oakland Middle School	-	-	-	-	-	-	-	1	-	-	-	-	-
Westlake Middle School	-	-	-	-	-	-	3	2	-	-	-	-	-

- 2. Provide a description of the methodology used for the ADA estimates above. Title 5 CCR §11969.9, specify that a requesting charter school must determine a reasonable projection of the in-district average daily classroom attendance (ADA) for the applying school year.**

The ADA estimates provided above come directly from the East Bay Innovation Academy Charter Petition, submitted to OUSD on August 14, 2013. These projections are based on the interest evidenced by our outreach activities to create awareness about EBIA's program. We have held events in homes, community centers, churches, street fairs, public schools, and sporting events. Our social media marketing strategy shows strong interest in the school. We have 229 meaningful interest signatures from families across Oakland for students that would enroll in Fall 2014. That number grows daily as we do targeted outreach to families of current 5th and 6th graders.

- 3. Provide documentation of the number of in-district students meaningfully interested in attending the charter school, if relevant. Attach as APPENDIX 1. Title 5 CCR §11969.9(c)(1)(B)(C) state that the annual request must include a description of the methodology used in making the ADA projections and if relevant, documentation of the number of in-district students meaningfully interested in attending the charter school.**

Please be advised that because the Charter School is not yet open, we have attached and incorporated herein by reference the following supporting documentation that substantiates the reasonableness of our in-District ADA projections for 2014-15 school year. Please see Appendix 1A, 1B, and 1C for parent "intent to enroll" forms and a spreadsheet summary of the "intent to enroll" data.



1. **Lakeview Elementary – 746 Grand Ave, Oakland 94610**
 - Central location for bus transportation from all points in Oakland within a few hundred feet of the school entrance.
 - Good proximity to downtown Oakland and Emeryville high tech businesses and community organizations for internships and projects.
 - Perceived by most Oakland families as being a very safe and convenient location for an Oakland-wide magnet school.

2. **Cole Middle School – 1011 Union Street, Oakland 94607**
 - Well located by the West Oakland BART station for families coming from East Oakland with safe walking routes.
 - Good proximity to downtown Oakland and Emeryville for internships and projects with high tech businesses and community based organizations.
 - Local West Oakland “maker” community has many locations and ready facilities for possible collaboration on project based innovation work.)

3. **Bret Harte Middle School – 3700 Coolidge Ave, Oakland 94610**
 - Ample space to co-locate a growing school in a fairly central geographic location for Oakland students.
 - Bus transportation is available with a short walk.
 - Relatively good proximity to Community Organizations in Fruitvale and Laurel Districts.
 - Oakland and Emeryville’s technology focused and large corporate businesses are more distant in this location.

4. **McClymonds High School – 2607 Myrtle Street, Oakland 94607**
 - Ample space to co-locate a growing school.
 - Public transportation via BART and bus is possible with some walking, but this is a more challenging location to get to than other school sites for East Oakland families because of the distance from BART. The issue of safety on walking routes to the school could be a concern for some families at this location.
 - Good proximity to downtown and Emeryville for internships and projects with high tech businesses and community based organizations.
 - Local West Oakland “maker” community has many locations and ready facilities for possible collaboration on project based innovation work.

5. ***Provide information on the charter school’s educational program that is relevant to the assignment of facilities.***

Title 5 CCR Section 11969.9(c)(1)(F) requires the facilities request to provide information regarding the charter school’s educational program that is relevant to the assignment of facilities. As noted in the EBIA



EXHIBIT "B"
DISTRICT FACILITIES OFFER



March 3, 2014

**Certified Mail and
Email**

Rochelle Benning and Laurie Jacobson Jones
East Bay Innovation Academy (EBIA)
774 Calmar
Oakland, California 94610

RE: Proposition 39 Preliminary Facility Offer for 2014-2015 Academic Year
Thurgood Marshall Elementary School-3400 Malcom Avenue Oakland, California 94605

Dear Rochelle and Laurie:

On November 7, 2000, California voters passed Proposition 39. A portion of this initiative amended Education Code section 47614 to mandate that school districts make facility space available to in-district charter school students, if certain conditions are met, in a manner that is fair to all public school students. The California Department of Education has also promulgated implementing regulations, most of which took effect on August 29, 2002.

2014-2015 PRELIMINARY SPACE OFFER

Oakland Unified School District (OUSD) received facility requests from many charter schools operating in Oakland and OUSD has identified an inventory of facility spaces that are available to fulfill these requests. To the extent possible, OUSD has attempted to match charter school facility requests with space available based on the compatibility of the following features:

- The quantity of classroom space requested
- The grades served by the program
- The grades served by other programs, if co-located
- The school program and any identified special features
- The location requested

OUSD's preliminary facility offer of space at the Thurgood Marshall Elementary School Campus is described on an enclosed page. It is an offer to occupy the space for one year only.

OUSD's Proposition 39 final offer will be conditioned on your terminating any current Proposition 39 facility use agreement with the District. Although OUSD's final offer will be more detailed, OUSD does not now anticipate that its final offer will differ significantly from this preliminary offer. However, given the number of applications received and preliminary offers made, some changes in offered facilities may occur.

Please sign, date and return your response via mail or hand delivery on the enclosed form no later than 5:00 p.m. Friday, March 14, 2014.

ANNUAL BASIC FACILITY USE RATE



OFFICE OF CHARTER SCHOOLS

All charter schools that choose to accept the Proposition 39 offer to occupy OUSD facilities will be charged a facility use rate that represents the charter school's pro-rata share of general fund expenditures for facilities costs, as allowed by statute and regulations.

The charter school's annual basic facility use rate includes the charter school's contribution for use of classrooms and administration space, shared access to special classrooms and non-classroom space. There may be additional pro-rata charges for required services to the entire facility, such as computer network access (for phone and Internet), custodial services, sewer charges, and gas, water and electricity. These terms and rates would be part of a final Facilities Use Agreement.

The charter school will be charged, at the actual cost, for any extra or extended services provided by OUSD to the charter school. The charter school will have the option to be connected to the District's network for purposes of VOIP telephone service (local and long distance) and Internet connectivity. (The charter school will not be part of the District's e-mail network or its '879-xxxx' telephone system.) If the charter school chooses to establish its own network and phone system, it must consult with the District regarding specifications and installation.

RESPONSE

Return the enclosed offer by mail or personal delivery to be **received by 5:00 p.m., Friday, March 14, 2014** at the following address:

Oakland Unified School District
Office of Charter Schools
Attention: Philip Dotson

MAIL or DELIVERY:

Tilden School
4551 Steele Street, Rm. 9
Oakland, CA 94619

If your charter school is interested in locating at this site, return the enclosed statement of **preliminary** interest by the date and time indicated. The Office of Charter Schools will contact you to schedule a meeting with the host school principals and/or other district staff to discuss any terms and conditions that would apply to the district site offered. **UNDER NO CIRCUMSTANCES ARE YOU TO CONTACT OR VISIT THE OFFERED SCHOOL SITE INDEPENDENT OF THE OFFICE OF CHARTER SCHOOLS.** To do so may irreparably damage your school's relationship with the school community.

Specific terms and conditions will be included in a subsequent **final** offer from OUSD to the charter school. **[Title 5 CCR Sec. 11969.9(e)]** You will have thirty (30) days to consider that final offer. The charter school's final offer notice may be withdrawn or modified at any time prior to the end of the 30 day period. **[Title 5 CCR Sec. 11969.9(f)].**



OFFICE OF CHARTER SCHOOLS

Failure to reply to this request indicating preliminary interest by the time and date indicated will be taken as declining your Proposition 39 facility offering for 2014-2015.

Again, please do not contact the principals currently operating at the site. If you would like to schedule a visit to the site or if you have any questions, please contact me at (510) 336-7576 or at Philip.
Dotson@ousd.k12.ca.us.

Sincerely,

Philip Dotson
Office of Charter Schools

Cc: Timothy White, OUSD Facilities
Jacqueline Minor, OUSD General Counsel
Cate Boskoff, OUSD Facilities Counsel
Tadashi Nakadegawa, Director of Facilities Management
David Montes de Oca, Associate Superintendent
Silke Bradford, Director of Quality Diverse Providers

Enclosures



PROPOSITION 39 PRELIMINARY FACILITIES OFFER

This document is part of the Oakland Unified School District’s preliminary offer of a **one year** facility use to East Bay Innovation Academy of **12** teaching stations, administrative space and shared access to special classrooms and non-classroom space at the Thurgood Marshall Elementary School Campus, to serve the charter school’s projected in-district student Average Daily Attendance of **228** students in grades 6 and 7 in school year 2014-2015.

