



OFFICE OF CHARTER SCHOOLS

April 8, 2020

Krishna Feeney
Urban Montessori
5228 Brann St
Oakland, CA 94619

Re: Proposition 39 Facilities Request for 2020-21
Final Offer of Facilities, 2020-21

Dear Krishna Feeney:

The Oakland Unified School District (“OUSD” or “District”) makes this Final Offer of Facilities to Urban Montessori (“Charter School”) for the 2020-21 school year.

The District has considered the Charter School’s request for facilities under the criteria set forth in Proposition 39 and its implementing regulations (“Proposition 39”).¹

A. 2020-21 FINAL OFFER TO THE CHARTER SCHOOL

The District’s allocation of space is based on a projected in-District Average Daily Attendance (“ADA”) of **351.32**.

The District makes its Final Offer to the Charter School as follows:

1) **Tilden/John Swett**: If, and only if: a) Roses in Concrete Charter School is non-renewed for the charter term beginning with the 2020-21 school year, meaning that Roses in Concrete Charter School has exhausted all administrative appeals under Education Code section 47605(j) from the nonrenewal of its charter; and b) the existing Facilities Use Agreement (“FUA”) with Roses in Concrete Charter School for this school site, as well as its right to continued occupation of the site, terminates by July 8, 2020, the District’s Final Offer to the Charter School consists of space at the following school site:

Tilden/John Swett
4551 Steele St, Oakland, CA 94619

At the time of this Final Offer, the State Board of Education’s renewal appeal decision for the school is pending.

2) **Santa Fe Campus**: If, and only if, Roses in Concrete’s renewal appeal continues to be pending and/or unresolved as of July 8, 2020; or if Roses in Concrete’s renewal appeal is approved by the State Board of Education as of July 8, 2020, the District’s Final Offer to the Charter School will consist of 17 classrooms at the following school site:

Former Santa Fe Elementary School Site
915 54th Street, Oakland, CA 94608

¹ Cal. Ed. Code § 47614; Cal. Admin. Code, title 5, §§ 11969.1, *et seq.*



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The Charter School has advised the District on multiple occasions, including after a site visit to the Santa Fe campus, that the 17 classrooms are sufficient for this offer. The Charter School is also aware that they would be sharing the Santa Fe site with one or more District special education programs.

If necessary, the District will provide temporary storage for the Charter School between the end of its occupation of the Sherman campus and the start of its occupation of the Santa Fe campus for the 2020-21 school year.

The Charter School’s allocation of space at the Tilden/John Swett site is summarized in section C below. The location of the exclusive use space offered to the Charter School in this Final Offer is depicted in the diagrams attached as Exhibit A. This Final Offer is based on the District’s Final ADA projections. As such, the space to which the Charter School is entitled, including the number of allocated classrooms, may have changed slightly from that which was indicated in the Preliminary Offer.

The District provides the contingent Final Offer at the Santa Fe site in response to the Charter School’s expressed desire for a single, contiguous site, and its stated preference to be offered the Tilden/John Swett site. The District provides this contingent Final Offer to provide flexibility in light of the Charter School’s stated preference for the Tilden/John Swett site as a single, contiguous site; the uncertainty caused by Roses in Concrete’s pending appeal from its nonrenewal; and as a means to ensure that the Charter School obtains an offer of reasonably equivalent, contiguous facilities. The District has conferred with the Charter School before the issuance of this Final Offer and has obtained the Charter School’s assent to both the contingent nature of this offer, as well as to the identification of the 17 classrooms at the Santa Fe site as an alternative.

B. COMPARISON GROUP

The Charter School’s facilities space entitlement is based on space provided to students at a set of District-operated comparison schools.² The District must first identify the high school attendance area in which the largest number of in-District charter school students reside, which for the Charter School is the Castlemont/CCPA/Madison Upper attendance area. Details about the determination of the Charter School’s high school attendance area can be found in Table 1 below.

Table 1: High School Attendance Area

High School Attendance Area	# of Students
Castlemont/CCPA/Madison Upper	83
Fremont	79
Skyline	70
Oakland Tech	62
Oakland High	25
McClymonds	12

The District then identified “the 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.”³ Using the methodology in the regulations, the District determined that the comparison group schools for the Charter School are as follows:

- **TK-5:** ACORN Woodland ES, Brookfield, Burckhalter ES, Community United ES, East Oakland Pride, EnCompass Academy, Esperanza ES, Fred T. Korematsu, Futures ES, Greenleaf, Howard ES, Madison

² Cal. Admin. Code, title 5, § 11969.3

³ Cal. Admin. Code tit. 5, § 11969.3(a)(2)



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- Park Academy TK-5, Markham ES, New Highland Academy, Parker ES, Reach Academy, RISE
- **6-8:** Coliseum College Prep Academy, Elmhurst United MS, Frick, Greenleaf, Madison Park Academy 6-12, Parker

C. REASONABLE EQUIVALENCE EVALUATION

In order to meet Proposition 39 standards that proposed facilities are “reasonably equivalent,” the District compares the proposed facilities to District-operated schools constituting the comparison school group. The District has considered capacity, condition, location, and other relevant factors, using as a point of reference the comparison group schools identified above.⁴

With respect to “capacity”, the District allocates facilities to the Charter School that are reasonably equivalent to the comparison group in the categories of facilities listed below:

- Ratio of teaching stations (classrooms) to average daily attendance (“ADA”)
- Specialized classroom space if such facilities are available to the district comparison group (e.g., science laboratories)
- Non-teaching space, which the district can share with the charter school (e.g., administrative, kitchen, multi-purpose, and/or play area space)

C1. Capacity - Exclusive-Use Classrooms (Non-Specialized)

C1a. Classroom Entitlement

The District has determined the number of classrooms (excluding specialized classroom space) the Charter School is entitled to based on the number of classrooms (non-specialized) “provided to” District students at the comparison group schools.

