

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the Superintendent

April 25, 2012

Legislative File

File ID No.: 12-0821

Introduction Date: 3/28/2012

Enactment No.: 12-1047

Enactment Date: 4-25-12

By: 

TO: Board of Education 

FROM: Anthony Smith, Ph.D., Superintendent
Gail Ann Greely, Coordinator, Office of Charter Schools

SUBJECT: Prop. 39 Final Facility Offer 2012-2013 School Year

ACTION REQUESTED:

Approve the proposed Final Facilities Offer to be made by the District to Community School for Creative Education under the Proposition 39 Statute, wherein charter schools are granted the right to request facilities allocations from the school district in which they reside commensurate with the in-district ADA of the charter school enrollment.

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 2012-2013, 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 2, 2012 (April 1st being a Sunday) and in turn must respond to that offer no later than May 1, 2012. In this case, the District and the charter school have mutually agreed to an extension of the final offer deadline to April 25, 2012, with a response due no later than May 25, 2012. 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 \$2.95 per square foot, per year, based on an analysis by Facilities Counsel and the CFO 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: 2012-2013**. 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:

It is the recommendation of staff to approve the proposed Final Facilities Offer to Community School for Creative Education under Proposition 39 as outlined in attached resolution.



OAKLAND UNIFIED SCHOOL DISTRICT

Office of the Superintendent

1025 Second Avenue, Room 301

Oakland, CA 94606

Phone (510) 879-8200

Fax (510) 879-8800

RESOLUTION
OF THE
GOVERNING BOARD
OF THE
OAKLAND UNIFIED SCHOOL DISTRICT

Resolution No. 1112-0202

**2012-2013 School Year Offer(s) of 2111 International Blvd (In Part), a District Facility To
Community School for Creative Education, Pursuant to Requirements of Proposition 39**

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 2012-2013 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; and,
- 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 2012-2013 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 2, 2012 (April 1st being a Sunday); 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, 2012; and,

WHEREAS, the District and the charter school mutually agreed to extend the timeline for the Final Facility Offer to April 25, 2012 and the date for a response to no later than May 25, 2012; 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 2012-2013 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, if applicable
- 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 2012-2013 School Year to the Charter School named below:

<p>Community School for Creative Education, K-4 (2012-13)</p>	<p><u>ENROLLMENT:</u> In-District ADA: 128.7 Total in-district enrollment based on most relevant attendance rate: 95.00%</p>	<p><u>RATIO:</u> Ratio applied to in-district enrollment based on an evaluation of equivalent facility allocation to comparison district school students: 19.08%</p>	<p><u>TEACHING STATION ALLOCATION:</u> Total teaching station allocation: 7 teaching stations (offer in excess of allocation allows for growth)</p>
<p><u>FINAL FACILITIES OFFER:</u> Former Life Academy at 2111 International Blvd. (see map)</p> <p>- 11 teaching stations identified within the attached map</p> <p>- 6 non-teaching stations and other spaces, as shown on the attached map</p> <p>- shared use of hallways, adult restrooms, entry, parking and courtyard</p>	<p><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:</p> <p>32,075 sq ft (calculated based on exclusive use and proportional share of shared areas)</p> <p>Annual Facility Use Rate \$2.95 per square foot, per year.</p> <p>Total Facility Use Rate pursuant to this offer: \$94,621.00</p>	<p><u>SHARED ACCESS TO SHARED SPACE:</u> Final Facilities Offer includes shared use with District personnel of some hallways, adult restrooms, entry, parking and courtyard (see map).</p>	

BE IT FURTHER RESOLVED that any such offer accepted not later than May 25, 2012 by Charter School shall be formalized by a mutually approved Facility Use Agreement between the District and the Charter School.

I hereby certify that the foregoing is a full, true, and correct copy of a Resolution passed at a Regularly Scheduled Meeting of the Superintendent and/or Board of Education of the Oakland Unified School District on April 25, 2012.

Passed by the following vote:

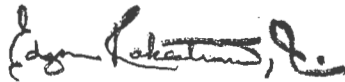
AYES: David Kakishiba, Gary Yee, Christopher Dobbins, Noel Gallo,
Alice Spearman, Vice President Jumoke Hinton Hodge and President Jody London

NOES: None

ABSTAINED: None

ABSENT: None

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 April 25, 2012.