§11969.9 Preliminary Offer Elements																						
Projections of in-district classroom ADA on which the proposal is based	228																					
The specific location or locations of the space	SEE ATTACHED MAP. NOTE THAT THE SPECIFIC IDENTIFIED SPACE IS PRELIMINARY AND IS SUBJECT TO CHANGE. Classroom Allocation 9 teaching stations plus administrative office space, multi-purpose room and outdoor areas																					
All conditions pertaining to the space, including a draft of any proposed agreement pertaining to the charter school’s use of the space	SEE ATTACHED <i>DRAFT</i> Facilities Use Agreement																					
The projected pro rata share amount and a description of the methodology used to determine that amount	Annual Pro Rata Share Amount per square foot: \$4.36 Facility use allocation: 26,492 square feet (estimated) Total Annual Pro Rata Share Amount: \$115,505.00 The methodology for calculating pro rata share amount is set forth in the CA Code of Regulations, Title 5, Division 1, Chapter 11, Subchapter 19, Article 3, § 11969.7 <u>Charges for Facilities Costs</u> (attached). Please refer to the attached Excel spreadsheet prepared by OUSD which calculates the pro-rata share of facilities costs for the 2014-2015 term.																					
List and description of comparison group schools used in developing preliminary proposal	Comparison Schools—Castlemont High School Attendance Area: <table border="1"> <thead> <tr> <th>[comparable grade] Schools in [name] HS Attendance Area</th> <th>Grade</th> <th>Enrolled</th> </tr> </thead> <tbody> <tr> <td>Madison</td> <td>6-8</td> <td>26</td> </tr> <tr> <td>Elmhurst (Community Prep and Alliance)</td> <td>6-8</td> <td>26</td> </tr> <tr> <td>Havenscourt Campus (Roots, Coliseum College Prep)</td> <td>6-8</td> <td>26</td> </tr> <tr> <td>Greenleaf Elementary</td> <td>6th</td> <td>26</td> </tr> <tr> <td>Havenscourt (Coliseum College Prep)</td> <td>9-12</td> <td>24</td> </tr> <tr> <td>Castlemont</td> <td>9-12</td> <td>24</td> </tr> </tbody> </table>	[comparable grade] Schools in [name] HS Attendance Area	Grade	Enrolled	Madison	6-8	26	Elmhurst (Community Prep and Alliance)	6-8	26	Havenscourt Campus (Roots, Coliseum College Prep)	6-8	26	Greenleaf Elementary	6 th	26	Havenscourt (Coliseum College Prep)	9-12	24	Castlemont	9-12	24
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Description of the differences between the preliminary proposal and the charter school’s facilities request as submitted pursuant to subdivision (b).	The charter school’s facilities request includes: Specific classroom and facility characteristics OUSD’s preliminary offer includes: 1. Adequate allocation of teaching stations and administrative																					



	office space, including space for staff 2. Location is the requested site by the charter organization
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Attachments:

- Site map indicating offered space
- Draft Facilities Use Agreement
- CCR, Title 5, Division 1, Chapter 11, Subchapter 19, Article 3, § 11969.7 Charges for Facilities Costs
- Spreadsheet with calculation of pro rata facilities fee
- Response to Preliminary Offer Form



OFFICE OF CHARTER SCHOOLS

Check one of the following, provide contact information, sign, date and return the form to the Office of Charter Schools by 5:00 p.m. Friday, March 14, 2014. Failure to reply by this time and date will be understood as declining your 2014-2015 Proposition 39 facility offer.

The charter school is interested in this site at this base annual facility use rate. Contact the following individual to schedule a meeting to discuss the terms and conditions that would apply to the Charter School/District Schools location before OUSD extends a final offer and the charter school is asked to commit to the space.

Contact Name _____
 Title or Position _____
 Address _____
 Telephone _____ Fax _____
 E-mail _____

The charter school is not interested in the site.

Signature

Date

Printed Name, Title

Mail or deliver to OUSD Office of Charter Schools, Tilden School, Room 9, 4551 Steele Street Oakland, CA 96419
Questions? Contact Philip Dotson, Office of Charter Schools at (510) 336-7576

DRAFT

**PROPOSITION 39 CHARTER FACILITIES USE AGREEMENT
BY AND BETWEEN OAKLAND UNIFIED SCHOOL DISTRICT AND
EAST BAY INNOVATION ACADEMY**

DRAFT

THIS AGREEMENT (“Agreement”) is made this ___ day of ____, 2014, by and between the Oakland Unified School District, a public school district organized and existing under the laws of the State of California (“District”) and East Bay Innovation Academy, a California public charter school (“Charter School”). The District and the Charter School may be referred to herein collectively as the “Parties” or individually as a “Party.”

RECITALS

WHEREAS, the Charter School is a non-profit public benefit corporation that is operating a charter authorized by the District;

WHEREAS, pursuant to the requirements of California Education Code section 47614 and its implementing regulations (also known as “Proposition 39”), the Charter School has made a written request for facilities for the 2014-2015 school year, a true and correct copy of which is attached as Exhibit A and hereby incorporated by reference; and

WHEREAS, pursuant to the requirements of Proposition 39 and its implementing regulations the District Board of Education has made a written offer to provide the Charter School with facilities for its in-district students, a true and correct copy of which is attached as Exhibit B and hereby incorporated by reference, and the Charter School has accepted the terms of that offer; and

WHEREAS, the parties desire to set forth the terms and conditions pursuant to which the Charter School will occupy classrooms and use facilities (the “Dedicated Space”) as particularly described in Exhibit B and located at the District’s Marshall Campus (the “Site”), located at 3400 Malcom Ave. Oakland, CA, commencing with the 2014-2015 school year.

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

Section 1. Use of Dedicated Space.

The District agrees to allow the Charter School exclusive use of the Dedicated Space (see Exhibit B), for the sole purpose of operating the Charter School educational program in accordance with the Charter School’s charter. The Charter School’s right to exclusive use of the Dedicated Space shall commence on August 1, 2014, and shall expire on June 30, 2015 (“Term”). Upon the expiration of the Term, the right to exclusive use and occupation of the Dedicated Space and the facilities and equipment thereon shall revert to the District, subject to the Parties’ negotiation of a successor



Agreement, if necessary, containing the terms of the District's provision of facilities to the Charter School in accordance with the provisions of Proposition 39. As titleholder to the Dedicated Space and the facilities and equipment located thereon, the District reserves the right at the expiration of the Term to recoup the full rights and benefits of such ownership, including, but not limited to, use of such Dedicated Space, facilities and equipment for District services.

The Charter School shall otherwise have full and exclusive use of the Dedicated Space during the Term. The Charter School shall comply with District policies regarding the operations and maintenance of the facilities, furnishings, and equipment.

Although the Charter School shall have the exclusive use of the Dedicated Space, District with the prior consent of Charter School, may agree to make the Dedicated Space available to members of the community in accordance with the provisions of the Civic Center Act (Education Code section 38131et seq.) If Charter School authorizes use of the Dedicated Space pursuant to the Civic Center Act, Charter School assumes the risk of loss or damage to its personal property located on the dedicated space as a result of that use.

For purposes of compliance with the Civil Center Act with respect to the Dedicated Space only, the governing body of Charter School shall hold the same powers and obligations applicable to School District Boards of Trustees under Education Code sections 38130-38139 and shall also follow District Board Policy and Administrative Regulations in making use of the facilities accessible to members of the community.

Pursuant to the requirements of Proposition 39, the allocation of Dedicated Space as set forth in this Section is based upon an assumption of 228 in-district classroom ADA for the 2014-2015 school year. Future requests for additional facilities based on enrollment increases may be made in the manner specified in Section 11969.9 of the Proposition 39 regulations (Cal. Code Regs., Tit. 5, § 11969.9.)

The Parties agree that the provision of facilities pursuant to this Agreement constitutes full and complete satisfaction of the District's obligation to provide facilities to Charter School under Proposition 39 for the 2014-2015 school year.

Section 2. Shared Space.

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

BATHROOMS: The Charter School students and staff shall have equal access to bathrooms in the Shared Space.



COMMON HALLWAYS: The District shall allow the Charter School students to use common hallways, to the extent necessary, for ingress and egress to the Charter School Dedicated Space described herein and to other Shared Space. Charter School's use of common hallways by the Charter School students shall be pursuant to a set schedule and under the supervision of a Charter School employee.

PARKING: The District shall allow Charter School staff and faculty to access the employee parking at the Site on the same basis as that permitted to District employees. The District shall make parking available for Charter School staff and visitors on the same basis as that permitted to other schools on the Site. The District shall distribute the number of parking spaces equitably between the Charter School and the District School. Charter School shall have non-exclusive use of the parking lot located on the Site. Charter School shall abide by District's policies concerning the use of the parking lot, including District policy relating to the drop-off and pick-up of children participating in Charter School Program. Except as specially allocated, Charter School's use of the parking lot shall be on a first come, first serve basis. Charter School may instruct its visitors, invitees and guests to park in the parking lot located on the Site or on available street parking. Charter School shall not abandon any inoperative vehicles or equipment on any portion of the Site. District shall not be liable for any personal injury suffered by Charter School or Charter School's visitors, invitees and guests for any damage to or destruction or loss of any of Charter School's personal property located or stored in the parking lots, street parking, or the Site. 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.