The District complied with Cal. Admin. Code tit. 5, § 11969.3(b)(1) by consulting the “classroom inventory pursuant to Sections 1859.31 and 1859.32 ... on the Form SAB 50-02.”⁵ A copy of Form SAB 50-02 is linked as Exhibit D. The District notes that Form SAB 50-02 only lists the aggregate number of classrooms by grade range within each high school attendance area, without breaking down and identifying the number of classrooms by District school. Therefore, Form SAB 50-02 does not, by itself, disclose the number of classrooms “provided to” District students at individual District schools. To determine the number of classrooms “provided to” District students at District schools, the District has taken the additional step of creating an updated inventory of actual classroom utilization at each comparison group school using data that was provided by a contracted third party vendor (MKThink) to OUSD. That inventory is provided as Exhibit C.

Based on the number of classrooms (non-specialized) “provided to” District students at the comparison group schools, the District determined the ADA-to-classroom ratio at the comparison group schools as 15.66 per classroom for grades TK-5 and 17.91 per classroom for grades 6-8, as demonstrated in the tables below.

Table 2a: Classroom Entitlement Calculation for Grades TK-5

Comparison School(s) Serving TK-5			
High School Attendance Area: Castlemont/CCPA/Madison Upper			
School Name	Projected ADA (Non-SDC)	Classrooms Provided	ADA per Classroom

⁴ Cal. Admin. Code tit. 5, §11969.3(c)

⁵ Cal. Admin. Code tit. 2, s 1859.30



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		(Non-Specialized)	
ACORN Woodland ES	268.69	12	22.39
Brookfield	154.95	17	9.11
Burckhalter ES	172.29	12	14.36
Community United ES	288.75	17	16.99
East Oakland Pride	305.04	24	12.71
EnCompass Academy	314.88	15	20.99
Esperanza ES	364.50	21	17.36
Fred T. Korematsu	180.75	10	18.08
Futures ES	297.71	18	16.54
Greenleaf	610.50	31	19.69
Howard ES	128.60	11	11.69
Madison Park Academy TK-5	235.49	17	13.85
Markham ES	276.03	27	10.22
New Highland Academy	320.78	22	14.58
Parker ES	227.97	19	12.00
Reach Academy	380.02	18	21.11
RISE	201.10	13	15.47
A. Average Entitlement Ratio (ADA per Classroom):			15.66
B. Charter School's Projected TK-5 ADA:			301.64
Number of TK-5 classrooms charter is entitled to: (Row B / Row A)			19.20

Table 2b: Classroom Entitlement Calculation for Grades 6-8

Comparison School(s) Serving 6-8			
High School Attendance Area: Castlemont/CCPA/Madison Upper			
School Name	Projected ADA (Non-SDC)	Classrooms Provided (Non-Specialized)	ADA per Classroom
Coliseum College Prep Academy	569.52	33	17.26
Elmhurst United MS	637.33	31	20.56
Frick	291.11	15	19.41
Greenleaf	610.50	31	19.69
Madison Park Academy 6-12	649.54	35	18.56
Parker ES	227.97	19	12.00
A. Average Entitlement Ratio (ADA per Classroom):			17.91
B. Charter School's Projected Gr. 6-8 ADA:			49.68

Number of Gr. 6-8 classrooms charter is entitled to: (Row B / Row A)	2.77
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Table 3: Total Classroom Entitlement Summary by Grade Span

Grade Span	Classroom Entitlement
TK-5	19.20
6-8	2.77
Total	21.97

The District’s calculation of the Charter School’s classroom entitlement shows that the Charter School is entitled to an allocation of 22 (rounded up from 21.97) classrooms.

C1b. Classroom Allocation

The Charter School’s allocation of exclusive-use classrooms is summarized in Table 4 and Table 5 below. The location of the exclusive-use classrooms offered to the Charter School in this Final Offer is depicted in the diagrams attached as Exhibit A.

Table 4: Exclusive-Use Classroom (Non-Specialized) Allocation Summary

School Site	Total Classrooms
Tilden/John Swett	22
Total	22

Table 5: Exclusive-Use Classroom Allocation

School Site	Room # (See location on Exhibit A)
Tilden/John Swett	8
Tilden/John Swett	9
Tilden/John Swett	10
Tilden/John Swett	11
Tilden/John Swett	PPA
Tilden/John Swett	PPB
Tilden/John Swett	PPC
Tilden/John Swett	PPD
Tilden/John Swett	PPE
Tilden/John Swett	PPF
Tilden/John Swett	PPG
Tilden/John Swett	PPH
Tilden/John Swett	PPI
Tilden/John Swett	PPJ
Tilden/John Swett	P08
Tilden/John Swett	P09
Tilden/John Swett	P10
Tilden/John Swett	P13



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Tilden/John Swett	P14
Tilden/John Swett	P15
Tilden/John Swett	P16
Tilden/John Swett	P17

C2. Capacity – Specialized Classroom Space

The Proposition 39 regulations⁶ require access to specialized classroom space based on three factors:

1. The grade levels of the charter school’s in-District students;
2. The charter school’s total in-District classroom ADA; and
3. The per-student amount of specialized classroom space in the comparison group schools.

Specialized Classroom Space (SCS) has been divided into three categories: Science, Art and Technology.

C2a. Specialized Classroom Space Entitlement

The District has determined the amount of Specialized Classroom Space (SCS) the Charter School is entitled to access based on the amount of SCS provided to District students at the comparison group schools. From that list, the District determined the SCS sqft-to-ADA ratios at the comparison schools as demonstrated in the tables below. Detailed data related to the specific SCS present at District sites is provided in Exhibit C.

