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Our File No.: 06573-0003
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April 1, 2020

VIA E-MAIL - JIM.SCHEIBLE@CLAYTONVALLEY.ORG

Jim Scheible, Executive Director
Clayton Valley Charter High School
1101 Alberta Way
Concord, CA 94521

Re: Mt. Diablo Unified School District/Clayton Valley Charter High School
Proposition 39 Facilities Request for 2020-2021
Final Offer of Facilities

Dear Mr. Scheible:

Mt. Diablo Unified School District ("District") makes this Final Offer of Facilities to the Clayton Valley Charter High School ("Charter School") for the 2020-2021 school year under Cal. Admin. Code, title 5, §11969.9(h).

The District has carefully considered the Charter School's request for facilities under the criteria set forth in Proposition 39 and its implementing regulations. (Cal. Ed. Code § 47614; Cal. Admin. Code, title 5, §§ 11969.1, *et seq.*) This Final Offer of Facilities complies with all of the requirements of Proposition 39 and Cal. Admin. Code, title 5, §11969.9(h).

A. Procedural History

The Charter School submitted a Request for Facilities under Proposition 39 pursuant to Cal. Admin. Code, title 5, § 11969.9(c) on October 30, 2019. The Charter School's Request for Facilities was based upon a projected 2,074.80 in-District classroom ADA. On January 31, 2020, the District issued a Preliminary Offer of Facilities under Cal. Admin. Code, title 5, § 11969.9(f). The Charter School issued its response to the Preliminary Offer on February 29, 2020. The District will base this Final Offer of Facilities on a projection of 2,074.80 in-District classroom ADA.

B. 2020-2021 Final Offer of Facilities to the Charter School

Education Code § 47614 and its implementing regulations only obligate the District to offer space sufficient to accommodate the Charter School's in-District students. The

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District's allocation of space is therefore based on the Charter School's projected in-District ADA of 2,074.80 in-District students.

1. Methodology

Proposition 39 bases its reasonable equivalence analysis on a benchmark established by a group of comparison group schools. Cal. Admin. Code, title 5, § 11969.3 governs the identification of comparison group sites. Subsection (a)(1) states as follows:

Comparison Group

The standard for determining whether facilities are sufficient to accommodate charter school students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending public schools of the school district providing facilities shall be a comparison group of district-operated schools with similar grade levels. If none of the district-operated schools has grade levels similar to the charter school, then a contiguous facility within the meaning of subdivision (d) of section 11969.2 shall be an existing facility that is most consistent with the needs of students in the grade levels served at the charter school. The district is not obligated to pay for the modification of an existing school site to accommodate the charter school's grade level configuration.

Cal. Admin. Code, title 5, § 11969.3(a)(2) governs the determination of the comparison group schools for districts whose students live in high school attendance areas:

The comparison group shall be the school district-operated schools with similar grade levels that serve students living in the high school attendance area, as defined in Education Code section 17070.15(b), in which the largest number of students of the charter school reside. The number of charter school students residing in a high school attendance area shall be determined using in-district classroom ADA projected for the fiscal year for which facilities are requested.

The District must first identify the high school attendance area in which the largest number of in-District Charter School students resides. Education Code §17070.15(b) defines "attendance area" as "the geographical area serving an existing high school and those junior high schools and elementary schools included therein." Based on the information provided in the Charter School's facilities request, the District has

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determined that the greatest number of Charter School students lives within the Concord High School and Northgate High School attendance areas.¹

2. Facilities Offered

The District offers the Charter School facilities at the following location: 1101 Alberta Way, Concord, CA 94521, at the current configuration it is occupying during the 2019-2020 school year, with the exceptions set forth below.

a. Reasonable Equivalence Methodology

i. Condition

In order to determine whether facilities are “reasonably equivalent,” the District compares the proposed facilities to District-operated schools constituting the comparison group of schools. The District may propose facilities to the Charter School that are comparable to the comparison group in the following ways:

	Facility Characteristic – Capacity	Regulatory Authority
1.	Ratio of teaching stations to average daily attendance (“ADA”)	C.C.R., tit. 5, § 11969.3(b)(1)
2.	Specialized classroom space if such facilities are available to the district comparison group (e.g., science laboratories)	C.C.R., tit. 5, § 11969.3(b)(2)
3.	Non-teaching space, which the district can share with the charter school (e.g., administrative, kitchen, multi-purpose, and/or play area space)	C.C.R., tit. 5, § 11969.3(b)(3)
4.	School site size	C.C.R., tit. 5, § 11969.3(c)(1)(A)
5.	Condition of interior and exterior surfaces	C.C.R., tit. 5, § 11969.3(c)(1)(B)
6.	Mechanical, plumbing, electrical, and fire alarm systems in condition and conformity to applicable law	C.C.R., tit. 5, § 11969.3(c)(1)(C)
7.	Availability and condition of technology resources	C.C.R., tit. 5, § 11969.3(c)(1)(D)
8.	Overall learning environment qualities (e.g., lighting, noise mitigation, and/or size for intended use)	C.C.R., tit. 5, § 11969.3(c)(1)(E)
9.	Furnishings and equipment	C.C.R., tit. 5, § 11969.3(c)(1)(F)
10.	Condition of athletic fields and/or play area space	C.C.R., tit. 5, § 11969.3(c)(1)(G)

¹ By Board Action on November 14, 2016, the District’s Governing Board reconfigured the District’s attendance boundaries such that students living in the former Clayton Valley High School attendance area could attend Northgate.

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The District has considered capacity, condition, location, and other relevant factors, using as a point of reference the comparison group schools identified above to allocate a facility to the Charter School that meets Proposition 39 standards for “reasonable equivalence.” A copy of that analysis is attached as **Exhibit A**.

ii. Capacity

Classroom Space

With respect to teaching stations, Cal. Admin. Code title 5, § 11969.3(b)(1) states that “[f]acilities made available by a school district to a charter school shall be provided in the same ratio of teaching stations (classrooms) to ADA as those provided to students in the school district attending comparison group schools.”

The District has determined that the ADA to teaching station ratio at the comparison group schools is as follows:

Table of ADA to Teaching Station Ratio at Comparison Group Schools

ADA to Teaching Station Ratio at Comparison Group Schools, Grades 9-12 (@2,074.80 ADA)			
School	Projected ADA	Teaching Stations	ADA/TS Ratio
Concord High School	1,529	53.00	
Northgate High School	1,564	55.60	
Total	3,093	108.60	28.40

(See, Exhibit B)

Table of Classroom Allocation to Charter School

Classroom Allocation to Charter School, Grades 9-12			
School	Projected ADA	ADA/TS Ratio	Teaching Stations
Classroom Allocation	2,074.80	28.40	73.05

The Charter School’s current allocation of 78 classrooms exceeds the reasonable equivalence requirement.

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Specialized Teaching Space

Cal. Admin. Code title 5, § 11969.3(b)(2) states as follows with respect to the allocation of Specialized Teaching Space to the Charter School:

If the school district includes specialized classroom space, such as science laboratories, in its classroom inventory, the space allocation provided pursuant to paragraph (1) of subdivision (b) shall include a share of the specialized classroom space and/or a provision for access to reasonably equivalent specialized classroom space. The amount of specialized classroom space allocated and/or the access to specialized classroom space provided shall be determined based on three factors:

- (A) the grade levels of the charter school's in-District students;
- (B) the charter school's total in-District classroom ADA; and
- (C) the per-student amount of specialized classroom space in the comparison group schools.

The Specialized Teaching Space available at the comparison group schools and the Charter School is shown below in term of units of buildings provided. (Note: in some cases the schools below have repurposed space originally allocated for another function.)

Category of Space	Concord	Northgate	CVCHS
Science Classrooms	9.0	8.0	12.0
Art/Drama	5.0	7.0	4.0
Special Education	10.0	5.0	9.0
Computer Lab	1.0	2.0	1.0
TLC	3.0	0.0	0.0
Woodshop	1.0	0.0	1.0
Weight Room	2.0	1.0	2.0
Leadership Room	1.0	0.0	0.0
Tech Lab	1.0	1.0	1.0
Auto	1.0	2.0	1.0

The inventory of Specialized Teaching Space at the comparison group schools and the Charter School, by unit and square footage, is attached as **Exhibit B**. Based on the

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above, the Charter School is receiving specialized teaching space in the amount made available to students at the comparison group schools.