RECREATIONAL AND ATHLETIC FACILITIES: The District shall allow the Charter School to schedule supervised student use of the 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 these Shared Spaces. The Charter School shall coordinate with the Shared Site Committee to schedule its use of the shared recreational and athletic facilities for provision of Physical Education. The recreational fields will be made available for use consistent with existing and site-sharing agreements with the District School located on the Site.

DINING AREA/CAFETERIA/AUDITORIUM: The District shall allow the Charter School to schedule supervised student use of the Site's dining area and auditorium as outlined below.

COORDINATING SHARED USE: Charter School use of the parking area, shared bathrooms, recreational and athletic facilities, dining area/cafeteria, and such other common areas as may be located on the Site shall be coordinated through the Shared Site Committee. A clear and reasonable process shall be developed and adopted prior to the start of school in August 2014. The principal of the District School at the Site and principal of the Charter School may also, at their discretion, jointly refer other matters of shared site operations of the schools to the Shared Site Committee. The District



shall provide the Charter School with appropriate keys to access Shared Space no fewer than ten (10) days prior to the start of school in August 2014, or seven (7) days prior if the District has good cause for delay. The Charter School will notify the Office of Charter Schools in writing by August 12, 2014, of any concerns regarding either access to keys or coordination of use for the Shared Space.

STUDENT DISCIPLINE: The principal of the District School at the Site and principal of the Charter School will collaborate to resolve any student disciplinary issues that involve students and/or 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.

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.

Section 3. Emergency Procedures for Shared Sites.

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 schools located on the Site. This includes reports of any serious incident that takes place on the 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 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 Site.

The Charter School will be notified two (2) operating days in advance of scheduled fire drills and emergency drills on the Site which may disrupt the Charter School and its operations. The Charter School will provide notification two (2) operating days in advance to the District School of scheduled fire drills and emergency drills on the Site which may disrupt the District School and its operations.

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 meet in September to identify appropriate dates and times through the year for these tests.

Section 4. Facility & Amenities – Occupancy & Use.

FURNISHINGS AND EQUIPMENT: The District shall provide, in accordance with the Proposition 39 regulations, furnishings and equipment at the Site. These furnishings and equipment shall remain the property of the District. The furnishings and equipment provided shall be equivalent to those furnishings and equipment provided in the comparison group of schools in accordance with 5 C.C.R.



Section 11969.2. The District and the Charter School shall develop a mutually agreeable inventory of the furnishings and equipment that will be located at the Site.

SECURITY: The Dedicated Space shall be wired to the Site's alarm system. The Charter School shall be responsible for costs incurred due to false alarms and security breaches that are related to the Dedicated Space. The Charter School shall operate a closed campus and cooperate with the District on security issues. The Charter School may have a unique security code. If there is a fire at the property, the Charter School shall immediately notify the District but no later than within one business day.

SCHOOL SAFETY OFFICER: If School Safety Officer services are to be provided to the Charter School for the Dedicated Space, the District will be given the first opportunity to provide service. If the District deems it is unable to provide service, the Charter School may retain services from an external provider. The Charter School will be responsible for costs of on-site security staff, whether provided by the District or an external provider.

EMERGENCY: In an emergency, including if the Dedicated Space is destroyed or damaged in any material way, the District reserves the right to temporarily interrupt the Charter School's use of the Space, or any Site facilities or systems.

Section 5. Maintenance and Operations.

MAINTENANCE AND OPERATION DEFINED. Maintenance and Operations ("M&O") are broadly and generally defined as maintaining, repairing, and operating buildings (including the classrooms therein) and grounds efficiently on a regular basis, in a manner that promotes learning in a safe, clean, and healthy environment.

DISTRICT AND CHARTER SCHOOL RESPONSIBILITIES. The District and Charter School shall be responsible for performing M&O on the Site, including the Dedicated Space, to maintain a good, safe and sanitary condition, as described in the Charter School Facilities Guide attached hereto as Exhibit C. The District and the Charter School shall provide M&O services to the Dedicated Space consistent with the District's M&O standards and policies and shall provide these services at a service level similar to that provided to the District public schools. Costs of M&O services provided by the District are included in the Pro Rata share which are paid by the Charter School and determined by calculating the actual square footage of the Dedicated Space and the percentage of Charter school's usage of the Shared Space, if applicable. If the Charter School requests any additional facilities-related services that are above and beyond the service level provided by the District public schools and which are not included in the M&O Pro-Rata Share but have been agreed to be provided by the District, costs of said services will be charged to the Charter School on a fee-for-service basis.

DEFERRED MAINTENANCE PLAN AND SERVICES. "Deferred Maintenance" shall mean facilities repair or replacement projects as described in Education Code section 17582(a) or additionally



approved by the State Allocation Board; and further detailed by Office of Public School Construction Deferred Maintenance Program Handbook, as updated from time to time. Those projects include, but are not limited to, work necessary to restore or replace deteriorated or damaged building systems such as plumbing, heating, air conditioning, electrical, roofing, flooring, and wall systems. The exterior and interior painting of school buildings, asphalt paving, the inspection, sampling and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials, the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials, the control, management, and removal of lead-containing materials, or such other items as may be approved by the Board, to such condition that the school buildings may be effectively utilized for their designated purposes. The Parties acknowledge and agree that the District has certain obligations to deliver Deferred Maintenance to the Site in exchange for Charter School's Pro Rata Share Charge payments. The District acknowledges and agrees that it will carry out its responsibilities in a good and workmanlike manner by properly qualified and licensed personnel and in accordance with all applicable laws and District policies. The District further acknowledges and agrees that all work it is obligated will be timely commenced and diligently prosecuted through completion.

Section 6. Reimbursement.

In the event that the space allocated to the Charter School is considered "over allocated" in accordance with 5 C.C.R. Section 11969.8, the Charter School shall follow the notification and reimbursement procedures outlined in 5 C.C.R. Section 11969.8.

Section 7. Modernization.

In the event that the District designates matching facilities funds for the facility and begins modernizing the facility, the District and the Charter School will meet to discuss the issue of modernization for the Site and impact on the Charter School's occupancy.

Section 8. Fees and Payment.

DEFINITION OF PRO RATA SHARE CHARGE. The Parties acknowledge and agree that the District may not, pursuant to California law, charge Charter School rent in exchange for its use of the Dedicated Space; provided, however, that the District shall have the right to charge the Charter School an annual fee for use of the Dedicated Space consistent with Education Code section 47614(b) (the "Pro Rata Share Charge"). In exchange for payment of the Pro Rata Share Charge by Charter School, the District shall perform Deferred Maintenance upon the Dedicated Space for the benefit of Charter School. In charging the Pro Rata Share Charge the District shall not charge the higher oversight fee under Education Code section 47613.



CALCULATION OF PRO RATA SHARE CHARGE. The Pro Rata Share Charge shall be calculated in accordance with Title 5 CCR section 11969.7. When determining Charter School's facilities costs, Charter School shall only be responsible for facilities payments for those types of facilities spaces used in the District's calculation of the Pro Rata Share Charge. If the Charter School shares the Site, the Charter School shall only be charged the Pro Rata Share Charge on the Charter School Shared Space on a percentage of its usage of the shared premises. The Pro Rata Share Charge shall be determined by calculating the actual square footage of the Dedicated Space and the percentage of its usage of the Shared Space. Calculation of square footage and percentage of Shared Space is provided in Exhibit D hereto. The Charter School will not be charged a Pro Rata Share Charge for the Site that it does not use, but may be charged a proportional Pro Rata Share Charge for shared space needed for the overall operation of the campus as set forth in Title 5 CCR section 11969.7(c).

PAYMENT OF PRO RATA SHARE CHARGE. The District will invoice the Charter School and the Charter School will make installment payments on this invoiced amount payable to "Oakland Unified School District" and delivered to the District's Office of Charter Schools according to the following schedule:

- 25% by October 1;
- 25% by December 1;
- 25% by April 1;
- 25% by July 1.

The Charter School may choose to prepay any of the installment payments without incurring a prepayment penalty from the District. Charter School payments of undisputed amounts that are more than thirty (30) calendar days late arriving at the District will incur a one (1%) percent per month interest charge on the balance. The District will deduct from subsequent transfer payments payable to the Charter School any undisputed scheduled payment amount due from this Agreement, plus interest charges, that is more than sixty (60) calendar days past due.

The Pro Rata Share Charge does not include Site-specific costs which the school must include in its own budget. The Pro Rata Share Charge does not include, among other items, the cost of computers, computer lab, laptop carts, server equipment, internet service, phone service, audio-visual equipment, utilities, custodial, or campus security.

Either the Charter School or the District may call, at any time, for a meeting to discuss adjustments or reconciliation of these figures when a reasonable basis exist to think that these estimates do not reflect actual amounts owing.