Table 6a: SCS Entitlement Calculation for Grades TK-5

Comparison School(s) Serving TK-5				
High School Attendance Area: Castlemont/CCPA/Madison Upper				
School Name	Projected ADA (Non-SDC)	Specialized Classroom Space Provided (sqft)/ADA		
		Arts Specialized Classroom Space Provided (sq ft)	Science Specialized Classroom Space Provided (sq ft)	Tech Specialized Classroom Space Provided (sq ft)
ACORN Woodland ES	268.69	1.16	2.96	0.00
Brookfield	154.95	0.00	4.03	2.42
Burckhalter ES	172.29	0.00	0.00	5.15
Community United ES	288.75	0.00	0.00	0.00
East Oakland Pride	305.04	2.45	3.17	0.00
EnCompass Academy	314.88	1.16	2.96	0.00
Esperanza ES	364.50	1.41	0.00	1.41
Fred T. Korematsu	180.75	1.41	0.00	1.41
Futures ES	297.71	0.00	0.00	0.00
Greenleaf	610.50	0.00	0.00	0.00
Howard ES	128.60	0.00	3.27	3.27
Madison Park Academy TK-5	235.49	0.00	0.00	0.00
Markham ES	276.03	3.42	3.08	3.00
New Highland Academy	320.78	1.78	1.50	0.00
Parker ES	227.97	0.00	0.00	3.63
Reach Academy	380.02	1.86	1.85	1.02

⁶ Cal. Admin. Code title 5, § 11969.3(b)(2)



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RISE	201.10	1.78	1.50	0.00
Average Entitlement Ratio (sqft/ADA):		0.97	1.43	1.25
Charter School's Projected TK-5 ADA:		301.64	301.64	301.64
TK-5 specialized classroom space (sq ft) charter is entitled to:		292.59	431.35	377.05

Table 6b: SCS Entitlement Calculation for Grades 6-8

Comparison School(s) Serving 6-8				
High School Attendance Area: Castlemont/CCPA/Madison Upper				
School Name	Projected ADA (Non-SDC)	Specialized Classroom Space Provided (sqft)/ADA		
		Arts Specialized Classroom Space Provided (sq ft)	Science Specialized Classroom Space Provided (sq ft)	Tech Specialized Classroom Space Provided (sq ft)
Coliseum College Prep Academy	569.52	3.35	17.32	3.05
Elmhurst United MS	637.33	2.87	4.07	0.00
Frick	291.11	7.50	22.53	3.55
Greenleaf	610.50	0.00	0.00	0.00
Madison Park Academy 6-12	649.54	5.87	4.68	0.00
Parker ES	227.97	0.00	0.00	3.63
Average Entitlement Ratio (sqft/ADA):		3.27	8.10	1.71
Charter School's Projected Gr. 6-8 ADA:		49.68	49.68	49.68
Gr. 6-8 specialized classroom space (sq ft) charter is entitled to:		162.45	402.41	84.95

The District's calculation of the Charter School's SCS entitlement shows that the Charter School is entitled to access to approximately 455 sqft of Arts SCS, 834 sqft of Science SCS, and 462 sqft of Technology SCS.

C2b. Specialized Classroom Space Allocation

The amount of SCS available on the offered school site is summarized in Table 7 below. As detailed above, the Charter School is entitled to access approximately 1,751 sq ft of SCS across the three categories. Although no separately-designated SCS is being allocated because none exists at the offer site, this site is both in the geographic area that the Charter School requested and the Charter School would be the only school on the site. Detailed data related to the specific SCS present at District sites is provided in Exhibit C.

Table 7: Specialized Classroom Space (SCS) Existing at the Offer Site(s)

School Site	Arts SCS (sq ft)	Science SCS (sq ft)	Tech SCS (sq ft)	Total SCS (sq ft)
Tilden/John Swett	0	0	0	0

C3. Capacity – Non-Classroom Space



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C3a. Non-Classroom Space Entitlement

As shown in the tables below, the District calculated the total amount of non-classroom space, as defined in the regulations, to which the Charter School is entitled based on the non-classroom square footage per ADA at each of the comparison group schools.⁷ Non-Classroom Space (NCS) has been divided into four categories: Auditorium-Cafeteria-Multipurpose Room-Gym, Other Interior Rooms, Operational, and Exterior. The calculation of non-classroom space at District sites is included in Exhibit C.

Table 8: Non-Classroom Space (NCS) Sqft/ADA Entitlement

Comparison School(s) Serving TK-5 and 6-8					
High School Attendance Area: Castlemont/CCPA/Madison Upper					
School Name	Projected Total ADA (incl. SDC)	Auditorium-Cafeteria-MPR-Gym (sq ft)/ADA	Other Interior Room (sq ft)/ADA	Operational (sq ft)/ADA	Exterior (sq ft)/ADA
ACORN Woodland ES	269.65	10.65	14.07	36.55	550.12
Brookfield	184.24	25.32	31.37	58.03	1,106.94
Burckhalter ES	189.98	27.17	40.23	58.74	496.92
Community United ES	294.38	15.41	14.53	33.91	351.35
East Oakland Pride	329.59	24.91	19.02	46.45	987.10
EnCompass Academy	314.88	10.65	14.07	36.55	550.14
Esperanza ES	374.02	8.77	21.54	14.46	526.64
Fred T. Korematsu	204.85	8.77	21.54	14.46	526.68
Futures ES	297.71	15.41	14.52	33.91	351.33
Greenleaf	610.50	*	*	*	*
Howard ES	150.65	14.16	22.60	30.21	906.88
Madison Park Academy TK-5	235.49	14.44	30.06	41.08	605.89
Markham ES	277.87	12.42	16.81	59.27	303.96
New Highland Academy	320.78	7.58	10.44	24.04	207.24
Parker ES	232.60	29.75	37.94	66.66	411.68
Reach Academy	380.94	8.29	9.46	26.15	138.89
RISE	201.10	7.58	10.44	24.03	207.20
Coliseum College Prep Academy	599.89	24.95	13.76	59.69	273.43
Elmhurst United MS	675.21	27.54	24.25	47.94	484.22
Frick	320.32	41.86	36.96	98.31	650.79
Madison Park Academy 6-12	663.83	19.45	19.27	44.99	828.37
Average Entitlement Ratio (sqft/ADA):		17.75	21.14	42.77	523.29
Charter School's Projected ADA:		351.32	351.32	351.32	351.32

⁷ Cal. Admin. Code title 5, § 11969.3(b)(3).



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NCS (sq ft) charter is entitled to:	6,236	7,427	15,026	183,842
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*The available Non-Classroom Space data for Greenleaf Elementary is outdated due to major renovations at the site in recent years. Therefore, this data was excluded from the calculation of Non-Classroom Space entitlement.

C3b. Non-Classroom Space Allocation

The Charter School’s Non-Classroom Space allocation is summarized below.