Non-Teaching Space

Cal. Admin. Code title 5, § 11969.3(b)(3) states as follows with respect to the allocation of Non-Teaching Space:

The school district shall allocate and/or provide access to non-teaching station space commensurate with the in-district classroom ADA of the charter school and the per-student amount of non-teaching station space in the comparison group schools. Non-teaching station space is all of the space that is not identified as teaching station space or specialized classroom space and includes, but is not limited to, administrative space, kitchen, multi-purpose room, and play area space

The Non-Teaching Space available at the comparison group schools and the Charter School is shown below in term of units of buildings provided (unless otherwise indicated.)

Category of Space	Concord	Northgate	CVCHS
Administration	1.0	1.0	1.0
Gymnasium	1.0	1.0	1.5
Kitchen	1.0	1.0	1.0
MUR	1.0	1.0	1.0

The inventory of Non-Teaching Space at the comparison group schools and the Charter School, by unit and square footage, is attached as **Exhibit B**. Based on the above, the Charter School is receiving Non-Teaching Space in the amount as made available to students at the comparison group schools.

Radio Facilities

For the 2016-2017 school year, the District’s Final Offer excluded the radio facilities at the Site, as follows:

The District will retain possession and control over the Radio Room and Radio antenna, and the following are expressly excluded from this Final Offer.

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- KVHS On-Air Studio (M-4 on the site map attached as **Exhibit C**);
- The two small production rooms immediately adjacent to the On-Air Studio where radio equipment and parts are stored. (These rooms are not numbered or designated on the site map attached as **Exhibit C**.);
- Production Room S-2;
- The loft space above Room S-2;
- The two Production Rooms 1 & 2, located between Rooms S-3 and S-4, respectively.

Even though the District did not in fact reclaim possession of any of the above-listed radio facilities at the beginning of the 2016-2017 school year, the Charter School sued the District, claiming that the District's reclaiming of the radio station space was not supported by Proposition 39.

However, an inventory of the Specialized Teaching Space and Non-Teaching Space available at the comparison group schools clearly demonstrates that the Charter School is not entitled to the radio facilities under Proposition 39. Neither of the comparison group schools have radio facilities. Therefore, the District reserves the right to reclaim the above-identified radio facilities at the beginning of the 2020-2021 school year.

The facilities offered to the Charter School in this Final Offer are depicted in the diagram attached as **Exhibit C**, excluding the radio room as set forth above, and including furnishings and equipment.

C. Final Offer of Facilities – Other Terms and Conditions

1. Miscellaneous

This offer of facilities, should it be accepted, is valid only for the 2020-2021 school year and may not be approved for allocation in future years.

Should Charter School accept the Final Offer of Facilities, the District will require it to enter into a Facilities Use Agreement containing the terms and conditions of the District's facilities allocation. A copy of a proposed agreement is attached as **Exhibit D**. The District provides this proposed agreement without prejudice to its right to propose or modify terms during the process of negotiating the agreement.

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2. Pro-Rata Share

In the event that Charter School occupies the facilities identified in this Final Offer for 2020-2021, Charter School's annual payment to the District, under Cal. Admin. Code title 5, § 11969.7, will be a sum of no less than that set forth in **Exhibit E**.

Under tit. 5, § 11969.9(i) of the Cal. Code of Regs.:

The charter school must notify the school district in writing whether or not it intends to occupy the offered space. This notification must occur by May 1 or 30 days after the school district notification pursuant to subdivision (h), whichever is later. The charter school's notification can be withdrawn or modified before this deadline. After the deadline, if the charter school has notified the school 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 school 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 the following fiscal year.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Burke, Williams & Sorensen, LLP

John R. Yeh

JRY:HLH
Enclosures
cc: Robert A. Martinez, Ed.D.
Superintendent
Mt. Diablo Unified School District

EXHIBIT A

“Condition” Analysis for Comparison Group Schools

School	Concord High School	Northgate High School	CVCHS
Age of Buildings	1966	1974	1958
Size of Site	43.5 Ac	40Ac	39.97Ac
Surfaces- Interior	Poor/Fair	Good	Good
Surfaces- Exterior	Fair	Good	Good
Mechanical Systems	Good	Good	Good
Plumbing	Good	Good	Good
Electrical	Good	Good	Good
Fire	Good	Good	Good
Conformity to Applicable Codes	Yes	Yes	Yes
Tech Infrastructure			
--- Available?	Yes	Yes	Yes
--- Condition?	Good	Good	Good
Lighting	Good	Good	Good
Noise	Fair	Good	Good
Adequacy of Size	Good	Fair	Good
Furnishings/Equipment	Fair	Good	Good
Play Fields	Poor	Poor	Fair

- 2019 MEASURE C
- RESOURCE CONSERVATION
- TECHNOLOGY
- MECHANICAL
- MODERNIZATION
- OVERSIGHT COMMITTEE

Concord High

4200 Concord Blvd Concord CA 94521

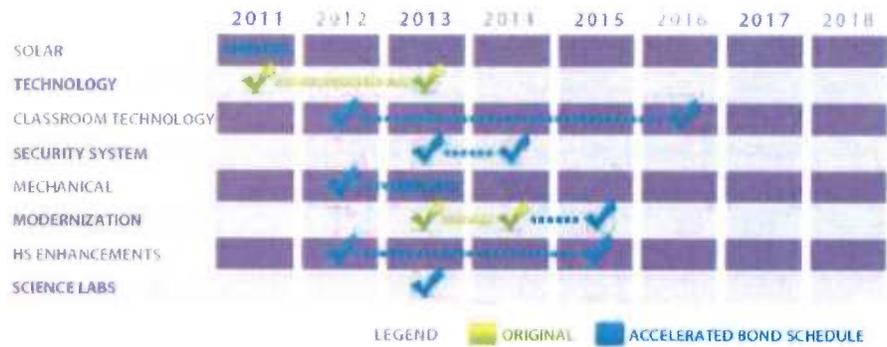
2019 Measure C Bond Schedule Summary



Map data ©2017 Google Imagery ©2017, DigitalGlobe, U.S. Geological Survey, USDA Farm Ser
View Mt Diablo Unified School District Sites in a larger map

Site Attributes	
Date Built	1966
Site Acreage	43.5
Buildings	
Attendance	1,462

- Solar Project Overview
- Solar: FAQ's
- Solar Performance



Site Updates



- 2010 MEASURE 5
- RESOURCE CONSERVATION
- TECHNOLOGY
- MODERNIZATION
- ADMINISTRATION
- OVERSIGHT COMMITTEE

Northgate High

425 Castle Rock Rd Walnut Creek CA 94598



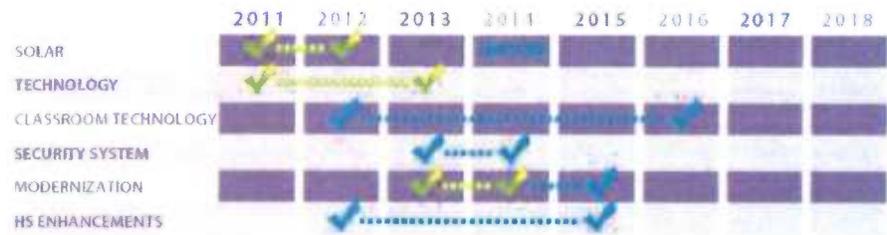
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View Mt Diablo Unified School District Sites in a larger map

Site Attributes

Date Built	1973
Site Acreage	40
Buildings	
Attendance	1464

- Solar Project Overview
- Solar: FAQ's
- Solar Performance



LEGEND ORIGINAL ACCELERATED BOND SCHEDULE

Site Updates



- 2010 MEASURES C**
- RESOURCE CONSERVATION
 - TECHNOLOGY
 - MODERNIZATION
 - COMMUNITY
 - OVERSIGHT COMMITTEE

Clayton Valley High

1101 Alberta Way Concord CA 94521



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View Mt Diablo Unified School District Sites in a larger map