If the Charter School disputes any fee or charge, it shall send written notification to the District. The Charter School has the right to submit the issue for resolution in accordance with the dispute resolution procedures outlined herein. Pending resolution of any dispute resolution procedures relating to the fee or charge, the Charter School shall only be required to continue paying any



undisputed amount. Upon resolution of the dispute relating to the fee or charge, and based upon the ultimate resolution thereof, the Parties shall reconcile the amounts owed. The Charter School withholding disputed funds in not grounds for revocation.

FALSE FIRE AND INTRUSION ALARM RESPONSE ASSESSMENTS. The Charter School shall be solely responsible for the cost of all assessments, fines or penalties (“Assessments”) imposed by the City of Oakland or its third party collection service for responding to false fire and intrusion alarms that are attributable to and /or located on the Dedicated Space. These false alarm response Assessments shall be presented to the Charter School upon receipt by the District of same from the City and shall be due and payable within thirty (30) calendar days from receipt.

Section 9. Utilities and Custodial Services.

The Charter School shall be solely responsible for the cost of all utilities used or consumed by the Charter School on the Site, including charges for electricity, natural gas, water, sewer, waste disposal, telephone and internet connectivity. With respect to internet and telephone service, the Charter School, through use of the network infrastructure installed at the Site, may remain on the District’s network as a means of obtaining internet connectivity and VOIP local and long-distance telephone service, subject to use charges from the District. Should the Charter School choose to contract for its own phone and internet service, it may use the pre-existing T-1 line and transfer billing for the use of such line over to the Charter School, upon approval from the District’s Technology Services. If the Charter School obtains its own internet service and telephone provider, it shall assume sole responsibility for upkeep and maintenance of all telephone systems, data lines, and related equipment, software and hardware, consistent with District standards.

For costs of electricity, natural gas, water, sewer and waste disposal for the current year, the Charter School will be charged a fee equal to its percentage of the Site use multiplied by the total Site utilities costs billed to the District. The percentage of the Site use 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 D. Such charges are to be paid according to the same billing cycle as for the Pro Rata Share Charge.

Custodial service for the Site shall be provided by the District, unless otherwise agreed by the Parties. For the costs of custodial service, the Charter School will be charged a fee equal to its percentage of its Site use multiplied by the total charge for custodial services made to the Site through the District’s budget system. The percentage of the Site use shall be calculated based on the proportion of Dedicated Space as shown in Exhibit D. These charges are to be paid according to the same billing cycle as for the Pro Rata Share Charge.

Section 10. Installation of Improvements.



IMPROVEMENTS: During the Term of this Agreement, the Charter School has no right to make alterations, additions, or improvements to the Site or Dedicated Space, which shall include modular classrooms, (“Improvements”), without the prior written consent of the District, and if required, the Division of the State Architect. The Charter School may submit a request to make Improvements to the Dedicated Space and the District agrees to act upon a timely upon the request. The District’s approval of any Improvements, including the construction schedule, work hours, and modifications, shall be at District’s sole and absolute discretion, and District may disapprove of such improvements without reason. Contractors retained by the Charter School with respect to the construction or installation of Improvements shall be fully licensed and bonded as required by law and must maintain levels of casualty, liability and workers’ compensation insurance and performance and payment bonds consistent with District construction requirements. The construction or installation of Improvements shall be performed in a sound and workmanlike manner, in compliance with all laws applicable to charter schools. The District or the District’s agent shall have a continuing right at all times during the period that Improvements are being constructed or installed to enter the Dedicated Space and to inspect the work, provided that such entries and inspections do not unreasonably interfere with the progress of the construction or interrupt instruction to Charter School’s students.

SIGNAGE: The Charter School may install signage at the 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 Site in order to erect such signage. Such 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. Charter School shall maintain any signage installed in good repair during the Term. Upon expiration of the Term, Charter School shall remove any signage installed on the Site or Dedicated Space and repair any damage caused by the removal.

Section 11. Condition of Property.

District makes no representations or warranties, express or implied, as to the condition of the Dedicated Space or the suitability of the Dedicated Space for use by Charter School for Charter School’s intended purposes. District is not aware of any defect in or condition of the Dedicated Space that would prevent the Dedicated Space from being used as a public school facility. With prior written notice to and approval from District, Charter School, at its sole costs and expense may conduct any and all inspections of the Dedicated Space to its full and complete satisfaction.



Environmental Laws. “Environmental Laws” means and refers to all federal, state and local laws, ordinances, court orders and administrative directives, rules and regulations now or hereafter in force, as amended from time to time, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. (“CERCLA”); the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Hazardous Substance Account Act, California Health & Safety Code § 25300 et seq.; the Hazardous Waste Control Act, California Health & Safety Code § 25100 et seq.; the California Underground Storage of Hazardous Substances Act, California Health & Safety Code § 25280 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, California Health & Safety Code 25249.5 et seq.; the Medical Waste Management Act, California Health & Safety Code § 15015 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code § 13000 et seq.; and California Education Code § 17210, et seq., and California Code of Regulations, Title 5, § 14010 et seq.

Hazardous Substance. “Hazardous Substance” means and refers to any substance, material, product or waste or other material of any nature whatsoever that is listed, regulated, or addressed in or pursuant to the Environmental Laws or which may give rise to liability under Environmental Laws or under any statutory or common law theory based upon negligence, trespass, intentional tort nuisance or strict liability or under any reported decisions of a state or federal court, which includes but is not limited to asbestos, petroleum or petroleum products (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), polychlorinated byphenyls, urea formaldehyde, radon gas, radioactive matter, medical waste, and chemicals which may cause cancer or reproductive toxicity.

Release. “Release” means and refers to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing, including continuing migration, into the environment of Hazardous Substance into or through soil, air, surface water or groundwater.

Compliance with Laws. Charter School shall comply with all applicable Environmental Laws relating to industrial hygiene and environmental conditions on, under or about the Dedicated Space, including but not limited to, air, soil and ground water conditions. Charter School shall not use Hazardous Substances on, under or about the Dedicated Space; provided, however, that Charter School may use normal and customary cleaning solutions and office supplies so long as the use of those solutions and supplies are in quantities and in a manner wholly consistent with all applicable Environmental Laws; and further provided that Charter School may use normal and customary chemicals for classroom use so long as the use of those chemicals are in quantities and in a manner wholly consistent with all applicable school standards. Charter School shall not, nor shall Charter



School allow any party to, transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any Hazardous Substance upon or about the Dedicated Space or Site in violation of Environmental Laws, nor permit any subtenant, employee, agent, invitees or contractor to engage in such activities in violation of Environmental Laws upon or about the Premises, during the Term of the Agreement.

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 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.

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.

Indemnification. Charter School shall indemnify, defend (by counsel reasonably approved in writing by District), protect, release, save and hold harmless District and District Parties from and against any and all Claims arising from any breach of Charter School's covenants under this Section.

Section 12. Title to Property.

The Parties acknowledge that title to the Dedicated Space is held by the District and shall remain in the District at all times.

Section 13. Fingerprinting.



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. Verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements shall be provided in writing to the District prior to each individual's commencement of employment or participation in any activity of the Charter School on the Dedicated Space and prior to permitting contact with District pupils.

Section 14. Insurance.

CHARTER SCHOOL INSURANCE. Charter School, at Charter School's sole cost and expense, shall both obtain and keep in full force and effect, beginning on the commencement date and continuing until this Agreement terminates, the following insurance policies for the Site, or, in lieu of maintaining coverage through an insurance company, use a self-insurance mechanism that meets the following criteria:

(1) **Liability Insurance.** Commercial general liability insurance with respect to the Site and Dedicated Space, if any, and the operations of or on behalf of the Charter School in, on or about the Site, including but not limited to: bodily injury, product liability (if applicable), blanket contractual, broad form property damage liability coverage and host liquor liability in an amount not less than One Million Dollars (\$1,000,000) in the aggregate, and excess liability coverage on a basis consistent with coverage for schools of a type similar to the Charter School. The policy shall be endorsed to name the Oakland Unified School District and the Board of Education of the City of Oakland as named additional insured and shall provide specifically that any insurance carried by the District which may be applicable to any claims or loss shall be deemed excess and the Charter School's insurance primary, provided however, that District's insurance shall be primary for claims caused by the actions of third parties, except to the extent that the third party's actions arose as a result of the negligence, intentional disregard or malfeasance of the Charter School.

(2) **Property Insurance.** Property insurance against fire, vandalism, malicious mischief and such other additional perils as now are or hereafter may be included in a standard "All Risks" coverage, including sprinkler leakage, insuring all of the Charter School's trade fixtures, furnishings, equipment, stock, loss of income or extra expense, and other items of personal property ("Charter's Property") in an amount not less than eighty hundred percent (80%) of fair market value.

(3) **Workers' Compensation, Employer Liability.** Workers' compensation insurance in accordance with provisions of the California Labor Code adequate to protect the charter school from claims that may arise from its operations pursuant to the Workers' Compensation Act.

(4) **Fidelity Bond.** Fidelity bond coverage for all of Charter School's employees and who handle, process, or otherwise have responsibility for Charter School's funds, supplies, equipment or



other assets. Minimum amount of coverage shall be \$50,000 per occurrence, with no self-insurance retention.