Edgar Rakestraw, Jr.
Secretary, Board of Education

File ID Number: 12-0821
Introduction Date: 4-25-12
Enactment Number: 12-1047
Enactment Date: 4-25-12
By: [Signature]

April 25, 2012

Dr. Ida Oberman
Community School for Creative Education
8755 Fontaine Street
Oakland, CA 94605



**RE: Proposition 39 Final Facility Offer
Former Life Academy – 2111 International Blvd.**

Dear Dr. Ida Oberman:

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, 2012, the District provided your charter school a Proposition 39 preliminary facility offer to occupy space for one year only at Howard, 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 District's response to the charter school's concerns and/or counter proposals is attached.

2012-2013 Proposition 39 Final Facility Offer

From Oakland Unified School District

To Community School for Creative Education

For the 2012-2013 School Year Only

- Exclusive use of 11 classrooms at the former Life Academy site, 2111 International Blvd.
- Exclusive use of 6 non-teaching spaces within 2111 International Blvd.
- Shared use, with District personnel, of hallways, adult restrooms, entry, parking and courtyard

This offer is based on an in-district classroom ADA assumption of 128.7 students in K-4 at Community School for Creative Education.

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 ten days prior to the charter school's first day of instruction in 2012-2013 (may be reduced to seven days for good cause).

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 \$94,621.00.

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., Friday, May 25, 2012 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 2012-2013.

Respond to this final facility offer by fax, mail, or personal delivery, to be **received by 5:00 p.m., Friday, May 25, 2012** at the following address:

Oakland Unified School District
Office of Charter Schools
Attention: Gail Greely

HAND DELIVERY:
Tilden School
4551 Steele Street, Rm. 11
Oakland, CA 94619

FAX:
510-482-6774

EMAIL:
Gail.Greely@ousd.k12.ca.us

Please do not contact the District personnel 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) 336-7571 or at Gail.Greely@ousd.k12.ca.us.

Sincerely,

Gail Ann Greely
Office of Charter Schools, Coordinator

Cc: Jacqueline Minor, OUSD General Counsel
Cate Boskoff, OUSD Facilities Counsel
Dr. Anthony Smith, Superintendent
Timothy White, Assistant Superintendent, Facilities, Planning & Management
Tadashi Nakadegawa, Director of Facilities Management
David Montes, Director of Quality Community Schools Development Group
Kimi Kean, Regional Executive Officer (Region 3)

Enclosure: Plan of 2111 International Blvd.

**Proposition 39 Final Offer of Facilities
Response to Charter School Concerns and/or Counter Proposal/s
Community School for Creative Education**

Concern: Community School for Creative Education objects to the District's use of a lower figure for projected ADA.

- Although the District questioned the charter school's ability to achieve its projected ADA of 128.725 based on its recruitment and retention record in 2011-2012, the evidence of recruitment to date for 2012-2013 is persuasive. The final offer has been recalculated based on the higher figure and the number of classrooms offered is consistent with the classroom needs identified by the school. If the charter school fails to achieve the projected level of ADA, it will be subject to penalties for over-allocated space, under the terms of the Proposition 39 regulations (5 CCR §11969.8).

Concern: Community School for Creative Education objects to the allocation of teaching stations as below the level of comparable district schools for the projected ADA and requests seven (7) classrooms.

- The District's final offer allocates eleven (11) classrooms, based on the charter school's projected ADA and future growth.

Concern: Community School for Creative Education objects that the preliminary offer allocates insufficient non-teaching station space.

- The District's final offer allocates substantial additional classroom and non-classroom space.

Concern: Community School for Creative Education expresses a desire to work with the District on shared space arrangements that will take into account the level of sharing needed to provide comparability of non-teaching spaces.

- The District's final offer is for Community School for Creative Education to share space with District personnel, with clear separation between office uses and the charter school's uses. Common areas are limited and shared space arrangements can be developed to ensure safety of students and fair use.

Concern: Community School for Creative Education asks the District to confirm that the square footage identified in the preliminary offer includes only space that the charter school has been allocated and will use.

- For the final offer, the square footage has been calculated to include all spaces allocated for exclusive use and very limited square footage as shared, including only interior hallways, entryways and adult restrooms. Shared outdoor spaces are not included in the square footage calculation.

Concern: Community School for Creative Education questions the inclusion of "RRMA transfer from UR to resource 8150" in the calculation of the pro rata share because the charter school, by the terms of the Facilities Use Agreement ("FUA"), has responsibility for some facility maintenance and operations.