Site Attributes

Date Built	1959
Site Acreage	39.97
Buildings	
Attendance	2,145

- Solar Project Overview
- Solar: FAQ's
- Solar Performance

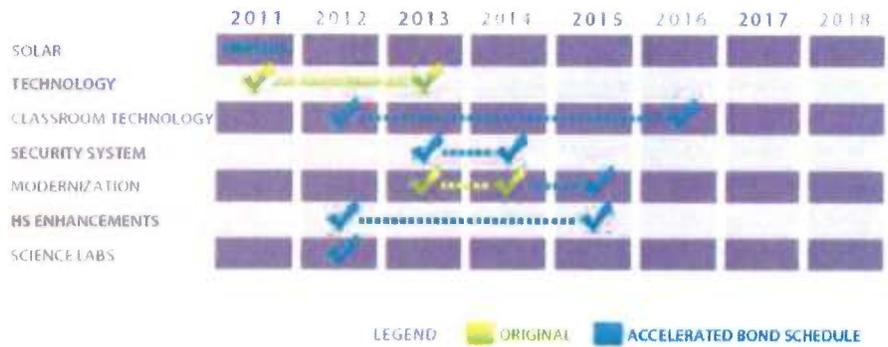


EXHIBIT B

DRAFT

2017-18 High School Enrollment-Driven General Ed. Teacher Allocation

		Enrollment (CALPADS for 2016-17 (as of 11/7/16))					Calculated Allocation for 2017-18			
		Regular Ed. and Part-Time Special Ed.								
0.20	FTE per period (6 classes taken, 5 classes taught)	9	10	11	12	Sp. Ed. Part Time†	Gr 9-12 Regular & Part- Time Sp. Ed.	Info Only: Sp. Ed. Full Time‡	2017-18 Unrounded Allocation**	2017-18 Rounded Allocation
324	College Park	474	485	493	481	114	2,047	17	73.19	73.20
326	Concord	331	344	361	277	167	1,480	49	52.92	53.00
355	Mt. Diablo	327	308	301	268	140	1,344	63	48.06	48.20
358	Northgate	352	356	407	347	90	1,552	12	55.49	55.60
399	Ygnacio Valley	285	327	253	225	131	1,221	73	43.66	43.80
		1,769	1,820	1,815	1,598	642	7,644	214	273.32	273.80

		Current FTE (prog 0700)†				2017-18 ALLOCATION		
0.20	Staffing Factor: 33.56*	TCHR SEC (0700)	TCHR SEC (0700)	TCHR SEC VOC (0700)	Total 0700s	Difference: 2016-17 and 2017-18	Change for 2017-18	2017-18 Allocation (0700)
324	College Park	75.80	1.00	0.40	77.20	(4.00)	-	77.20
326	Concord	55.80	1.00	0.60	57.40	(4.40)	-	57.40
355	Mt. Diablo	46.60	1.00	0.20	47.80	0.40	0.40	48.20
358	Northgate	59.00	1.20	1.00	61.20	(5.60)	-	61.20
399	Ygnacio Valley	46.40	0.60	0.80	47.80	(4.00)	-	47.80
		283.60	4.80	3.00	291.40	(17.60)	0.40	291.80

*The staffing "factor" of 33.56 is based on average class size (1 class @ 33, 1 class @ 28, 1 class @ 40, 3 classes @ 37) × 95%

**Formula = number of students (which is the combined regular ed. enrollment and part-time Special Ed. enrollment) ÷ "factor" × periods taken + periods taught

†Rounded = rounded up to nearest period.

‡Position Control (classroom teachers only, from Position Control, 1/4/16)

§The Sp. Ed. part-time students (Resource) are fully counted for the General Ed. teacher allocation; the Sp. Ed. full-time students (SDC) are not part of this calculation or allocation.

Revised: 1/17/17

Information provided for Budget Development only. After 4/30/17, refer to Position Control for 2017-18 FTE.

Concord High

4200 Concord Blvd.
Concord, CA 94521

RM	SQFT	TYPE	RM	SQFT	TYPE	RM	SQFT	TYPE
201	822	CL/English	501	814	CL/RS	701	1,920	CL/Art
202	814	CL/English	502	814	CL/SDC	702	960	CL/History
203	814	CL/Sp Ed	503	1,171	CL/Science	703	960	CL/History
204	814	CL/English	504	1,621	CL/Art	704	960	CL/English
205	814	CL/English	505	814	CL/Art	705	960	CL/SDC
206	814	CL/English	506	822	CL/Art	706	960	CL/SDC
207	822	CL/English	507	1,163	CL/History	707	960	CL/History
208	1,624	CL/Drama	507A	162	Office	708	960	CL/History
209	814	CL/FL	508	1,171	CL/Comp	709	960	CL/English
210	814	CL/FL	509	691	SpEd	710*	960	CL/Summit NSHS
211	814	CL/English	510	465	Sp Ed	711*	960	CL/Summit NSHS
212	822	CL/History	511	465	Sp Ed	712*	960	CL/TLC
300	319	Ofc/SS	512	814	CL/English	713*	960	CL/TLC
301	814	CL/Math	513	822	CL/History	714*	960	CL/TLC
302	814	CL/Math	514	342	RS	801	3,090	CL/Woodshop
303	814	CL/Math	515	114	Office	802	3,995	CL/Weight
304	822	CL/English	516	114	Office	803	2,206	CL/Leadership
305	807	CL/Math	517	114	Office	804	1,749	CL/Tech Lab
306	814	CL/Math	601	842	CL/Science	805	4,090	CL/Auto
307	1,171	CL/Sp Ed	602	1,143	CL/Chem	814	7,774	LOCKER-B
308	814	CL/Math	603	1,143	CL/Chem	817	5,400	LOCKER-G
309	814	CL/Math	604	1,271	CL/Foods			
310	822	CL/Math	605	1,324	CL/Physics	ADMIN	4,601	Office+
311	807	CL/Math	606	1,203	CL/Bio Lab	BAND	2,040	(Rm 2)
312	814	CL/Math	607	1,203	CL/Bio Lab	BATH	2,052	
313	814	CL/Math	608	1,274	CL/Bio Lab	CHORAL	1,040	(Rm 3)
314	360	Ofc/Math	609	361	NI	GYM	12,296	
315	144	Ofc/Foreign Lang	610	301	Prep	KITCHEN	2,756	
316	108	Ofc/English	612	301	Prep	MULTI USE	8,056	
400	3,936	Library	613	308	Prep	OTHER	14,612	Corridors+
401	754	CL	614	301	Prep			
402	661	Acad. English						
403	835	CL	P1	960	CL/English			
404	754	CL	P2	960	CL/FL			
405	661	SpEd						
406	835	CL						
Total							146,455	63 Classrooms

& 2 NSHS
& 3 TLC

*NSHS, TLC

Northgate High
 425 Castle Rock Road
 Walnut Creek, CA 94598

ROOM #	SQ FT	TYPE	ROOM #	SQ FT	TYPE
1	1,225	CL/Sci Lab	60	2,636	CL/Auto
2	1,225	CL/Sci Lab	61	2,316	CL/Auto
3	1,225	CL/Sci Lab	62	570	RS
4	1,225	CL/Sci Lab	63	1,565	CL
5	1,385	CL/Sci Lab	64	4,142	CL/Tech Center
6	1,211	CL/Sci Lab	65	1,617	CL/Comp Lab
7	1,110	CL/Comp Lab	70	1,372	CL/Photo
8	1,193	CL/Sci Lab	71	1,222	CL/Photo
9	1,148	CL/Sci Lab	72	1,715	CL/Art
10	784	CL	73	1,039	CL/Ceramics
11	784	CL	74	670	RS
12	784	CL	75	1,323	CL
13	784	CL	76A	588	SDC
14	784	CL	76B (78)	366	Spectrum
20	1,008	CL	77	1,741	CL/Math
21	1,008	CL			
22	1,008	CL	80A	645	NI
23	900	CL	90	2,280	CL/Choral
30	784	CL	91	939	CL
31	784	CL	92	947	CL/Dance
32	784	CL	93	2,609	CL/Instru Music
33	1,323	CL			
34	784	CL/SDC	ADMIN	5,829	
35	980	CL	BATH	1,800	
36	980	CL	GYM	14,640	
37	1,141	CL	IMC	2,065	IMC/Career Ctr
40	873	CL	KITCHEN	551	
41	784	CL	LCKRM	13,040	
42	784	CL	LECTURE	1,922	CL
43	784	CL	LIBRARY	6,588	
44	1,087	CL	MUR	2,745	
50	814	CL	OTHER	53,331	Corridors+
51	845	CL	TEACHER	777	
52	826	CL	THEATRE	3,340	
53	826	CL	WEIGHT RM	2,240	CL/Weight
54	796	CL			
55	960	CL			
56	960	CL/Spec Ed LD			
57	960	CL/Foreign Lang Lab			
			Total	176,820	56 Classrooms