INSURANCE POLICY CRITERIA. Insurance required shall 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 prior to the date the Charter School is given the right to possession of the Dedicated Space. In addition, the District and the Board of Education of the City of Oakland shall be named as an additional insured on the liability policies and a loss payee on the property coverage for the Site. The District may, at any time and from time to time, upon reasonable notice to the Charter School and at no cost to the Charter School, inspect and/or copy any and all insurance policies required hereunder, and in no event shall the then-limits of any policy be considered as limiting the liability of the Charter School under this Agreement.

FAILURE TO OBTAIN INSURANCE. If the Charter School fails to procure, maintain and/or pay for at the times and for the durations specified in this Agreement, the insurance required hereunder, or fails to carry insurance required by any applicable law, the District may (but without obligation to do so), and with concurrent notice to the Charter School, perform such obligations on behalf of the Charter School, and the cost thereof, together with interest thereon at the Interest Rate from the date of demand until paid, shall become due and payable as additional payment by Charter School to the District. Charter School shall reimburse the District for cost of the premiums paid by the District for the insurance carried by the District pursuant to the terms above.

DISTRICT INSURANCE. During the Term of this Agreement, the District shall maintain insurance or shall self-insure against claims for injuries to persons or damages to property (real and personal, including the structures on the Site and any District-owned personal property) in amounts equal to that which would be in place if the Site were occupied by another school of the District. For services provided by the District to the Charter School, the District shall maintain responsibility for these services and such services shall be covered by the District's self-insurance or any insurance that the District may maintain.

Section 15. Indemnification.

The Charter School shall indemnify, hold harmless, and defend the District, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Site after District delivers possession of the Dedicated Space to the Charter School, arising from the Charter School's use of the Dedicated Space or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by the Charter School in or about the Dedicated Space; provided, however, that the Charter School shall not have any obligation to indemnify, hold harmless or defend the District, its trustees, officers, employees and agents against and from any and



all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Site after the District delivers possession of the Dedicated Space to the Charter School, resulting from or arising out of the sole negligence or willful malfeasance of the District, its trustees, officers, employees and agents or any person or entity not subject to the Charter School's control and supervision.

The District shall indemnify, hold harmless, and defend the Charter School, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Site after District delivers possession of the Dedicated Space to the Charter School, arising from the District's use of the Dedicated Space or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by the District in or about the Dedicated Space; provided, however, that the District shall not have any obligation to indemnify, hold harmless or defend the Charter School, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Site after the District delivers possession of the Dedicated Space to the Charter School, resulting from or arising out of the sole negligence or willful malfeasance of the Charter School, its trustees, officers, employees and agents or any person or entity not subject to the District's control and supervision.

Section 16. Access.

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 ("Inspection"); or to perform Deferred Maintenance in or on the Dedicated Space. Nothing in this Section shall prevent the District from entering the Dedicated Space to address an emergency upon the Dedicated Space nor shall this Section restrict the District's authority to enter the Dedicated Space without advanced notice to perform its general oversight responsibilities under the terms of Charter School's charter and applicable law. An "emergency" shall be defined to include circumstances that risk the health and safety of students, personnel or other persons on the Site or Dedicated Space, or circumstances that risk further imminent damage or destruction to the Dedicated Space or Site, or otherwise jeopardizes the operation of the Dedicated Space or Site including, but not limited to, the safety and sanitary condition of the Dedicated Space.

Section 17. Surrender of Dedicated Space.

Upon the termination date or other termination of occupancy pursuant to this Agreement, the Charter School shall peaceably quit and surrender to the District the Dedicated Space together with any furniture and equipment owned by the District, and Charter School improvements and all alterations approved by the District, in good order and condition, except for normal wear and tear after the Charter School's having made the last necessary repair required on its part under this



Agreement, and further except for any portion of the Dedicated Space condemned and any damage and destruction for which the Charter School is not responsible hereunder.

Section 18. Holding Over.

Charter School shall surrender possession of the Dedicated Space immediately upon the expiration of the Term or earlier termination of this Agreement. Charter School will not be permitted to hold over possession of the Dedicated Space after such expiration or earlier termination of the Term without the express written consent of the District, which consent the District may withhold in its sole and absolute discretion. Any holdover by Charter School shall constitute a breach of this Agreement by Charter School entitling the District to pursue any and all remedies available at law and in equity, including without limitation consequential damages resulting therefrom. During any hold over period, Charter School shall: (i) not occupy and use the Dedicated Space or Site during the hold over period except to remove its personal property and Improvements as it has coordinated with District; and (ii) authorize District to charge the Charter School One Hundred Dollars (\$100) per day (or any portion thereof) on the sixth day of the hold over and said per day rate shall increase by 100% for each fifteen (15) day period thereafter; provided, however, that these hold over provisions shall not apply to those situations where Charter School previously made a timely and legally sufficient request under Prop. 39 for the school year to commence after the last day of the Term of this Agreement, the District made a facilities offer and Charter School accepted, and there is a delay in the delivery of the facilities.

Section 19. Liens.

Charter School shall not suffer or permit any liens to stand against the Dedicated Space or Site, or any part thereof, by reason of any work, labor, services or materials done, supplied, or claimed to have been done or supplied. If as a result of work performed by or under the direction of the Charter School any such lien shall at any time be filed against the Dedicated Space or Site, the Charter School shall provide written notice thereof to the District as soon as notice of such lien or action comes to the knowledge of the Charter School. The Charter School shall cause the lien or action to be discharged of record within thirty (30) days after the date of the filing of same, either by payment, deposit or bond, unless a bond therefore is already in effect. Nothing in this Agreement shall be construed as consent or agreement by the District to subject its estate in the Dedicated Space or Site or any estate that may be construed in favor charter school under this agreement to liability under any mechanics' lien law or to any contractor or laborer for work performed.

If any such liens are not so discharged within thirty (30) days after the date of the filing of the same, the District, without waiving its rights and remedies based on such breach by the Charter School whose dealings gave rise to the lien and without releasing the Charter School from any of its obligations, cause such liens to be released by any reasonable means, including payment in satisfaction of the claim giving rise to such lien.



Section 20. Damage and Destruction.

NOTICE TO THE DISTRICT. Charter School shall provide written notice to the District immediately of any casualty that wholly or partially damages or destroys the Charter School Dedicated Space.

(1) If Charter School and the District determine that all or substantially all of the Dedicated Space are inaccessible or unusable by Charter School in a safe manner, then the parties may mutually agree to terminate this Agreement.

(2) If Charter School and the District determine that Charter School can safely continue its educational program from the Dedicated Space, Charter School may elect to continue the Agreement in effect; provided, that the Pro Rata Share Charge shall be adjusted proportionately for that portion of the Dedicated Space that Charter School cannot use.

(3) Upon mutual agreement between the Parties, Charter School may elect to pay the District for the full estimated cost and expense to repair the damage or destruction, or pay in accordance with a structured payment schedule agreed to by the District. If Charter School exercises such option, this Agreement shall continue in full force and effect but the Pro Rata Share Charge and all other charges, expenses and fees shall be proportionately reduced as provided above.

(4) If this Agreement is terminated as provided above, the District shall house Charter School's entire program that was conducted at the Site in a single facility for the remainder of the Charter School's planned school year. If the District cannot provide Charter School with a single facility, the District shall provide Charter School with classrooms sufficient to house the Charter School's entire program that was conducted at the Site across multiple facilities or by temporary use of DSA compliant modular classrooms, as permitted by law, either on the Site or at other District real property that the District deems appropriate; provided, that pursuant to Section 47614(b)(1) of the Education Code nothing herein shall obligate the District to expend unrestricted general fund revenues.

Section 21. EMINENT DOMAIN

TERMINATION OF AGREEMENT. This Agreement shall terminate if the Dedicated Space is permanently taken under the power of eminent domain. If only a portion of the Dedicated Space is permanently taken under the power of eminent domain, the District or Charter School may elect to terminate this Agreement by providing sixty (60) days' written notice to the other Party. In the event of a permanent partial taking which does not result in termination of this Agreement, the Pro Rata Share Charge shall be proportionately reduced based on the portion of the Dedicated Space rendered unusable, and the District shall restore the Dedicated Space by constructing a demising wall deemed necessary by the District to separate the Charter School Dedicated Space from the portion



permanently taken. In the event the District terminates this Agreement pursuant to this Section, the District shall make best efforts to house Charter School's entire program in a contiguous facility for the remainder of the Charter School's planned school year. If the District cannot house the Charter School's entire program in a single contiguous facility, the District shall make best efforts to provide Charter School with classrooms sufficient to house the Charter School's entire program across multiple facilities or by use of temporary modular classrooms.