Table 9: Non-Classroom Space (NCS) Allocation Summary

Site	Projected Charter ADA at Site	NCS Type			
		Auditorium-Cafeteria-MPR-Gym (sq ft)	Other Interior (sq ft)	Operational (sq ft)	Exterior (sq ft)
Tilden/John Swett	351.32	3,337	1,290	7,553	209,655

Table 10 below summarizes the Charter School’s overall Non-Classroom Space allocation, compared to the Non-Classroom Space to which the Charter School is entitled.

Table 10: Non-Classroom Space (NCS) Sqft/ADA Allocation vs. Entitlement

	NCS Type			
	Auditorium-Cafeteria-MPR-Gym (sq ft)	Other Interior (sq ft)	Operational (sq ft)	Exterior (sq ft)
Total NCS Allocation	3,337	1,290	7,553	209,655
Total NCS Entitlement	6,236	7,427	15,026	183,842

The District calculates the sqft/ADA for Non-Classroom Space to determine the reasonable equivalence standards for this category of space at the comparison group schools. A charter school’s allocation is considered to fall within reasonable equivalence standards if it is commensurate with the average of the sqft/ADA ratios at the comparison group schools. As shown in the table above, the Charter School’s allocation is higher than the comparison group average for one of four Non-Classroom Space categories. Although the allocation for the auditorium-cafeteria-MPR-gym, other interior, and operational categories are below the entitlement, this is due to a lack of this type of space at the Tilden/John Swett campus. However, the Charter School has expressed a desire to be located at a single, contiguous site, which this offer allows, and the Charter School has expressed interest in this particular site. Furthermore, since the Charter School is being allocated other types of Non-Classroom Space in excess of its entitlement, the District believes it has met its obligation with regards to Non-Classroom Space.

The District also will offer the Charter School reasonably equivalent furnishings and equipment for **351.32** ADA.

C4. Condition

With respect to “condition”, the District allocates facilities to the Charter School that are comparable to the comparison group considering the characteristics outlined in Table 11 below.

Table 11: Facility Characteristics to Determine Reasonable Equivalence of Condition



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Facility Characteristic	Reasonable Equivalence Category	Regulatory Authority
School site size	Condition	C.C.R., tit. 5, § 11969.3(c)(1)(A)
Condition of interior and exterior surfaces	Condition	C.C.R., tit. 5, § 11969.3(c)(1)(B)
Mechanical, plumbing, electrical, and fire alarm systems in condition and conformity to applicable law	Condition	C.C.R., tit. 5, § 11969.3(c)(1)(C)
Availability and condition of technology resources	Condition	C.C.R., tit. 5, § 11969.3(c)(1)(D)
Overall learning environment qualities (e.g., lighting, noise mitigation, and/or size for intended use)	Condition	C.C.R., tit. 5, § 11969.3(c)(1)(E)
Furnishings and equipment	Condition	C.C.R., tit. 5, § 11969.3(c)(1)(F)
Condition of athletic fields and/or play area space	Condition	C.C.R., tit. 5, § 11969.3(c)(1)(G)

The District has evaluated the offered site(s) against the comparison school group based on site size (acreage) as well as data on the condition of the facilities based on information available from the Facilities Condition Index and Educational Adequacy Score, as part of the Jacobs Study provided in Exhibit B.

Per the Jacobs study, the Facility Condition Index (FCI) is an industry-accepted indicator that measures a relative scale of the overall condition of a given facility or group of facilities within a portfolio. The FCI evaluates each building’s overall condition, including its site, roof, structural integrity, the exterior building envelope, the interior, and the mechanical, electrical, and plumbing systems. The index is derived by dividing the total repair cost, including educational adequacy and site-related repairs, by the total replacement cost of the facility.

The Educational Adequacy Score (EAS) is intended to measure the degree to which OUSD facilities support the instructional mission and modern instruction methods. The EAS is based on District specifications and Jacobs best practices and standards from previous experience, which are both informed by national standards developed by or observed by the Jacobs team. There are eight educational adequacy categories: instructional support, technology, security and supervision, capacity, support for programs, physical characteristics, learning environment, and relationship of spaces. The study gave special consideration and review to the District’s instructional technology infrastructure.

The District’s analysis, found in the table below, shows that the site offered to the Charter School is similar to the comparison school group on overall condition. The site acreage, FCI, and EAS of the offered site are similar to the comparison school average. Therefore, based on the data available to the District, the District has concluded that the facilities offered to the Charter School meet the reasonable equivalence standards under the category of “condition.”

Table 12: School Site Condition Analysis, Comparison Sites vs Offer Site(s)

School Name			



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	School Site Size (acreage)	Facilities Condition Index*	Educational Adequacy Score**
Bridges Academy	2.47	24%	43.1
Global Family	4.29	22%	53.2
Horace Mann ES	2.63	57%	48.2
International Community School	7.71	27%	70.7
Life Academy	6.33	43%	53.9
Melrose Leadership Academy	3.4	78%	45.8
Think College Now	7.71	27%	70.7
United For Success Academy	6.33	43%	53.9
Urban Promise Academy	3.92	21%	50.9
Comparison School Average	4.98	38%	54.49
Offer Site: Tilden/John Swett	5.68	37%	45.40

* A higher FCI is indicative of a lower quality condition.

** A higher EAS score is indicative of a higher level of educational adequacy.

D. RESPONSE TO CHARTER SCHOOLS FEBRUARY 28, 2020 LETTER

The District addresses the Charter School’s response to the District’s Preliminary Offer of Facilities.⁸

Charter School’s ADA Projections: The District is allocating space in accordance with the Charter School’s ADA projections.

Site Location: The Charter School stated its “strong, first preference would be to be located in a single, contiguous site that is centrally located and easily accessible to 580.”

The District provided the Charter School a Preliminary and Final Offer that includes space at the Tilden/John Swett site, which is in close vicinity to the Charter School’s current location, would grant the Charter School exclusive access to a site, and is located in the Charter School’s area of geographic preference in relation to Interstate 580.

Contingent Offer: The Charter School’s concerns regarding the contingent nature of the Preliminary Offer (February 28, 2020 letter, p. 2) have been resolved through the issuance of this contingent Final Offer after consultation with the Charter School (see p. 1, above).