MUSD FACILITIES PLAN

Clayton Valley High

1101 Alberta Way
Concord, CA 94521

RM #	SQ FT	TYPE	RM #	SQ FT	TYPE	RM #	SQ FT	TYPE
A1	1,075	Classroom	C10	828	Classroom	H3*	960	CL/NSHS
A2	1,075	Classroom	C11	836	Classroom	H4	960	CL/SDC
A3	1,321	Classroom	C12	828	Classroom	H5	960	Classroom
A4	1,065	Classroom	C14	836	Classroom	H6	960	Classroom
A5	1,321	Classroom	D1	1,243	CL/Sci Lab	H7	960	Classroom
A6	1,124	CL/Comp	D2	1,427	CL/Home	H8	960	CL/RS
A7	1,075	Classroom	D3	1,243	CL/Sci Lab	H9	960	Classroom
A8	1,125	CL/Lab	D4	1,420	CL/Home	I1	960	CL/Mental Health
A9	1,075	Classroom	D5	1,243	CL/Sci Lab	I2	960	CL/SH
A10	835	CL/Lab	D6	1,243	CL/Sci Lab	J1	960	CL/RS
B1	828	CL/SDC	D8	1,250	CL/Sci Lab	J2	960	Classroom
B2	828	Classroom	E1	836	CL/RS	M1	1,620	CL/Vocal
B3	828	Classroom	E2	836	CL/RS	M2	3,240	Stage/CAA
B4	828	Classroom	E3	828	Classroom	M3	1,620	CL/Inst Music
B5	828	Classroom	E4	828	Classroom	S1	1,760	CL/Art Design
B6	828	Classroom	E5	828	Classroom	S2	2,208	CL/Radio Lab
B7	828	Classroom	E6	828	CL/Sci Lab	S3	3,312	CL/Wood
B8	828	Classroom	E7	828	Classroom	S4	3,864	CL/Tech Center
B9	828	Classroom	E8	1,243	CL/Sci Lab	S5	2,208	CL/Photo Lab
B10	828	Classroom	E9	828	Classroom	S6	4,128	CL/Auto
B11	828	Classroom	E10	1,243	CL/Sci Lab	BATH	2,300	
B12	954	Classroom	E11	828	Classroom	BOILER	1,656	
B13	836	Classroom	E13	836	Classroom	GYM	10,290	Large Gym
C1	836	CL/RS	F2	866	CL/RS	GYL-L	5,400	Little Gym
C2	836	Classroom	F4	859	Classroom	KITCHEN	2,600	
C3	1,065	Production	F6	859	CL/SDC	LCK/B	7,583	Boys Locker
C4	828	Classroom	F8	859	Classroom	LCK/G	5,178	Girls Locker
C5	1,420	Staff	F10	859	CL/SDC	LIBRARY	4,356	
C6	828	Classroom	F12	859	CL/Weight	MULTI USE	6,775	
C7	828	Classroom	F14	866	CL/Weight	OFFICE	6,017	
C8	828	Classroom	H1*	960	CL/NSHS	OTHER	16,463	Corridors+
C9	828	Classroom	H2*	960	CL/NSHS			
Total							164,558	78 Classrooms

*NSHS = 3 CL

11/15/2013 - L100
L200
5484
1440 - Chemistry
1440 - Chemistry
432 - Science Prep Room
384 - Concussion Bldg

EXHIBIT C

MDUSD
MOUNTAIN DIABLO UNIFIED SCHOOL DISTRICT
11777 FARM ROAD, SUITE 100, FARMINGTON, CA 95125



XXX
XXX

DISTRICT: DIST-PH#
MAINT: MAINT#
FAX: FAX#

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CLAYTON VALLEY HIGH SCHOOL
1101 ALBERTA WAY
CONCORD, CA 94521

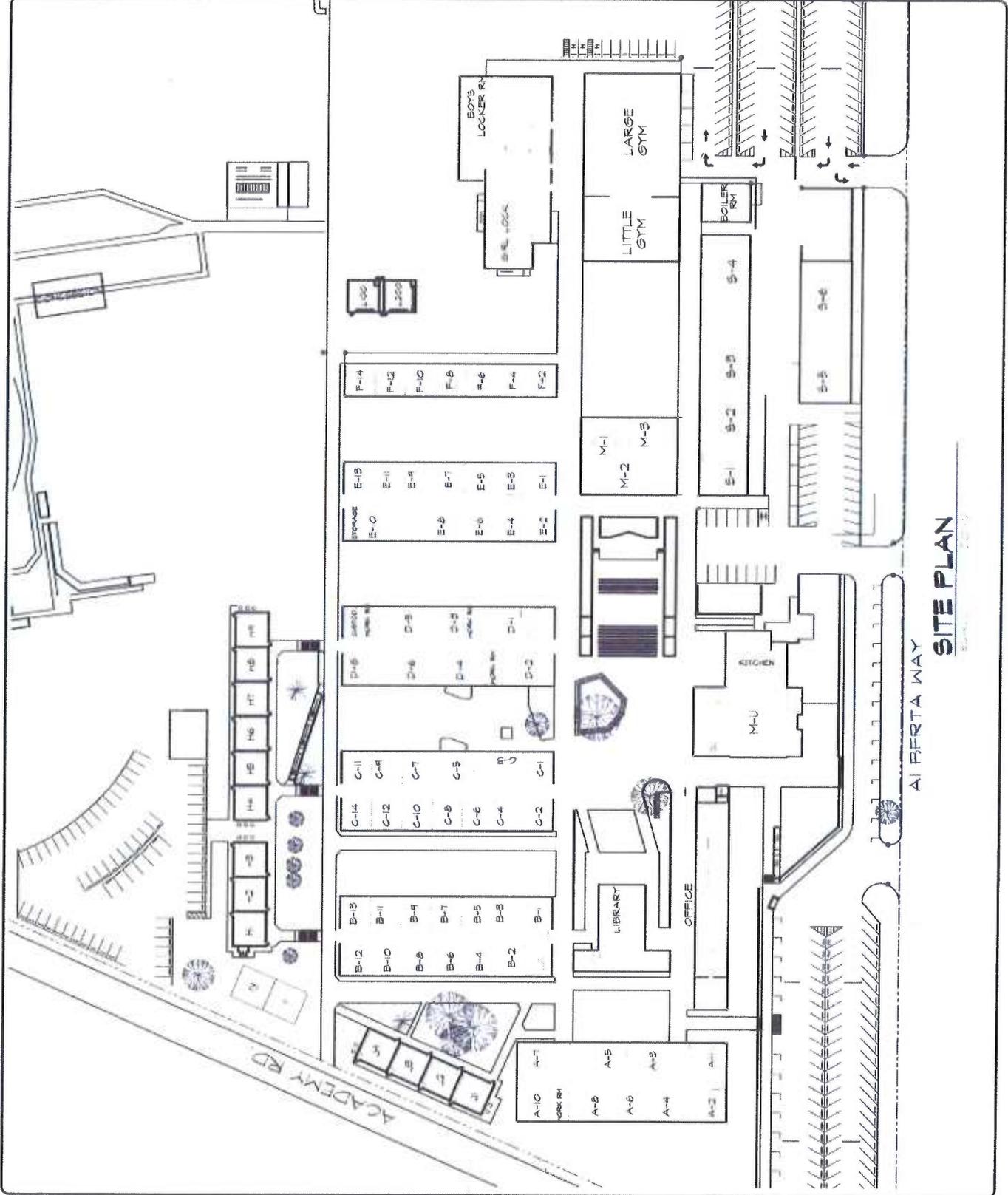
SITE PLAN

DRAWN BY	KRM
DESIGNED BY	N/A
APPROVED BY	N/A
DATE	N/A

DATE	12/26/01
DATE	N/A

PROJECT NUMBER	
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SCALE	AS NOTED
SHEET NUMBER	EDU-1
	1 OF 1



SITE PLAN

EXHIBIT D

**FACILITIES USE AGREEMENT
BY AND BETWEEN
MT. DIABLO UNIFIED SCHOOL DISTRICT AND
[NAME] CHARTER SCHOOL**

This Facilities Use Agreement (“Agreement”) is made by and between the Mt. Diablo Unified School District (“District”) and [Charter School] a California non-profit public benefit corporation (“Non-Profit”), which operates [Charter School] (the “Charter School”). The Non-Profit and District are collectively referred to as the “Parties.”