- The inclusion of these costs is supported by the Proposition 39 regulations (5 CCR 11969.7(a)(1)), which specifically allow the inclusion of "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.” The FUA specifies that the District will continue to have specific maintenance responsibilities for the offered site, as outlined in the Charter School Facilities Guide document provided with the preliminary offer, and these are part of the referenced “resource 8150” and are therefore appropriately included in the fee calculation.

Concern: Community School for Creative Education questions the inclusion of debt service, specifically Emergency Apportionment State Loans, in the calculation.

- The District has included the debt service on two Emergency Apportionment State Loans in its cost calculation in reliance on the language of Proposition 39 (Ed Code §47614(b)(1)) and implementing regulations at 5 CCR §11969.7, which specifically includes debt service with no language restricting it to facilities-related debt service, as suggested by Community School for Creative Education. The regulation reads as follows:

§ 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:

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:

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

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

[Emphasis supplied]

Concern: Community School for Creative Education notes that the District’s contributions to maintenance may change as a result of changes to state funding requirements, thereby changing the

calculation of the pro rata share.

- Proposition 39 regulations at 5 CCR §11969.7(d) requires that, “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.” The calculations will therefore be adjusted to reflect 2011-2012 fiscal year costs.

Concern: Community School for Creative Education questions the allocation of custodial costs in the preliminary offer and requests that the final offer be revised to permit it to provide its own custodial service.

- Because the final offer site may be shared with District personnel, use of District custodial services will need to be addressed in the Facilities Use Agreement.

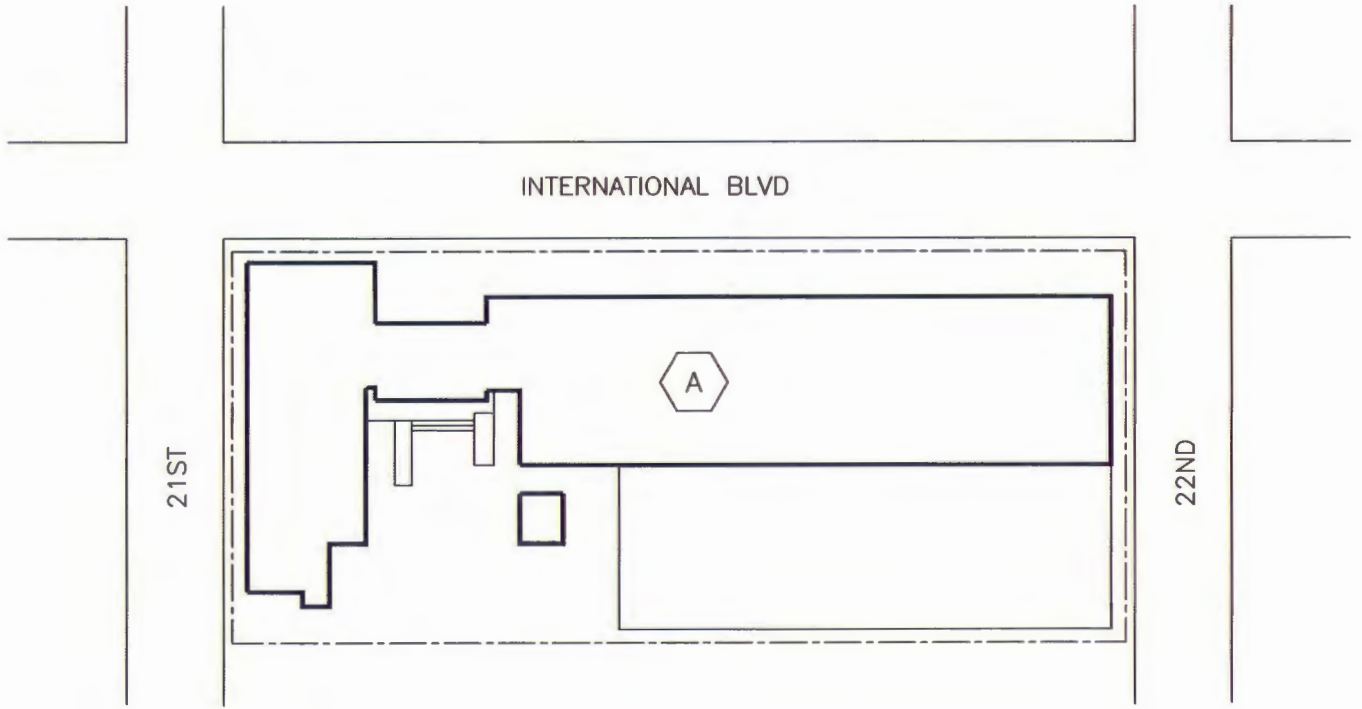
Concern: Community School for Creative Education identifies two issues of concern in the Charter School Facilities Guide (“Guide”): 1) clarification that the charter school will not be responsible for equipment already in damaged condition at time of occupancy and requesting an inventory; and 2) questioning whether the charter school should be responsible for damage to shared equipment.