Condition Analysis: The Charter School’s only objection to the District’s “condition” analysis is its description of the location of the data in the Jacobs report extracted by the District on the condition of the comparison group schools (February 28, 2020 letter, p. 3). However, the Charter School does not demonstrate how the condition analysis or the facilities offered to the Charter School might have been impacted. Therefore, the District concludes that it has conducted the comparison group condition analysis in compliance with Proposition 39 and its implementing regulations.

Non-Contiguous Offer: The Charter School objects to the District’s Board Resolution No. 1920-0075 upon the allegation that “the District is clearly favoring its own programs” (February 28, 2020 letter, p. 4) without citing

⁸ Per Cal. Admin. Code, title 5, §11969.9(h)



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any factual support for this allegation. California courts have recognized that school districts are not obligated to ignore the potential impact of meeting Proposition 39 obligations on district students and programs. (See, e.g., *Westchester Secondary Charter School v. Los Angeles Unified School District* (2015) 237 Cal.App.4th 1226 (“the law requires the District to treat charter and noncharter students fairly, but not favor one group over the other”); see also, *Los Angeles Intern. Charter High School v. Los Angeles Unified School Dist.* (2012) 209 Cal.App.4th 1348.) As the court in *Ridgecrest v. Sierra Sands Unified School District* (2005) 130 Cal.App.4th 986, 1001 (n. 16) established, “[c]harter school students are not entitled to better facilities choices than other district resident pupils.”

The Charter School’s argument is also undermined by the fact that the District at no time issued an offer to allocate non-contiguous facilities to the Charter School for the 2020-21 school year. The Charter School’s argument that the District disregarded the Charter School’s location preference is also undermined by the fact that the District is offering the Charter School facilities at a location consistent with the Charter School’s stated desire for “a single, contiguous site that is centrally located and easily accessible to 580 and would allow the school to grow” (Charter School Request for Facilities, p. 4).

Classroom to ADA Ratio: The Charter School accuses the District of using an “arbitrary and fabricated formula” consisting of a “loading standard” in determining the Classroom to ADA ratio (February 28, 2020 Response to Preliminary Offer, p. 5). However, this allegation is not supported by the actual methodology used by the District. The Charter School points to no specific examples to support its allegations that the District’s methodology is “opaque,” or lacks “transparency,” or that it used a “loading standard” (February 28, 2020 Response to Preliminary Offer, p. 7). The data supporting the District’s Classroom to ADA calculations are contained in Tables 2a, 2b and 3, and the data provided in Exhibit C. Because the District’s calculation of 15.66 A.D.A. per classroom for TK-5 and 17.91 for 6-8 are well below the LCFF class size limit of 24:1, the Charter School has not demonstrated that the District violated Proposition 39 or its implementing regulations.

Specialized Teaching Space and Non-Teaching Space: The Charter School objects to the District’s allocation of Specialized Teaching Space by arguing that the District failed to identify the space to be allocated to the Charter School (February 28, 2020 Response to Preliminary Offer, p. 12). However, as noted above, the District’s Final Offer includes a contiguous, single site that the Charter School has expressed interest in despite the fact that the site does not have any designated Specialized Teaching Space.

The Charter School also contends that the District is prohibited from aggregating different categories of Specialized Teaching Space, or “[a]llocating general education classrooms to meet [the] obligation” to provide Specialized Teaching Space. (February 28, 2020 Response to Preliminary Offer, p. 12.) However, the Proposition 39 regulations do not prohibit either practice. In any event, the District’s Preliminary and Final Offer to the Charter School did neither of these practices.

Non-Teaching Space: The Charter School’s primary contention is that the District did not account for, or allocate, space for the Charter School’s special education program (February 28, 2020 Response to Preliminary Offer, p. 13). In this Final Offer, under the Non-Classroom Space allocation, the District is offering interior rooms that could be used for special education programming (e.g., pull-out programming).

The Charter School contended that the District impermissibly “lumps together” categories of Non-Teaching Space (February 29, 2020 Response to Preliminary Offer, p. 15). Although the District believes this practice



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was consistent with the regulations, it is now separating the Non-Classroom Space allocation into several categories of Non-Classroom Space.

Calculation of Pro-Rata Share: The Charter School contests the District's inclusion of the following categories of facilities costs in its calculation of the pro-rata share: RMMA Transfer, Police Services, Insurance, and Emergency Debt Services Costs (February 28, 2020 Response to Preliminary Offer, pp. 15-17). The District's calculation of the pro-rata share was affirmed by the Court in *California Charter Schools Association v. Oakland Unified School District*, Alameda Superior Court Case No. RG16806690, when the Hon. Ioana Petrou, now a justice with the California Court of Appeal, granted the District Summary Adjudication on the California Charter Schools Association's (CCSA's) Twelfth and Thirteenth Causes of Action, rejecting CCSA's argument that the District was prohibited from including each category of facilities costs in its calculation of the pro-rata share. Therefore, the District's calculation of the pro-rata share complied with the Proposition 39 regulations.

Facilities Use Agreement: Should the Charter School provide a written intent to occupy the facilities in this Final Offer, the parties shall negotiate the proposed Facilities Use Agreement provided with the District's offers.

E. FINAL FACILITIES OFFER – OTHER TERMS AND CONDITIONS

E1. Pro-Rata Share

The calculation of the pro-rata share of facilities costs is attached as Exhibit E and the Charter School's fees and payment schedule is attached as Exhibit F.

E2. Overallocation Fee

In the event that the District overallocates facilities to a charter school based on the charter school's overprojection of ADA for a school year, the Charter School will incur an overallocation penalty.

Space is considered overallocated⁹ if:

1. The Charter School's actual in-District classroom ADA is less than the projection upon which the facility allocation was based; and
2. The difference is greater than or equal to either (a) 25 ADA, or (b) 10% of projected in-District classroom ADA, whichever is greater.