RECITALS

- A. Charter School is a California nonprofit public benefit corporation that is proposing to operate a California public charter school serving approximately XXX students in grades XX-XX.
- B. Pursuant to the requirements of California Education Code Section 47614 and Title 5 of the California Code of Regulations Section 11969, *et seq.*, adopted by the State Board of Education (“Proposition 39” or “Prop. 39”), the Charter School has made a written request for facilities for the 2020-2021 school year, a true and correct copy of which is attached as Exhibit A.
- C. The District is the owner of certain real property located at [ADDRESS] (collectively the “Site”).
- D. The Charter School desires to use certain District facilities located on the Site for its public charter school programs.
- E. It is the intent of the parties that all of the classrooms and facilities owned by the District at the location legally described and depicted in Exhibit B to this Agreement shall be governed by this Agreement.
- F. The Parties intend that for the 2020-2021 school year, this Agreement will satisfy their obligations under Proposition 39, which among other things require a written agreement regarding the allocation of facilities.

AGREEMENT

In consideration of the covenants and conditions of this Agreement, the Parties hereby agree as follows. All obligations imposed hereby on the Charter School are equally imposed on the Non-Profit.

- 1. Facilities. Use of the Facilities shall be for the purposes set forth in the Charter School’s charter, and on the terms and conditions set forth herein. For the term of this Agreement, the District grants use to the Charter School of the Site facilities identified in Exhibit B attached to this Agreement and incorporated herein by reference (the “Facilities”) under the terms and conditions set forth in this Agreement. The Charter School shall not have exclusive use of the Site.

The Charter School’s use of the Facilities includes the following: [INSERT] as designated in Exhibit B. The Charter School will also have shared access and use of the following facilities: [INSERT]. The Charter School shall be entitled to use of shared spaces for a proportionate share of the available school hours determined on a weekly basis as specified in the Final Offer of Facilities.

- 2. Term. The term of this Agreement shall be from July 1, 2020 to June 30, 2021 (“Term”), unless earlier terminated as provided herein. The term shall not commence until written confirmation of an approved charter petition and that Charter School has achieved actual enrollment of at least 80 in-District students for the 2020-2021 school year.

3. Shared Space. The District hereby grants to the Charter School the right to joint use of the following "Shared Space" solely for the purposes set forth in the Charter School's charter and on the terms and conditions set forth herein:
 - 3.1 *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 classrooms described herein and to other shared spaces. Said use of common hallways by the Charter School students shall be under the supervision of a Charter School employee.
 - 3.2 *Coordinating Shared Use*. Charter School use of shared space shall be coordinated through the District's Principal and Charter School's Principal. A clear and reasonable process shall be developed and adopted no less than 10 business days prior to the start of school in August 2020. This process will include expectations for notification of school events; clean-up of shared use areas after such events and common procedures and expectations of community behavior during the events. The Charter School will notify the Superintendent or designee in writing by August 31, 2020 of any concerns regarding coordination of use for the shared space.
 - 3.3 *Student Discipline*. The Principal of the District School and the 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.
 - 3.4 *Bell Schedule/Alarms/Announcements*. It is recognized that the Charter School will have a separate bell schedule from the District's programs and that the existing intercom and bell system cannot accommodate Charter School's bell schedule.
 - 3.5 *Emergency*. 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 on 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 school Site. Charter School staff, faculty, and students shall cooperate with and participate in any lockdowns, exigent security procedures, and emergency response training, procedures, and protocols required by the District at the Site. District will provide Charter School with emergency procedures and/or equipment. The Charter School will be notified two 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 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. District will attempt to schedule fire and other security and emergency alarm testing to after-school hours or nonteaching/training days.
4. Facility Use Fee. The Facility Use Fee shall be based on a pro rata cost estimate per square foot for the Facilities provided. The dollar amount to be paid by Charter School, per square foot, for use of the Facilities during the Term will be calculated by the District pursuant to Title 5, California Code of Regulations, section 11969.7. To calculate the fee, the District must determine actual facilities costs and total space figures in the year preceding the fiscal year in which facilities are

provided. Such amounts may only become available to the District after each fiscal year ends. Therefore, within ninety (90) days of the beginning of each fiscal year, or as soon as the actual facilities costs and total space figures for the prior fiscal year become available, whichever is later, the District shall provide notice to the Charter School of any amended Facilities Use Fee calculations based on the actual data for the prior fiscal year. Amounts owed to or by the Charter School due to this calculation will be credited or added to subsequent remaining monthly installment payments of the Facilities Use Fees.

The Charter School shall pay District an initial estimate Facilities Use Fee of [INSERT], based on a pro rata facilities cost estimate of \$.371 per square foot for the use of approximately [INSERT]. The calculation is further explained in Appendix C. Included in this fee are costs associated with Utilities, Custodial, Grounds, and Maintenance.

Facilities Use Fees shall be paid out in equal installments each month throughout the respective school year within the Term. Beginning on July 1, 2020, payments shall be payable on or in advance on the first day of each month (“Due Date”). If any payment is made more than fifteen (15) days after the Due Date, a late fee of one percent (1%) shall apply and interest shall accrue thereafter on such late payment commencing thirty (30) days after the Due Date, provided however that no interest shall accrue on said late fee. The payment by Charter School of any late fees or interest shall in no event excuse or cure any default by Charter School nor waive District’s legal rights and remedies with respect to such default. Failure by the Charter School to pay any installment of the pro-rata share shall constitute an event of default under Section 24 of this Agreement, giving rise to the District’s right to terminate this Agreement and reclaim possession of the site.

5. Requests for Additional Facilities/Over-allocated space. Should the Charter School anticipate increased enrollment in any subsequent school year which would require additional classroom facilities, the Charter must request the additional classrooms prior to the date established by law and implementing regulations of the year preceding the school year in which the additional classrooms will be needed.

Should the Charter School request facilities in any year above those necessary to serve their actual in district enrollment, the Charter School shall be subject to reasonable fees imposed by the District. Nothing in this provision, however, shall obligate the District to allocate facilities for the Charter School’s non-District students.

The District reserves the right to collect over-allocation and other applicable fees and reimbursements from the Charter School, pursuant to Title 5, California Code of Regulations, Section 11969.8. The Charter School’s projected in-District Average Daily Attendance (“ADA”) for the 2020-2021 school year, and upon which the Facilities are provided, is **XXXX**.

6. Condition of Premises. THE CHARTER SCHOOL ACKNOWLEDGES AND AGREES (I) THAT, EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, IN ENTERING INTO THIS AGREEMENT, THE CHARTER SCHOOL HAS NOT RELIED ON ANY REPRESENTATION, STATEMENT, OR WARRANTY BY THE DISTRICT, OR ANYONE ACTING FOR OR ON BEHALF OF THE DISTRICT, ALL MATTERS CONCERNING THE PREMISES TO BE INDEPENDENTLY VERIFIED BY THE CHARTER SCHOOL; (II) THAT THE CHARTER SCHOOL IS TAKING POSSESSION OF THE PREMISES BASED ON ITS OWN INSPECTION AND EXAMINATION THEREOF AND ON AN “AS IS” BASIS; AND (III) THAT THE CHARTER SCHOOL

MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE WITH RESPECT TO THE PREMISES.

7. Conditions of Use.

7.1 *Public Charter School.* The Facilities shall be used and occupied by the Charter School for the sole purpose of operating a California public charter school and for no other purpose without the prior written consent of the District.

7.2 *Insurance Risk.* The Charter School shall not do or permit anything to be done in or about the Facilities nor bring or keep anything therein which will in any way increase the existing insurance rate or affect any fire or other insurance upon the Facilities or any of their contents (unless the District gives its prior approval and the Charter School pays any increased premium as a result of such use or acts), or cause a cancellation of any insurance policy covering said Facilities or any part thereof or any of its contents, nor shall the Charter School sell or permit to be kept, used, or sold in or about the Facilities any articles which may be prohibited by a standard form policy of fire insurance.

7.3 *Rights of the District.* The Charter School shall not do or permit anything to be done in or about the Facilities that will in any way obstruct or interfere with the rights of the District as owner of the Site or allow the Facilities to be used for any unlawful purpose, nor shall the Charter School cause, maintain or permit any nuisance in or about the Facilities. The Charter School shall not commit or suffer to be committed any waste in or upon the Facilities.

7.4 *Illegal Uses.* The Charter School shall not use the Facilities or permit anything to be done in or about the Facilities that will in any way conflict with any applicable law. The Charter School shall at its sole cost and expense promptly comply with all applicable laws now in force or which may hereafter be in force relating to or affecting the use or occupancy of the Facilities by the Charter School. The judgment of any court of competent jurisdiction or oversight body or the admission of the Charter School in any action involving the Charter School, whether the District be a party thereto or not, that the Charter School has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of the fact as between the District and the Charter School.