ALLOCATION OF CONDEMNATION AWARD. In the event of a permanent condemnation or taking of all or part of the Site, the District shall be entitled to any and all awards which may be made in such taking or condemnation relating to all interests, including the fee title, to the Site. Nothing contained in this Article 15 shall be deemed to give the District any interest in or to require Charter School to assign to the District any separate award as designated by the condemning authority made to Charter School for (i) the taking of Charter School's personal property, (ii) interruption of or damage to Charter School's business, or (iii) amounts attributable to Charter School's relocation expenses.

TEMPORARY TAKING. No temporary taking of the Dedicated Space or any part of the Dedicated Space and/or of Charter School's rights to the Dedicated Space under this Agreement shall terminate this Agreement or give Charter School any right to any abatement of any payments owed to the District pursuant to this Agreement, provided that such temporary taking does not continue for more than five (5) consecutive days or a total of five (5) non-consecutive days in any thirty (30) day period. Any award made by reason of such temporary taking shall belong entirely to the District, except as to compensation for (i) the temporary taking of Charter School's personal property, (ii) interruption of or damage to Charter School's business, or (iii) amounts attributable to Charter School's temporary relocation expenses.

Section 22. Charter School's Default; District's Remedies.

CHARTER SCHOOL'S DEFAULT. The occurrence of any one of the following events shall be considered a default of this Agreement by Charter School:

(1) The failure of Charter School to pay any charges or fees due and payable hereunder; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under Code of Civil Procedure section 1161, and such ten (10) day cure period shall run concurrently with any cure period required under California law, including Code of Civil Procedure section 1161;

(2) The failure of Charter School to observe or perform any of its covenants or obligations hereunder, which failure continues past the notice and cure period provided herein. 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. Any such notice shall be in lieu of, and not in addition to, any notice required under Code of Civil Procedure section 1161; and such cure period shall run concurrently with any cure period required under California law, including Code of Civil Procedure section 1161;

(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;

(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 received 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.

(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 Use Agreement until after the Charter School has exhausted all appeals subsequent to the revocation or nonrenewal of its charter.

DISTRICT'S REMEDIES. (1) In the event of any default by Charter School and if Charter School fails to cure such default within the time period specified in this Agreement after receipt of written notice from the District of such default, the District shall have the right, in addition to all other rights available to the District under this Agreement or now or later permitted by law or equity, to terminate this Agreement by providing Charter School with a ninety (90) day prior written notice of termination. Upon termination, the District may recover any damages proximately caused by Charter School's failure to perform under this Agreement, or which are likely in the ordinary course of business to be incurred, including any amount expended or to be expended by the District in an effort to mitigate damages, as well as any other damages which the District is entitled to recover under any statute now or later in effect.

(2) In accordance with Civil Code section 1951.4 (or any successor statute), Charter School acknowledges that in the event Charter School has breached this Agreement and abandoned the Dedicated Space, this Agreement shall continue in effect for so long as the District does not



terminate Charter School's right to possession, and the District may enforce all its rights and remedies under this Agreement, including the right to recover the Pro Rata Share Charge as it becomes due under this Agreement and the reasonable costs incurred to preserve the property. Acts of maintenance or preservation of the Dedicated Space or the appointment of a receiver upon initiative of the District to protect the District's interest under this Agreement shall not constitute a termination of Charter School's right to possession. In addition to its other rights under this Agreement, the District has the remedy described in Civil Code section 1951.4.

(3) In the event of any default by Charter School and if Charter School fails to cure such default within a the time period specified in this Agreement after receipt of written notice from the District of such default, the District shall also have the right, with or without terminating this Agreement, to enter the Dedicated Space or Site and remove all persons and personal property from the Site, such property being removed and stored in a public warehouse or elsewhere at Charter School's sole cost and expense. No removal by the District of any persons or property in the Site shall constitute an election to terminate this Agreement. Such an election to terminate may only be made by the District in writing, or decreed by a court of competent jurisdiction. The District's right of entry shall include the right to remodel the Dedicated Space or Site and re-let the Dedicated Space or Site. Any payments made by Charter School or third party to whom the facilities are re-let shall be credited to the amounts owed by Charter School under this Agreement. No entry by the District shall prevent the District from later terminating this Agreement by written notice.

(4) If Charter School fails to perform any covenant or condition to be performed by Charter School within a the time period specified in this Agreement after Charter School received written notice of such failure from the District, the District may perform such covenant or condition at its option, after notice to Charter School. In the event of an Emergency, the District has the right to perform such activity to mitigate the impact of the Emergency. All reasonable costs incurred by the District in so performing shall be reimbursed to the District by Charter School. Any performance by the District of Charter School's obligations shall not waive or cure such default. All out-of-pocket, reasonable costs and expenses actually incurred by the District in collecting payments due, or enforcing the obligations of Charter School under this Agreement shall be paid by Charter School to the District.

(5) The rights and remedies of the District set forth herein are not exclusive, and the District may exercise any other right or remedy now or later available to it under this Agreement, at law or in equity.

Section 24. Authorization to Sign Agreement

If Charter School is a corporation, each individual executing this Agreement on behalf of Charter School represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of Charter School in accordance with a duly adopted resolution of Charter School's Board of

Directors, and that this Agreement is binding upon Charter School in accordance with its terms, and Charter School shall, concurrently with its execution of the Agreement, deliver to District upon its request a certified copy of a resolution of its Board of Directors authorizing the execution of this Agreement. If Charter School is a partnership or trust, each individual executing this Agreement on behalf of Charter School represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of Charter School in accordance with the terms of such entity's partnership agreement or trust agreement, respectively, and that this Agreement is binding upon Charter School in accordance with its terms, and Charter School shall, concurrently with its execution of the Agreement, deliver to District upon its request such certificates or written assurances from the partnership or trust as District may request authorizing the execution of this Agreement. Each individual executing this Agreement on behalf of District represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of District and this Agreement is binding upon District in accordance with its terms..

Section 25. 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, addressed as follows:

If to the District: Office of Charter Schools
 Tilden School, Room 9
 4551 Steele Street
 Oakland, CA 94619
 Attn: Philip Dotson

If to the Charter School: East Bay Innovation Academy
 774 Calmar
 Oakland, California 94610

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 mail shall be effective three (3) days after deposit in the United States mail.

Section 26. Dispute Resolution.



Notwithstanding anything in this Agreement to the contrary, disputes between Charter School and the District regarding this Agreement, including, the alleged violation, misinterpretation, or misapplication of this Agreement, Proposition 39, or State Regulations shall be resolved using the dispute resolution process identified below.

The Party initiating the dispute resolution process shall prepare and send to the other Party a notice of dispute that shall include the following information: (1) the name, addresses and phone numbers of designated representatives of the Party (the designated representatives must be an employees(s) of Charter School or the District); (2) a statement of the facts of the dispute, including information regarding the Parties attempts to resolve the dispute; (3) the specific sections of the Agreement that are in dispute; and (4) the specific resolution sought by the Party. Within ten (10) business days from receipt of the notice of dispute the representatives from Charter School shall meet with representatives from the District in an informal setting to try to resolve the dispute.

If the informal meeting fails to resolve the dispute the Party initiating the dispute resolution process shall notify the other Party (the responding party) in writing that it intends to proceed to mediation of the dispute and shall request the State Mediation and Conciliation Service to appoint a mediator within ten (10) business days to assist the parties in resolving the dispute (if the State Mediation and Conciliation Service ("SMCS") is unable or refuses to provide a mediator the parties shall mutually agree upon a mediator with fifteen (15) days from notice that SMCS will be unable to provide a mediator). The initiating party shall request appointment of a mediator who is available to meet as soon as possible but not later than thirty (30) calendar days after receipt of the request for appointment. The party initiating the dispute shall forward a copy of the notice of the dispute to the appointed mediator. The responding party shall file a written response with the mediator and serve a copy on the initiating party within seven (7) business days of the first scheduled mediation. The mediation procedure shall be entirely informal in nature; however, copies of exhibits upon which either party bases its case shall be shared with the other party in advance of the mediation. The relevant facts should be elicited in a narrative fashion to the extent possible, rather than through examination and cross examination of witnesses. The rules of evidence will not apply and no record of the proceedings will be made. If an agreement is reached, the agreement shall be reduced to writing and shall be signed by the District and Charter School.

Either Party may seek equitable or injunctive relief prior to the mediation to preserve the status quo or prevent irreparable injury pending the completion of that process. Except for such an action to obtain equitable relief, neither Party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or forty-five (45) calendar days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire.

Section 27. Subcontract and Assignment.



Neither Party shall assign its rights, duties or privileges under this Agreement, nor shall a Party attempt to confer any of its rights, duties or privileges under this Agreement (including that of sublease) on any third party, without the written consent of the other Party.

Section 28. Independent 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.

Section 29. 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 the parties.

Section 30. 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 Alameda County, California.

Section 31. Attorneys' Fees.

If either Party files any action or brings any proceedings against the other arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the Party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a Party is entitled to its costs or attorneys' fees.

Section 32. Waiver.

The waiver by any 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.

Section 33. 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.

Section 34. Modifications.