- With respect to responsibility for equipment damaged prior to charter school’s possession, the Facilities Use Agreement clarifies that the parties are not responsible for damage caused by the other. The charter school may prepare an inventory specifying the condition of equipment at the offered site, to be submitted to the District for review and agreement.
- With respect to shared equipment, because Community School for Creative Education is to be the only school program at the site, there is little likelihood of equipment being shared. The issue of responsibility for damage to equipment will be addressed in the Facilities Use Agreement.

Concern: Community School for Creative Education raises multiple questions and concerns regarding the draft Facilities Use Agreement (“FUA”) provided with the preliminary offer. The District will engage in discussions with Community School for Creative Education to finalize the draft FUA.

- Section 1: Community School for Creative Education says the FUA is contradictory with respect to Civic Center Act obligations.
 - The District will work with the charter school to clarify the language of the FUA and procedures to be used for Civic Center Act access to the offered site, should Community School for Creative Education accept the final offer.
- Section 2: Community School for Creative Educations asks for clarification of the language regarding date of occupancy.
 - In the course of finalizing the FUA, the language can be clarified to better track the language of the Proposition 39 regulations regarding occupancy.
- Section 4: Community School for Creative Education seeks clarification of language regarding responsibility for false alarms on the site’s security system.
 - Although the FUA includes limits on the charter school’s responsibility for the acts of others, in the course of finalizing the FUA, the language of this section can be further clarified.

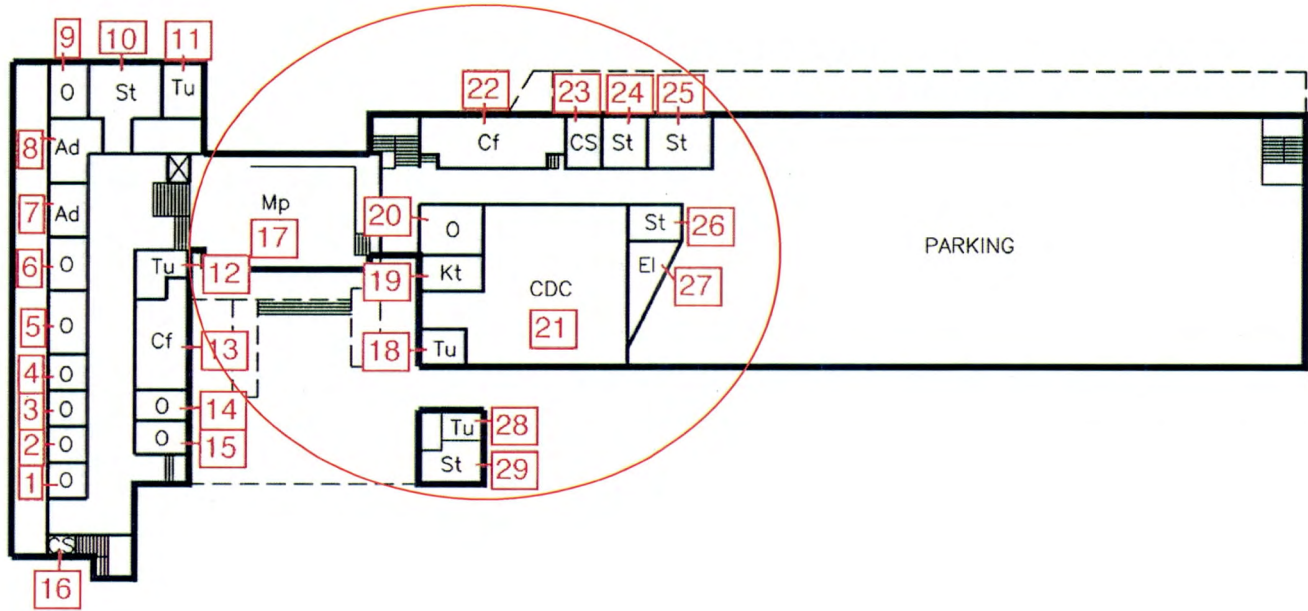
- Section 8: Community School for Creative Education seeks clarification that the pro rata share fee does not include technology equipment and services, and that the District will provide the charter school with comparable equipment pursuant to Proposition 39.
 - Costs for the referenced list of technology equipment and services are not included in the calculation of the pro rata share facilities fee (as can be verified by reference to the materials provided with the preliminary offer).
 - OUSD will meet its obligations under Proposition 39 to provide furniture and equipment comparable to that provided to district schools, using a variety of measures that could include designating furniture and equipment currently at the final offer site, relocating surplus furniture and equipment from other District campuses, and/or selecting furniture and equipment from District surplus.
- Section 14: Community School for Creative Education requests more information on the amount of excess liability insurance coverage expected and asks for clarification that insurance obtained through a Joint Powers Agency is sufficient.
 - In the course of finalizing the FUA, the District will specify the amount of excess liability coverage. Language in the FUA on “Insurance Policy Criteria” does not prohibit insurance obtained through a JPA, as long as the insurance is “written by responsible insurance companies authorized to do business in the State of California”.
- Section 22(1): Community School for Creative Education asks that the FUA needs to include a statement on written notice to cure pursuant to Code of Civil Procedure Section 1161.
 - In the course of finalizing the FUA, the District will consider applicability of the referenced section and the appropriateness of including the requested language.