7.5 *District Responsibility.* The District has ensured that the Facilities comply with all applicable laws governing charter school facility use (for example, ADA, CEQA, State and local building codes, environmental laws including asbestos, lead, etc.). If any portion of the Facilities is found to be out of compliance with any such applicable law, the District shall ensure, within reasonable time limits, that such Facilities are brought into compliance with such applicable law, except to the extent that the Facilities' noncompliance with applicable law are a direct result of the Charter School's modification or alteration of the Facilities after the effective date of this Agreement, in which case the Charter School, at its sole cost and expense, will make any and all alterations, improvements, additions and/or repairs to the Facilities necessary to ensure such compliance with applicable law.

7.6 *Civic Center Act*. The Charter School agrees to comply with the provisions of the Civic Center Act (Education Code Section 38131, *et seq.*) in making use of the Facilities accessible to members of the community. The parties understand that the Facilities are to be primarily used for school programs and activities and as such any use of the Facilities by members of the community shall not interfere with school activities at any time. District Board Policy and Administrative Regulations related to the Civic Center Act shall control scheduling, use and collection of fees related to use of the Facilities by members of the public. Consistent with that policy and the regulations, the District shall be solely responsible for coordinating access to the Facilities under the Civic Center Act and shall require users to provide appropriate proof of insurance related to use of the Facilities and to indemnify and hold harmless the District and Charter School for injury, risk of loss, or damage to property as a result of that access by members of the community. The District agrees to promptly clean and repair, if necessary, any portion of the Facilities used by members of the community immediately following such use. All requests for use of the Facilities made directly to the Charter School shall be forwarded to the District for coordination of use consistent with Board Policy and Administrative Regulations.

7.7 *Alarms*. The Charter School shall have access to activate burglar alarms and intruder alerts, if any, corresponding to the Facilities provided at the Site. The Charter School agrees that in the event that any of Charter School’s employees, directors, trustees, officers, agents, students, visitors, or contractors, trigger a false alarm at the Site, the Charter School shall be responsible for costs incurred.

7.8 *Security*. The Charter School shall be responsible for securing the Facilities, including all of the equipment and furnishings contained therein, in manner that reasonably prevents or deters the theft or destruction of District property. Such reasonable measures may include but are not limited to locking doors, locking windows, setting alarms, keeping valuable materials out of public view or restricting access to the Facilities. The responsibility to maintain the security of the Facilities under this subparagraph shall not be interpreted as the District’s authorization of the alteration of the Facilities. If Charter School desires to make alterations or improvements to the Facilities as a result of its obligation to maintain the security of the Facilities or its contents, then Charter School must follow the procedures stated in Section 14 (“Alterations and Additions”) prior to making any such alterations or improvements, including but not limited to the changing door locks, the placement of surveillance cameras and the installation of alarms or deterrent devices.

8. Furnishings and Equipment. The furnishings and equipment to be provided by the District for the Facilities are those furnishings and equipment that exist at the Facilities as of the date of execution of this Agreement. Said furnishings and equipment will be provided pursuant to Education Code section 47614(b), and Title 5, California Code of Regulations, section 11969.2. The Charter School is responsible for any furnishings and equipment over and above those provided by the District.

The Charter School shall return all such furniture, fixtures and equipment to the District in like condition at the termination of this Agreement, excepting ordinary wear and tear. Upon return of the furniture, fixtures, and equipment, the District will inspect said items within sixty (60) calendar days. The Non-Profit shall be responsible for costs to repair or replace furniture, fixtures, and equipment to like condition, excepting ordinary wear and tear. All furniture, fixtures, and equipment that are not the property of the District or are not otherwise reimbursed by the District

shall remain the property and under the ownership of Non-Profit and shall be disposed of according to the provisions of the approved charter petition.

9. Utilities. District agrees to furnish or cause to be furnished to the Facilities necessary utilities. Utilities include, but are not limited to, electrical, natural gas, sewer, waste disposal/recycling and water services. The District’s failure to furnish or cause to be furnished necessary utilities when such failure is caused by (i) Acts of God or other acts beyond the control or fault of the District; (ii) strikes, lockouts, or other labor disturbances or labor disputes of any kind; (iii) any laws, rules, orders, ordinances, directions, regulations, requirements, or any other action by federal, state, county or municipal authority; (iv) inability despite the exercise of reasonable diligence by the District to obtain electricity, water, or fuel; or (v) any other unavoidable delay, shall not cause the District to be in default and shall not result in any liability of the District. Charter School shall be responsible for paying the appropriate agency for the use of such utilities.
10. Proposition 39/Conditions Reasonably Equivalent. Non-Profit acknowledges by execution of the Agreement that the Facilities provided by the Agreement are “reasonably equivalent,” as the term is defined by Proposition 39. Non-Profit agrees that upon execution of this Agreement, all obligations of the District to the Non-Profit and Charter School under Proposition 39 have been satisfied for the Term of the Agreement.
11. Signage. The Charter School shall be allowed to place signage on the exterior of the Facilities. The District will keep its own signage exhibited at the Site, identifying the school as operated by the District. The District shall have final approval over the design, content and location of the Charter School’s signage, but shall not unreasonably deny such design, content or location. The Charter School must remove the signage upon termination of this Agreement. The Charter School must restore the Facilities, following removal of the signage, to the condition existing prior to installation of the signage to District’s reasonable satisfaction. All such signage shall be subject to compliance with all applicable laws at Charter School’s sole cost.
12. Routine Maintenance. The District shall provide routine maintenance services for the Facilities consistent with the maintenance services provided for the District’s facilities. Requests for maintenance beyond the services ordinarily provided for the District’s facilities shall be processed on a case by case basis, and may be subject to additional charges. The District will provide routine custodial services to Charter School’s classrooms and shared space.
13. Major Facilities Maintenance Costs. The District shall bear all major facilities maintenance costs with respect to the buildings and grounds of the Facilities, except to the extent major facilities maintenance is required as a result of the Charter School’s negligent or intentional acts occurring during its occupancy of the Facilities and is beyond the scope of maintenance provided at other District schools, in which case the Charter School shall directly reimburse the District for such major facilities maintenance costs. “Major facilities maintenance” include all non-routine maintenance, replacement and repair services, including major maintenance and replacement of the roof, mechanical systems (heat, ventilation, air conditioning, electrical, plumbing), and other major maintenance and upgrades and any projects identified during the term of this Agreement that the District deems eligible to be designated as deferred maintenance as defined under Education Code section 17582, at a level comparable with other District schools. To the extent that in any fiscal year the District’s necessary major facilities maintenance costs for the Facilities are not funded by the State or other non-operational sources or are underfunded, during that

fiscal year the District shall undertake major facilities maintenance at the Facilities only to the extent and on the same level that the District undertakes such maintenance at its other facilities.

14. Alterations and Additions. The Charter School shall add no fixtures, as that term is defined in Civil Code section 660 (“Fixtures”), to the Facilities or any part thereof without obtaining the prior written consent of the District’s Superintendent or designee. Any such Fixtures at the Facilities requested by the Charter School shall be paid for by the Charter School, and shall be contracted for and performed in accordance with all applicable law. The District may impose as a condition to the aforesaid consent such requirements as the District may deem necessary in its sole discretion, including without limitation, the manner in which the work is done, a right of approval of the contractor by whom the work is to be performed, and the times during which it is to be accomplished. Title to all Fixtures shall vest in the District or, at the District’s request, any or all Fixtures shall be removed from the Facilities upon the expiration or earlier termination of this Agreement.
15. Entry by District. The District may enter the facility at any time to inspect the Facilities, to supply any service to be provided by the District to the Charter School hereunder and to alter, improve or repair the Facilities, or in the case of an emergency, consistent with Education Code Section 47607(a)(1).

The District may erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed so long as the Charter School’s operations do not suffer unreasonable interference. The District agrees to use its best efforts at all times to keep any interference to the academic programs at Charter School to a minimum. The Charter School waives any claim for damages for any inconvenience to or interference with the Charter School’s business, any loss or use of quiet enjoyment of the Facilities related to District’s entry for the purposes identified in this Section.