The penalty for overallocation is calculated as follows:

The per-pupil rate for over-allocated space shall be equal to the statewide average cost avoided per pupil set pursuant to Education Code section 42263 for 2005-06, adjusted annually thereafter by the CDE by the annual percentage change in the general-purpose entitlement to charter schools calculated pursuant to Education Code section 47633, rounded to the next highest dollar, and posted on the CDE Web site. The reimbursement amount owed by the charter school for over-allocated space shall be equal to (1) this rate times the difference between the charter school's actual in-district classroom ADA and the projected in-district classroom ADA upon which the facility allocation was based, less (2) this rate times one-half the threshold ADA.

Please be advised that, in the event that the District overallocates facilities based upon the Charter School's

⁹ Cal. Admin. Code tit. 5, § 11969.8



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overprojection of ADA, the District will exercise its rights under the Proposition 39 regulations to collect the overallocation fee from the Charter School.

F. CONCLUSION:

The Charter School must notify the District in writing whether or not it intends to occupy the offered space no later than 30 days after receipt of this Final Offer. Please deliver a response to charteroffice@ousd.org. Please do not mail or hand deliver a response to this letter.

The Final Offer of Facilities may differ from the Preliminary Offer, based on any response received from the Charter School (by March 1) or other factors, including changes in the District's final enrollment projections. Should the Charter School occupy the facilities allocated in the Final Offer of Facilities, the District will require it to enter into a Facilities Use Agreement (sample agreement linked as Exhibit G), containing the terms and conditions of the District's facilities allocation. The District provides this proposed agreement without prejudice to its right to propose or modify terms during the process of negotiating the agreement.

Sincerely,

Kelly Krag-Arnold
Policy Specialist, Office of Charter Schools

Sonali Murarka
Director, Office of Charter Schools



Proposition 39 Final Offer Exhibits

Exhibit A – Specific Space Offered to Charter School [see below]

[Exhibit B](#) – Facilities Condition Data

[Exhibit C](#) – All Space Inventory

[Exhibit D](#) – Form SAB 50-02

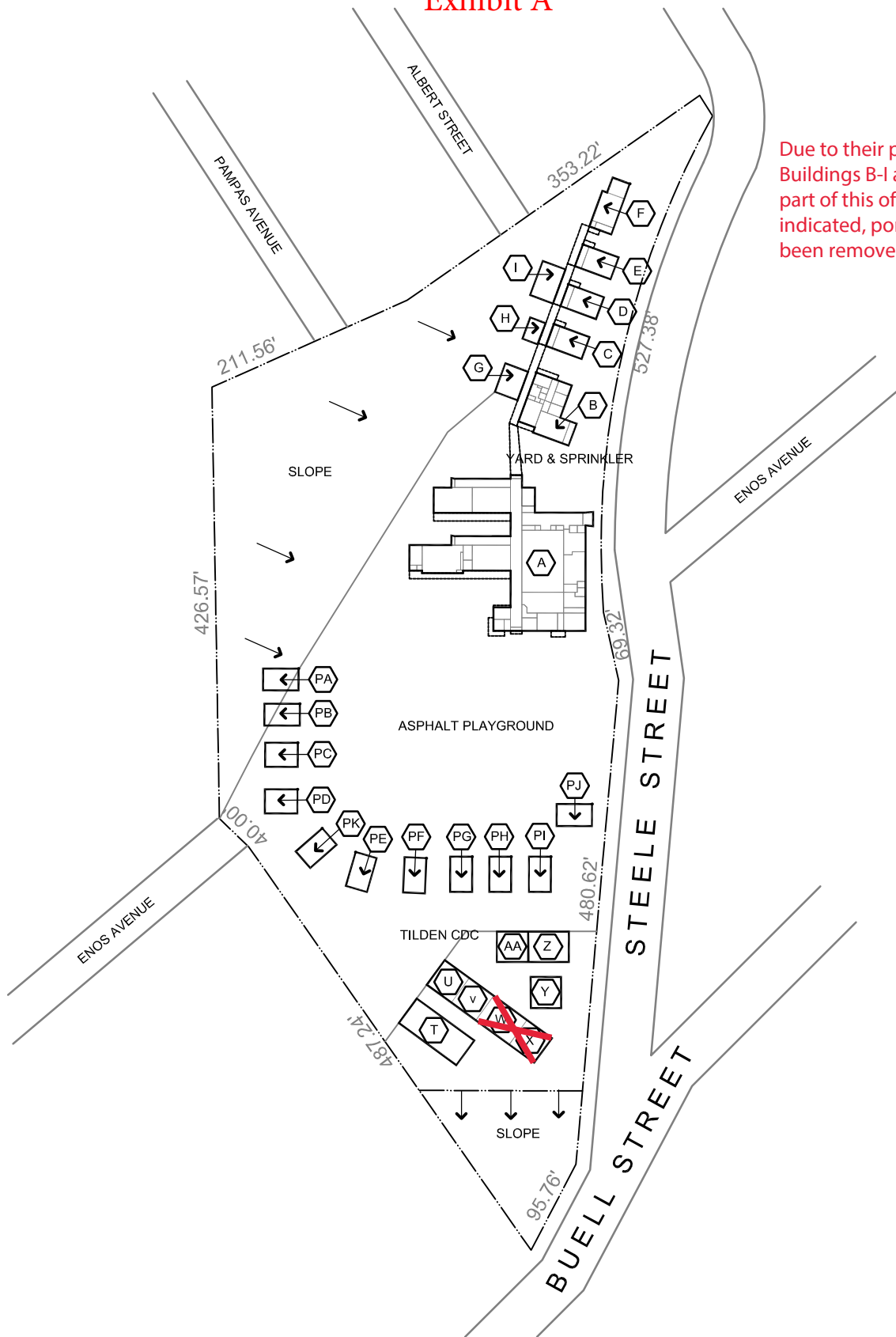
[Exhibit E](#) – Calculation of Pro Rata Share

Exhibit F – Fees and Payment Schedule [see below]

[Exhibit G](#) – Sample Facilities Use Agreement

[Exhibit H](#) – Multi-Site Resolution

Exhibit A



Due to their poor condition, Buildings B-I are not included as part of this offer. Additionally, as indicated, portables W & X have been removed.