Modifications of this Agreement may be made by mutual written agreement at any time and must express intent to modify this Agreement. Any modification of this agreement must be in writing and executed by duly authorized representatives of both Parties.

Section 35. Force Majeure.

Whenever either Party hereto shall be required by the terms of this Agreement or by law to perform any contract, act, work, construction, labor or services, or to perform and comply with any laws, rules, orders, ordinances, regulations or zoning regulations, that Party shall not be deemed to be in default herein and the other Party shall not enforce or exercise any of its rights under this Agreement, if and so long as nonperformance or default herein shall be directly caused by strikes, non-availability of materials, war or national defense preemptions or civil disobedience, governmental restrictions, alien invasion, or other similar causes beyond the reasonable control of the non-performing Party.

Section 36. 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.

Section 37. 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.

Section 38. Construction.

Nothing in this Agreement shall affect the number of positions held by or reduce the amount of work performed by District employees covered by a collective bargaining agreement with the District.

Section 39. 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.

Section 40. Incorporation of Recitals and Exhibits.

The Recitals and each exhibit attached hereto are incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

OAKLAND UNIFIED SCHOOL DISTRICT

David Kakishiba, President, Board of Education

Date

Edgar Rakestraw, Jr., Secretary, Board of Education

Date



APPROVED AS TO FORM:

Cate Boskoff, OUSD Facility Counsel

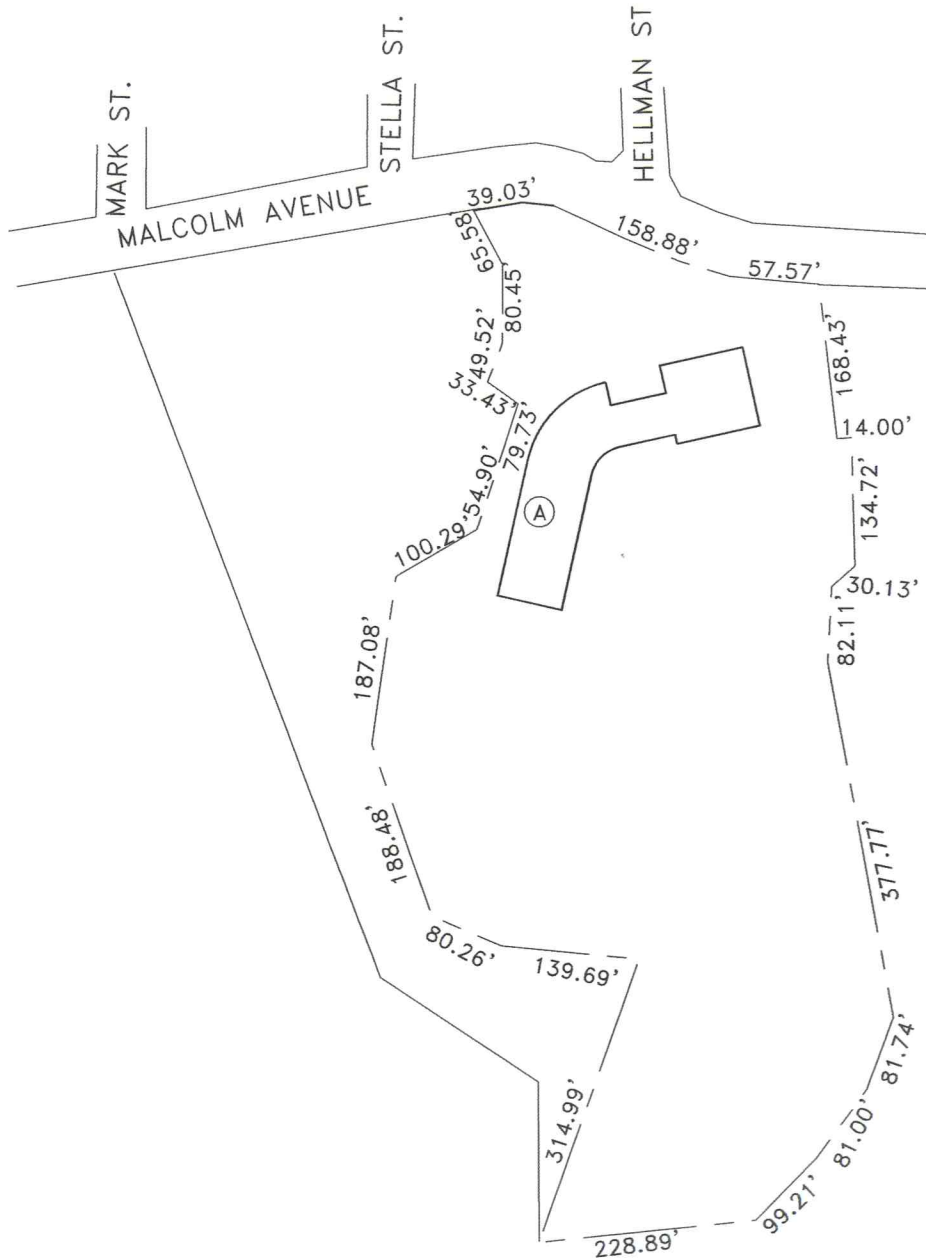
Date

CHARTER SCHOOL

By: _____

Date: _____

Title: _____



Not drawn to scale

174 - Thurgood Marshall Elementary School - Site Plan

3400 Malcolm Avenue - Oakland, CA 94605-5353

MKTHINK

Roundhouse One, 1500 Sanson Street, San Francisco, CA 94111
 mkthink.com 415 452 0868

2011





EXHIBIT "C"
CHARTER SCHOOL FACILITIES GUIDE



Guide for Charter Schools in Oakland Unified School District Facilities

Important Contact Information:

- OUSD Buildings & Grounds: 955 High Street Oakland, CA 94601
Phone: (510) 879-8397 Fax: (510) 879-8393
- OUSD Office of Charter Schools: 4551 Steele Street, Main Building, Rm. 11, Oakland, CA 94619
Phone: (510) 336-7500 ext. 1 Fax: TBD



Buildings & Grounds Work Order Protocol

Please note: work orders are to be placed by designated Site Staff only. Please designate a minimum number of staff responsible for placing work orders so as to minimize confusion and the opportunity for miscommunication.

1. Contact work control center at (510) 879-8400 with the following information:
 - a. Site Name (Site Number if applicable)
 - b. Contact Name and Phone Number
 - c. Exact nature of request (i.e. 2 light fixtures broken/missing in room 2 Main Building vs. replace light fixtures) – Please specify if EMERGENCY
 - d. Specific location (Building/Room Number/Area)
 - e. Obtain your Work Order number; this is critical for tracking your order

Work Control Hours are Monday through Friday, 7:30am – 4:00pm

1. If there is an emergency and there is no answer, contact the Main Office: (510) 879-8397.
2. If it is after hours (for emergency only), contact On-Call Manager: (510) 277-7284.

The Work Control Center has the responsibility of evaluating and assigning a priority level to all work requests. General Priority Levels and Time Lines are as follows¹:

1. Emergency Requests: same day response whenever possible or next business day, depending on nature of problem and time received.
 - Emergencies consist of repairs/replacements that need to be addressed immediately in order to protect the health and safety of a student, employee or other person at the site and/or prevent damage to the integrity of the site.
2. Non-emergency requests that require immediate attention, but do not require same day service completed within 1-7 business days.
 - Requests of a general nature that do not pose an immediate threat to the safety of the facility or its occupants to be completed within 10-30 business days.
 - If you have placed a work order and the request has not been addressed within the allotted timeframe, please follow up with the Work Control Center at (510) 879-8400. Have your work order number and date of request.



For pest management and custodial requests contact Custodial Services at (510) 879-8352.

For environmental concerns contact Risk Management at (510) 879-8588.

¹ See Buildings & Ground Prioritization List for more detail.



Buildings & Grounds Prioritization of Work Orders

The Work Control Center has the responsibility of evaluating and assigning a priority level to all work requests received². The Priority Levels and Time Lines are as follows:

Priority Level 1 - Emergency Requests – Repairs that pose a health and safety concern and require immediate attention. Same day response whenever possible or next business day, depending on nature of problem and time received.

- Gas & Water Leaks (non-roofing)
- Power Shortage
- Hazards
- Sewer backups
- Graphic graffiti
- Floods
- Gain entries
- Elevator malfunction; trapped in shaft
- No Heat (entire bldg)/ No Ventilation – Priority Order: 1) CDC, 2) Elementary, 3) Middle, 4) High, 5) Admin/Adult Ed
- Missing storm drain cover
- Playground equipment
- Communication/Clocks/Bells
- Fallen Trees/Branches
- Personnel locked-in building
- Vandalized Toilet Fixtures

Priority Level 2 - Non-emergency requests – Repairs that require immediate attention, but do not require same day service. Requests to be completed within 1-7 business days.