16. Employees, Contractors and Independent Contractors. The Charter School and the District, their employees, agents, contractors and subcontractors shall comply with the requirements of Education Code Sections 45125.1 and 45125.2 related to access to the Facilities and protection of minor students. Charter School shall not be required to have volunteers or visitors fingerprinted if they are directly supervised at all times by a Charter School employee with proper criminal background check clearance. Charter School shall also ensure that its employees are in compliance with the tuberculosis testing requirements set forth in Section 49406 of the California Education Code.
17. Indemnity. The Charter School, individually and collectively, shall indemnify, hold harmless, and defend the District, its Board of Trustees, the members of its Board of Trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liabilities, expenses and costs for any injury, death or damage to any person or property arising from the Charter School’s use of the Facilities, excepting those claims, demands, actions, suits, losses, liabilities, expenses and costs arising from the negligent or intentional acts of the District, its employees, agents, officers and invitees.

The Charter School shall further indemnify, hold harmless, and defend the District, its Board of Trustees, the members of its Board of Trustees, officers, employees and agents against and from any and all claims arising from any breach or default in the performance of any obligation on the

individual or collective Charter School's part to be performed under the terms of this Agreement, and from all costs, attorneys' fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon.

The District shall indemnify, hold harmless, and defend the Charter School, its trustees, officers, and agents against and from any and all claims, demands, actions, suits, losses, liabilities, expenses and costs for any injury, death or damage to any person or property arising from the District's conduct of business at the Facilities, excepting those claims, demands, actions, suits, losses, liabilities, expenses and costs arising from the negligent or intentional acts of the Charter School, their employees, agents, officers and invitees.

The District shall further indemnify, hold harmless, and defend the Charter School against and from any and all claims arising from any breach or default in the performance of any obligation on the District's part to be performed under the terms of this Agreement, and from all costs, attorneys' fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon.

Upon becoming aware of any casualty or accident in or on the Facilities, each Party to this Agreement shall give prompt written notice thereof to the other Party.

In the event of a third party claim or potential claim covered by these provisions, the Parties agree to take all steps reasonable or necessary to cooperate in defending and protecting their joint interests, and in expediting all reasonable or necessary efforts to gain coverage for the Parties under any liability policy or indemnity agreement issued in favor of the Non-Profit, including indemnity rights or agreements existing in contracts between the Non-Profit and any third party (such as contract with a supplier of goods or services), and further including efforts to reduce defense costs (through joint representation whenever possible), expenses and potential liability exposures.

18. Insurance. The Charter School shall, at all times during the term of this Agreement, and at its own cost and expense procure and continue in force the following insurance coverage: Bodily Injury and Property Damage Liability insurance with a combined single limit for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) per occurrence and Five Million Dollars (\$5,000,000) annual aggregate combined single limit (CSL). Such minimum limits of policies shall in no event limit the liability of the Charter School hereunder. Such insurance shall name the District as an additional insured. Insurance, unless obtained through the California Charter School Association's Joint Powers Authority, shall be with companies having a rating of not less than A- in "Best's Insurance Guide". The Charter School shall furnish from the insurer or cause the insurer to furnish certificates of coverage to the District. No such policy shall be cancelable or subject to reduction of coverage or other modification or cancellation except after thirty (30) days prior written notice to the District by the insurer and with the consent of the District thereto.

In the event of property damage or personal injury caused by the Charter School, its officers, employees or agents, all such policies, including but not limited to coverage obtained through CCSAJPA, shall be considered primary policies not contributing with and not in excess of the coverage that the District must carry. In the event property damage or personal injury is caused by the District, its officers, employees or agents, or any unaffiliated third party, the Charter School policies shall be secondary and in excess of the coverage that the District may carry. The Charter

School shall, at least twenty (20) days prior to the expiration of such policies, furnish the District with renewals or binders. The Charter School agrees that if the Charter School does not take out and maintain such insurance, then the District may (but shall not be required to) procure said insurance on the Charter School's behalf and charge the Charter School the premiums together with a 15% handling charge, payable upon demand. The Charter School shall have the right to provide such insurance coverage pursuant to blanket policies obtained by the Charter School provided such blanket policies expressly afford coverage to the Facilities and to the Charter School as required by this Agreement.

During the term of this Agreement, the District shall continue to maintain insurance against claims for injuries to persons or damages to property (real and personal, including any personal property of the District in amounts equal to that maintained by the District prior to the Charter School's occupancy.

19. Damage to or Destruction of School Site. The cost of restoring the Facilities under this Section shall be borne by the Non-Profit if the cause of the casualty is the negligence or intentional act of the Charter School, its employees, agents, students or invitees. The cost of restoring the Facilities under this Section shall be borne by the District if the cause of the casualty is the negligence or intentional act of the District, its employees, agents, or invitees. The Parties shall tender the cost of restoring the Facilities to their respective insurance carriers if the casualty is caused by a third party.

If the Facilities are damaged by any casualty which is covered under fire and extended coverage insurance carried by District, then District may restore such damage provided insurance proceeds are available to pay eighty percent (80%) or more of the cost of restoration and provided such restoration can be completed within ninety (90) days after the commencement of the work in the opinion of a registered architect or engineer appointed by District. In such event this Agreement shall continue in full force and effect, except that Charter School shall be entitled to proportionate reduction of use payments while such restoration takes place, such proportionate reduction to be based upon the extent to which the restoration efforts interfere with Charter School's business in the Facilities. The District shall provide the Charter School alternative space in the District for any part of the Charter School's program that is displaced by the partial damage and/or the repair work of the same. If the Charter Schools secures alternative space then there shall be no diminution in the use payments during the period of the restoration.

If the Facilities are totally destroyed (defined as the destruction of more than fifty percent (50%) of the usable classroom space) or the Facilities cannot be restored as required herein under applicable laws and regulations, notwithstanding the availability of insurance proceeds, then this Agreement shall be terminated effective the date of the damage. Immediately upon the effective date of the damage, the District must provide a reasonably equivalent school facility to the Charter School as soon as reasonable so as to avoid any interruption in the educational program of the Charter School.

20. Liens. Charter School shall keep the Facilities free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Charter School. Notwithstanding anything stated herein to the contrary, if the Charter School fails to promptly release and remove any such lien, District, at its sole option, may immediately (but shall not be obligated to) take all action necessary to release and remove such lien, without any duty to

investigate the validity thereof, and all sums, costs and expenses, including reasonable attorneys' fees and costs, incurred by District in connection with such lien shall be immediately due and payable by Charter School.

21. Holding Over. Charter School shall not remain in possession of the Facilities or any part thereof after the expiration of this Agreement or after termination thereof without the express written consent of District. Notwithstanding the foregoing, if the Charter School holds over, the Charter School shall pay the monthly Facilities Use Fee plus all other charges payable required by this Agreement. Any holdover by Charter School requires the Charter School and the Charter School to comply with all terms of this Agreement. A holdover by the Charter School shall not trigger any additional term. The District shall have the right to remove the Charter School at any time after the expiration of the Term or termination of this Agreement.
22. Assignment and Subletting. The Charter School may not assign its rights under this Agreement or sublet any portion of the Facilities without the prior written consent of the District.
23. Rules, Regulations and Law. The Charter School and the Charter School's agents, employees, students, visitors and invitees shall observe and comply fully and faithfully with all reasonable and nondiscriminatory policies, rules, and regulations adopted by the District for the care, protection, cleanliness, and operation of the Facilities, and the Facilities' furnishings and equipment, and shall comply with all applicable laws. The District will provide the Charter School with copies of the relevant written custodial and maintenance policies. The District will provide any such written policies that are amended during the term of the Agreement.
24. Default by Charter School. The occurrence of any one or more of the following events shall constitute a default and material breach of this Agreement by Charter School or the Non-Profit:
 - a. The failure by Non-Profit to utilize the Facilities for the sole purpose of operating the Charter School.
 - b. The failure by Charter School to make timely payments required under this Agreement, including but not limited to its obligation to pay its pro-rata share of facilities costs under Section 4 of this Agreement.
 - c. The failure by Non-Profit or the Charter School to observe or perform any of the material express covenants, conditions or provisions of this Agreement.
 - d. The revocation or non-renewal of the Charter School's Charter. Notwithstanding the foregoing, this Agreement shall not be terminated pursuant to this provision provided that the Charter School continues to operate in accordance with the terms of this Agreement and is diligently pursuing a statutory appeal of the revocation or nonrenewal of its charter. In the instance of a default pursuant to this Subsection (d), the District may impose the following remedy: The Facilities allocated to the Charter School shall revert back to District possession and use.