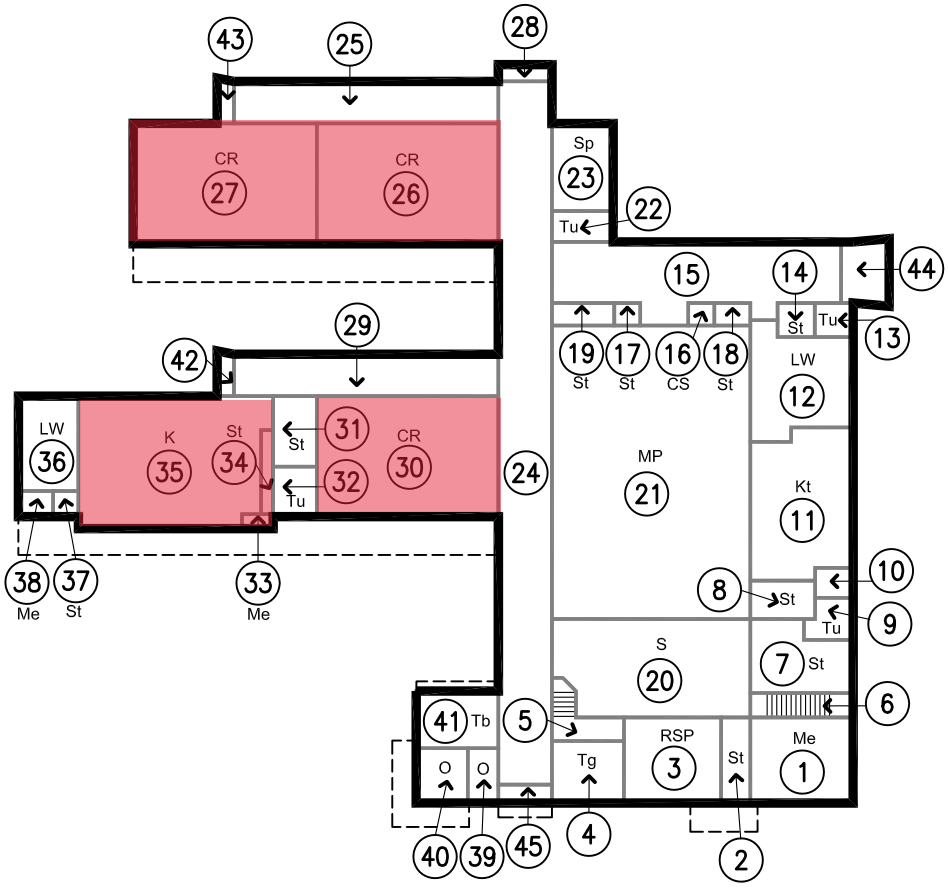
SITE PLAN

156 - JOHN SWETT ELEMENTARY SCHOOL
4551 STEELE STREET, OAKLAND, CA 94619-2743



Date: 1/18/2013

Scale: 1"=150'-0"