- General graffiti
- Ramp repair
- Drinking fountain
- Urinal/toilet backup
- Potholes
- Roof leaks
- Broken windows/doors/hardware/restroom accessories
- Fence repair
- Re-keying/replacement of keys
- Intrusion/fire alarm repair
- Light bulbs (5 or more)
- No Heat (specific rooms) –Priority Order: 1)CDC 2)Elementary 3)Middle 4)High 5)Admin/Adult Ed
- Thermostat Adjustment

² Please note that the prioritization list governs work orders for both district and charter schools. In some cases, the items listed may be the responsibility of the charter school. Refer to the Responsibility Matrix and your Facility Use Agreement for more information.



OFFICE OF CHARTER SCHOOLS

Priority Level 3 - Requests of a general nature that do not pose an immediate threat to the safety of the facility or its occupants. Requests to be completed within 10-30 business days.

- Light bulbs (5 or less)
- Missing tiles (ceiling/floor)
- Signage
- Broken windows (2nd floor)
- Furniture/fixture repair
- Security lights (3 or more)

Priority Level 4 - Deferred Maintenance/Improvement Services. Improvement requests take precedence over existing Facility small projects, additions, modifications and all work requests not associated with a repair of the facility. All work requests assigned a Level 4 Priority will be reviewed on a case-by-case basis and discussed with the appropriate parties for items such as funding, feasibility and timeline for completion.

- Chalkboards
- Pin boards
- Partition walls
- Cabinetry
- Landscaping
- Enhancement painting
- Fencing additions
- Electrical additions (i.e. computer lab)



Facility Task Responsibility Matrix

Below is a comprehensive list of facilities tasks that may arise at your site. The responsibility for each task, whether District or charter school, has been established by the facilities department as a baseline. Each charter school’s specific Facility Use Agreement dictates the ultimate responsible party, and if the Agreement is not in alignment with the below matrix, the Agreement shall trump the matrix.

Task	Charter School	OUSD
1. Broken lock replacement/repair	repair ³	replacement
2. Broken window replacement	X	
3. Broken toilet replacement/repair	repair	replacement
4. Broken sink replacement/repair	repair	replacement
5. Painting exterior/interior of the campus	X	
6. Replacement/repair of broken skylights	repair	replacement
7. Replacement/repairs of broken kitchen equipment (capital equipment such as stoves, ovens, refrigerators)	X	
8. Repair of heaters		X
9. Repair/replacement of window blinds	X	
10. Repair/replacement/upgrade of phone system	X	
11. Repair/replacement/upgrade of security system		X
12. Replacement of broken floor tiles		X
13. Replacement of broken ceiling tiles		X
14. Repair of broken electrical outlets	X	
15. Repair of broken white boards/chalk boards	X	
16. Asphalt repair	routine ⁴	non-routine
17. Fence repair	X	
18. Sidewalk repair in front of and around school exterior		X
19. Replacement of light fixtures (not ballasts or bulbs)		X
20. Replacement of baseboards	X	
21. Repair of water damage		X
22. Repair/replacement of roofs		X
23. Pest management	X	
24. Repair/replacement of doors (interior and exterior)	repair	replacement
25. Repair/replacement of door push bars	repair	replacement
26. Repair of internet cabling/jacks/conduits	cabling, jacks	conduits
27. Repair of gates	repair	replacement
28. Repair/replacement of towel and soap fixtures in bathrooms	X	
29. Replacement of broken mirrors	X	
30. Repair of water fountains	X	
31. Repair of broken wooden cabinets and shelves	X	

³ Where “repair” and “replacement” are cited, this notes a distinction in responsibility. For many tasks, a repair is the responsibility of the charter school, while replacement is the responsibility of the district.

⁴ A distinction of whether a repair is routine or non-routine may be easily made. When it is not, consultation with District facilities staff may be necessary.



EXHIBIT "D"
PRO RATA SHARE CHARGE
DEDICATED SPACE
SHARED SPACE



Welcome to the online source for the California Code of Regulations

5 CA ADC § 11969.7

5 CCR § 11969.7

Cal. Admin. Code tit. 5, § 11969.7

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
TITLE 5. EDUCATION
DIVISION 1. CALIFORNIA DEPARTMENT OF EDUCATION
CHAPTER 11. SPECIAL PROGRAMS
SUBCHAPTER 19. CHARTER SCHOOLS
ARTICLE 3. FACILITIES FOR CHARTER SCHOOLS.

This database is current through 1/16/09, Register 2009, No. 3

§ 11969.7. Charges for Facilities Costs.

If the school district charges the charter school a pro rata share of its facilities costs for the use of the facilities, the pro rata share shall not exceed (1) a per-square-foot amount equal to those school district facilities costs that the school district pays for with unrestricted revenues from the district's general fund, as defined in sections 11969.2(f) and (g) and hereinafter referred to as "unrestricted general fund revenues," divided by the total space of the school district times (2) the amount of space allocated by the school district to the charter school. The following provisions shall apply to the calculation of the pro rata share of facilities costs:

(a) For purposes of this section, facilities costs that the school district pays with unrestricted general fund revenues includes those costs associated with plant maintenance and operations, facilities acquisition and construction, and facilities rents and leases, as defined in section 11969.2(h). For purposes of this section, facilities costs also includes:

(1) contributions from unrestricted general fund revenues to the school district's Ongoing and Major Maintenance Account (Education Code section 17070.75), Routine Restricted Maintenance Account (Education Code section 17014), and/or deferred maintenance fund,

(2) costs paid from unrestricted general fund revenues for projects eligible for funding but not funded from the deferred maintenance fund, and

(3) costs paid from unrestricted general fund revenue for replacement of facilities-related furnishings and equipment, that have not been included in paragraphs (1) and (2), according to school district schedules and practices.

For purposes of this subdivision, facilities costs do not include any costs that are paid by the charter school, including, but not limited to, costs associated with ongoing operations and maintenance and the costs of any tangible items adjusted in keeping with a customary depreciation schedule for each item.

(b) For purposes of this section, the cost of facilities shall include debt service costs.

(c) "Space allocated by the school district to the charter school" shall include a portion of shared space where a charter school shares a campus with a school district-operated program. Shared space includes, but is not limited to, those facilities needed for the overall operation of the campus, whether or not used by students. The portion of the shared space to be included in the "space allocated by the school district to the charter school" shall be calculated based on the amount of space allocated for the exclusive use of the charter school compared to the amount of space allocated to the exclusive use of the school-district-operated program.

(d) The per-square-foot charge shall be determined using actual facilities costs in the year preceding the fiscal year in which facilities are provided and the largest amount of total space of the school district at any time during the year preceding the fiscal year in which facilities are provided.

(e) The per-square-foot charge shall be applied equally by the school district to all charter schools that receive facilities under this article, and a charter school using school district facilities pursuant to Education Code section 47614 shall report the per-square-foot charge it is paying in the current fiscal year to the California Department of Education (CDE) in any notification the charter school makes to the CDE pursuant to Education Code section 47630.5(b). The CDE shall post the per-square-foot amounts reported by charter schools on its publicly accessible Web site. The CDE shall offer the opportunity to each school district to provide explanatory information regarding its per-square-foot charge and shall post any information received.

(f) If a school district charges a charter school for facilities costs pursuant to this article, and if the district is the charter school's authorizing entity, the facilities are not substantially rent free within the meaning of Education Code section 47613, and the district may only charge for the actual costs of supervisory oversight of the charter school not to exceed one percent of the school's revenue.

Note: Authority cited: Sections 33031 and 47614(b), Education Code. Reference: Sections 17014, 17070.75, 47613, 47614 and 47630.5, Education Code.

HISTORY

1. New section filed 7-30-2002; operative 8-29-2002 (Register 2002, No. 31).
2. Amendment of section and Note filed 2-28-2008; operative 3-29-2008 (Register 2008, No. 9).

5 CCR § 11969.7, 5 CA ADC § 11969.7
1CAC

5 CA ADC § 11969.7

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WORKSHEET -- OUSD's Prop 39 Facility Use Rate Per Sq Ft for 2014-15

Calculation is based on 2013/14 Budget Projection as of 1/07/14

		Prop 39 Base	
Custodial Services Department Expenses*			
Trash & Recycling			
Compensation			
Supplies and Materials			
Buildings & Grounds Department Expenses			
Deferred Maintenance transfer from Fund 01	2,093,782		
RRMA transfer from UR to resource 8150	6,385,518		
Facility Acquisition and Construction (Func 8500)	913,168		
			9,392,468
Utilities Expenses*			
Gas, Water & Electric			
Sewer Charges			
Basic Phone Service			
Debt Servicing - principal & interest payments			
Emerg. Apportionment (State) Loan - \$65 million	3,890,534		
Emergency Apportionment (State) Loan - \$35 million	2,094,903		
			5,985,437
Police Services			
Insurance - Property Liability	6,919,513		
Insurance - Other Insurance	435,000		
	2,300,000		
			9,654,513
TOTAL COST BASIS			25,032,418
TOTAL DISTRICT SQUARE FOOTAGE			5,736,441
COST PER SQUARE FOOT			\$ 4.36

* Item may be added to Use Agreement if applicable.