In the event of any material default or breach, as described in Subsection (a) or (b), the District may, but shall not be obligated to, terminate this Agreement and Charter School's right to possession of the Facilities upon fifteen (15) days written notice therefore to the Charter School

if the default is not cured within the fifteen (15) day period. In the event of any other material default or breach by Charter School, District may, but shall not be obligated to, terminate this Agreement and Charter School's right to possession of the Facilities upon thirty (30) days written notice thereof to the Charter School if the default is not cured within the thirty (30) day period. If the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period, the Charter School shall not be in default if Charter School shall within such thirty (30) day period commence such cure and thereafter, diligently prosecute the same to completion. In no event shall such period to cure exceed sixty (60) days.

Upon termination, District shall retain the right to recover from Charter School, without limitation, any amounts due under this Agreement or applicable law. In the event of termination by the District by reason of Charter School default or breach of this Agreement, the District shall not be obligated to provide facilities to the Charter School pursuant to Proposition 39 for the remainder of that school year.

25. Waiver. The waiver by either party of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of any charge hereunder by District or payment of any charge by Charter School shall not be deemed to be a waiver of any preceding default by Charter School or District of any term, covenant or condition of this Agreement, other than the failure of the Charter School to pay the particular charge so accepted, regardless of District's knowledge of such preceding default at the time of the acceptance of such charge.
26. Successors and Assigns. The covenants and conditions herein contained, subject to the provisions as to assignment, apply and bind the heirs, successors, executors, administrators and assigns of the parties hereto.
27. Dispute Resolution. The Parties agree to attempt to resolve all disputes regarding this Agreement, including the alleged violation, misinterpretation, or misapplication of the Agreement, pursuant to the dispute resolution procedures identified in the Charter School's charter. Notwithstanding the foregoing, those disputes that may result in revocation of Charter School's charter, pursuant to Education Code section 47607, are not required to go through the dispute resolution process.
28. Amendment. No provision of this Agreement may be amended or modified except by an agreement in writing signed by the parties hereto.
29. Construction. Each of the parties acknowledges and agrees that this Agreement is to be construed as a whole according to its fair meaning and not in favor of nor against any of the parties as draftsman or otherwise.
30. Venue. Any action or proceeding by any party to enforce the terms of this Agreement shall be brought solely in the Superior Court of the State of California for the County of Contra Costa.
31. Applicable Law. This Agreement shall be governed by and interpreted under the laws of the State of California applicable to instruments, persons, transactions and subject matter that have legal contacts and relationships exclusively within the State of California.

32. Severability. If any provision or any part of this Agreement is for any reason held to be invalid, unenforceable or contrary to public policy, law, or statute and/or ordinance, the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.
33. Prevailing Authority. In the event of a conflict between the law and the terms of this Agreement, the law shall prevail, and any such conflicting terms shall be severed from this Agreement and nullified. In the event of a conflict between the terms of the Charter and the terms of this Agreement, the terms of this Agreement shall prevail. The parties shall meet and confer to determine how to correct any conflicts so this Agreement complies with the Charter.
34. No Admission. Except as expressly agreed herein, nothing contained herein shall constitute an admission of fact or law.
35. Binding Obligation. The Non-Profit expressly agrees that this Agreement is a binding obligation on the Non-Profit and the Charter School and the District agrees that this Agreement is a binding obligation on the District.
36. Prior Agreements. This Agreement contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Agreement, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose.
37. Subject to Approval by Governing Board. This Agreement shall become effective upon ratification by the District’s Governing Board.
38. Notices. All notices and demands that may be or are to be required or permitted to be given by either Party to the other hereunder shall be in writing. All notices and demands by the District to the Non-Profit or the Charter School shall be sent by United States Mail, postage prepaid, addressed to the Non-Profit or Charter School at the address set forth below. All notices and demands by the Non-Profit and/or Charter School to the District shall be sent by United States Mail, postage prepaid, addressed to the District at the address set forth below.

To the District:
[INSERT]

To Non-Profit or Charter School:
[INSERT]
39. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement. Signatures transmitted via facsimile or portable document format (“pdf”) to other Parties to this Agreement shall be deemed equivalent to original signatures on counterparts.
40. Warranty of Authority. Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party indicated, and each of the parties by signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.

**DRAFT – SUBJECT TO NEGOTIATION AND REVISION
V.1**

Non-Profit and Charter School District

By: _____

By: _____

Date: _____

Date: _____

Approved and ratified this _____ day of _____, 2020, by the Board of Trustees of the Mt. Diablo Unified School District by the following vote:

AYES:

NOES:

Abstentions:

Secretary to the Board of Trustees

**DRAFT – SUBJECT TO NEGOTIATION AND REVISION
V.1**

**EXHIBIT A –
CHARTER SCHOOL PROPOSITION 39 WRITTEN REQUEST**

**DRAFT – SUBJECT TO NEGOTIATION AND REVISION
V.1**

**EXHIBIT B –
FACILITY USE COVERED BY THE AGREEMENT**

**DRAFT – SUBJECT TO NEGOTIATION AND REVISION
V.1**

**EXHIBIT C –
FACILITY USE FEE CALCULATION**

EXHIBIT E



FY 2019/20 Facility Use Fees for Clayton Valley Charter High School

Facility Costs per square foot calculation for charter school billing purposes

Based on 2019/20 Adopted Budget				
	Resource	Function	Object	
1	0000-1999	8100-8999	1000-7999	\$ 22,881,883.00
	RRM Contrib	8150	0000 8980	10,879,080.00
	DM Contrib	F14	0000 8915/19	-
	Total facilities expenses			\$ 33,760,963.00
				-
2				District Wide square footage incl ext 33,534,230.40
				Cost per square foot per year 1.00676123
3				Charter Space square footage, including exterior 1,744,789.20
				Total Reserved for MDUSD Use (Radio Station Production & Broadcast rooms) (3,273.00)
				All Square Footage in use 1,741,516.20
				\$
4				Cost per 2019-20 of charter space 1,753,290.99

		Square Feet
A1	CL	1,075
A2	CL	1,075
A3	CL	1,321
A4	CL	1,065
A5	CL	1,321
A6	CL/Comp	1,124
A7	CL	1,075
A8	CL/Lab	1,125
A9	CL	1,075
A10	CL/Lab	835
B1	CL	828
B2	CL	828
B3	CL	828
B4	CL	828

District Reclaiming - Radio Station Production Room

B5	CL	828
B6	CL	828
B7	CL	828
B8	CL	828
B9	CL	828
B10	CL	828
B11	CL	828
B12	CL	954
B13	CL	836
C1	CL	836
C2	CL	836
C3	Production	1,065
C4	CL	828
C5	Staff	1,420
C6	CL	828
C7	CL	828
C8	CL	828
C9	CL	828
C10	CL	828
C11	CL	836
C12	CL	828
C14	CL	836
D1	CL/SciLab	1,243
D2	CL/Home	1,427
D3	CL/SciLab	1,243
D4	CL	1,420
D5	CL/SciLab	1,243
D6	CL/SciLab	1,243
D8	CL/SciLab	1,250
E1	CL	836
E2	CL	836
E3	CL	828
E4	CL	828
E5	CL	828
E6	CL/SciLab	828
E7	CL	828
E8	CL/SciLab	1,243
E9	CL	828
E10	CL/SciLab	1,243
E11	CL	828
E13	CL	836
F2	CL	866
F4	CL	859
F6	CL	859
F8	CL	859
F10	CL	859
F12	CL/Wt	859
F14	CL/Wt	866
H1	CL	960
H2	CL	960

District Reclaiming-Radio Broadcast Classroom

H3	CL	960
H4	CL	960
H5	CL	960
H6	CL	960
H7	CL	960
H8	CL	960
H9	CL	960
I1	CL	960
I2	CL	960
J1	CL	960
J2	CL	960
L100	CL	1,440
L200	CL	1,400
Sci Prep	CL	432
M1	CL	1,620
M2	STAGE	3,240
M3	CL	1,620
S1	CL	1,760
S2	CL	2,208
S3	CL	3,312
S4	CL	3,864
S5	CL	2,208
S6	CL	4,128
BATH	SHARED	2,300
BOILER	SHARED	1,656
GYM	SHARED	10,290
GYL-L	SHARED	5,400
KTCH	SHARED	2,600
LKRB	SHARED	7,583
LKRG	SHARED	5,178
LIBR	SHARED	4,356
MU	SHARED	6,775
OFC	SHARED	6,017
Other	SHARED	<u>16,463</u>
		167,830
Ttl SF		
CL		99,252.00
Ttl # CL		87
Avg SF		
CL		1140.83