BLDG A - 1ST FLOOR PLAN



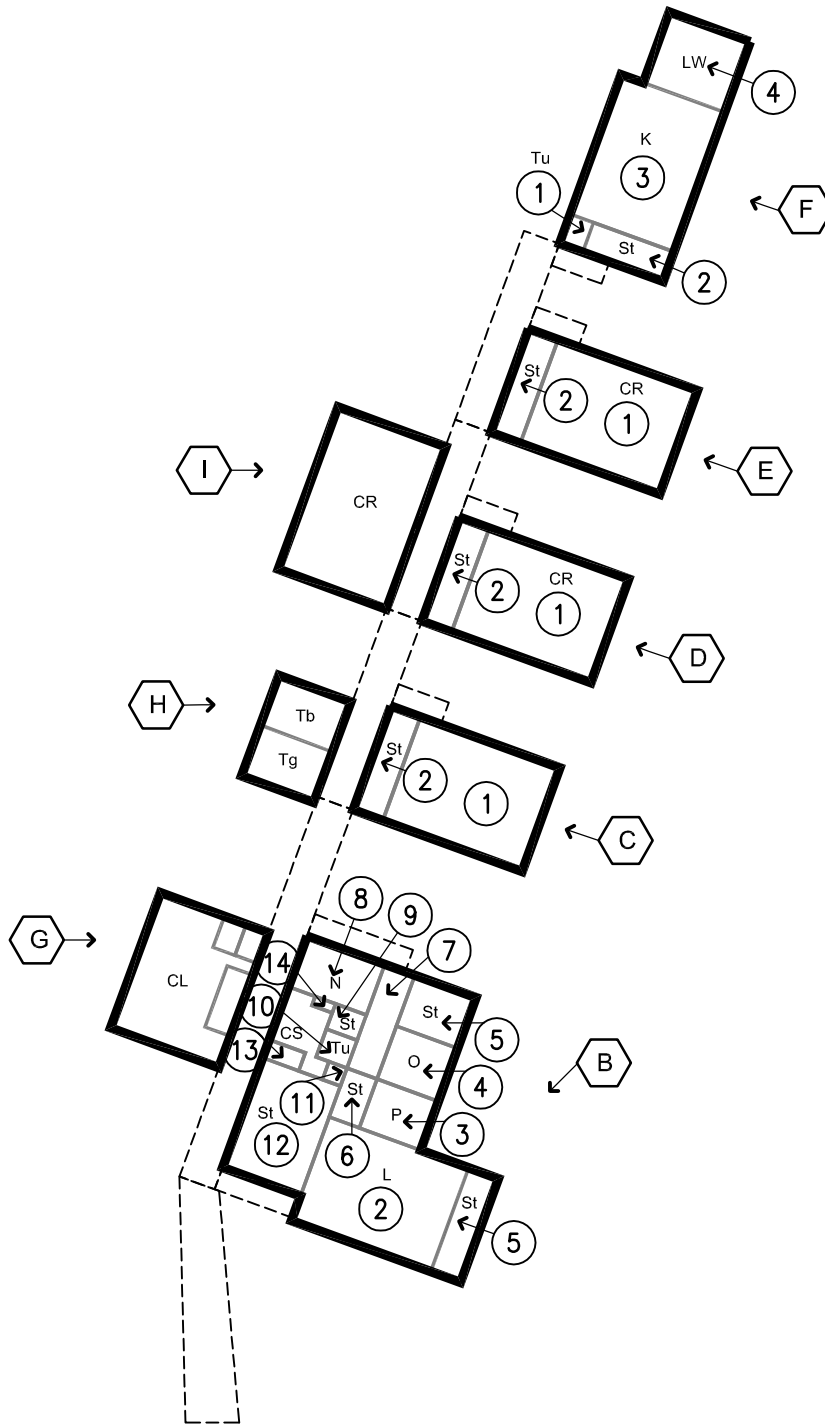
BLDG A - 1ST FLOOR PLAN

156 - JOHN SWETT ELEMENTARY SCHOOL
 4551 STEELE STREET, OAKLAND, CA 94619-2743



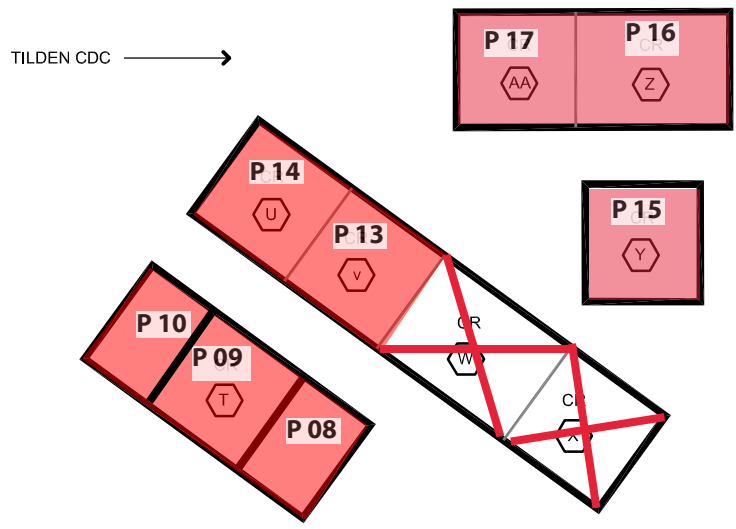
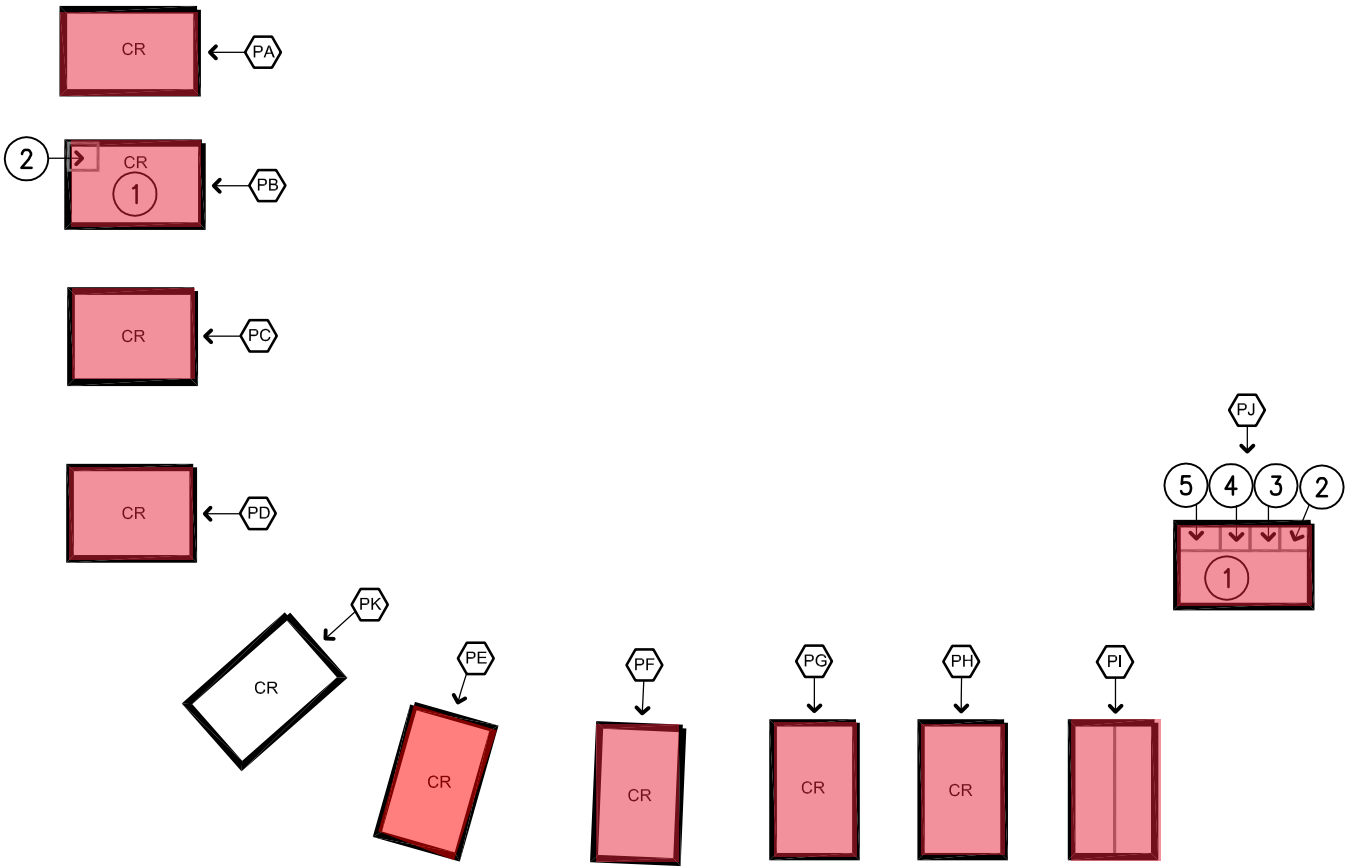
Date: 1/18/2013

Scale: 1"=40'-0"



BLDG B-I - 1ST FLOOR PLAN





BLDG PORT A-J & CDC - 1ST FLOOR PLAN