Not drawn to scale



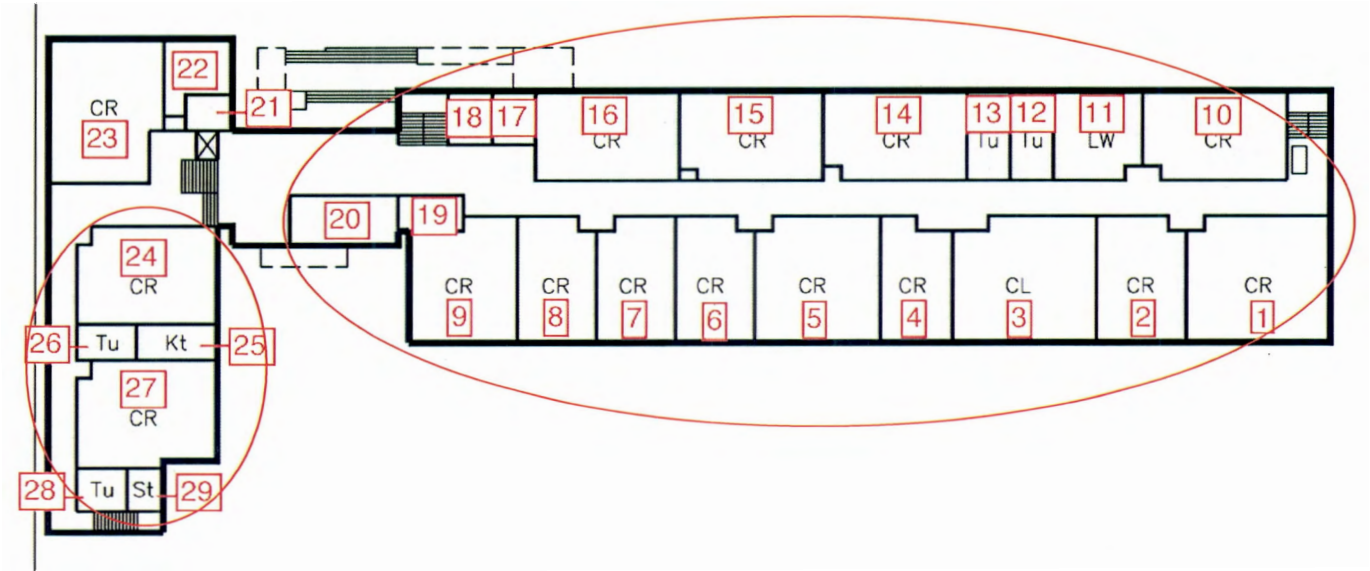
335 - 2111 International Blvd - Site Plan
2111 International Boulevard - Oakland, CA 94606-2302



Not drawn to scale



335 - 2111 International Blvd - Unit A1
 2111 International Boulevard - Oakland, CA 94606-2302



Not drawn to scale



335 · 2111 International Blvd · Unit A2

2111 International Boulevard · Oakland, CA 94606-2302