



OFFICE OF CHARTER SCHOOLS

March 29, 2019

Michelle Cho and Shelley Benning
East Bay Innovation Academy
3400 Malcolm Avenue
Oakland, CA 94605

Re: Oakland Unified School District
Middle School Final Offer of Facilities, 2019-20

Dear Michelle Cho and Shelley Benning:

Oakland Unified School District (“District”) makes this Final Offer of Facilities to **East Bay Innovation Academy** (“Charter School”) for the 2019-20 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. (Cal. Ed. Code § 47614; Cal. Admin. Code, title 5, §§ 11969.1, *et seq.*) This Final Offer 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 or before November 1, 2018. The Charter School’s Request for Facilities was based upon a projected in-District Average Daily Attendance (“ADA”) of 598.05. The District issued written objections to projections under Cal. Admin. Code, title 5, § 11969.9(d) on November 30, 2018. In its Response to District Objections To ADA Projections letter, dated December 28, 2018, the Charter School accepted the District’s counterprojection of **520.46 (6-8: 312.52; 9-12: 207.94)**. The District’s November 30, 2018 letter, and the reasons stated therein, are incorporated into this Final Offer of Facilities.

B. 2019-20 Final Offer to the Charter School

Education Code § 47614 and its implementing regulations obligate the District to offer space sufficient to accommodate the Charter School’s in-District students. In a letter dated March 15, 2019, the Charter School and District agreed that the District would issue two separate Proposition 39 final offers of facilities: one for the Charter School’s middle school (grades 6-8) ADA and another for its high school (grades 9-12) ADA. Furthermore, the letter extended the deadline for issuing the high school final offer from April 1, 2019 to May 13, 2019, which will allow the Charter School time to determine whether it will be able to renew its lease for the private facility that its high school currently occupies. Therefore, the District’s allocation of space included in this letter is based solely

on the Charter School’s projected 6th-8th grade in-District ADA of **312.52**.

The District’s Final Offer to the Charter School includes space at the following school site:

**Thurgood Marshall campus
 3400 Malcolm Ave, Oakland, CA 94605**

The Charter School’s allocation of space is summarized in the tables 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. Additionally, the methodology for determining space allocations has incorporated some of the feedback provided in charter schools’ responses to Preliminary Offer letters.

Table 1: Exclusive Use Classroom Allocation Summary

School Site	Total Classrooms*	Specialized Classrooms	Total Classroom Space (sqft)
Thurgood Marshall	13	4	12,340

* Total Classrooms includes Specialized Classrooms.

Table 2: Exclusive Use Classroom Allocation

Count	School Site	Room # (per MKThink site plan, Exhibit B)	Sqft
1	Thurgood Marshall	A-1-36	840
2	Thurgood Marshall	A-1-38*	960
3	Thurgood Marshall	A-1-39	840
4	Thurgood Marshall	A-1-40	960
5	Thurgood Marshall	A-1-43	960
6	Thurgood Marshall	A-1-44	1140
7	Thurgood Marshall	A-1-45	960
8	Thurgood Marshall	A-1-46*	840
9	Thurgood Marshall	A-1-47*	960
10	Thurgood Marshall	A-1-48	840
11	Thurgood Marshall	A-1-49*	960
12	Thurgood Marshall	A-1-52	1120
13	Thurgood Marshall	A-1-53	960

* Specialized classroom

Table 3: Non-Classroom Space (NCS) Allocation Summary

Site Name	Projected Charter ADA at Site	Charter School NCS Allocation at Site		
		Interior	Exterior	Total
Thurgood Marshall	312.52	15,088	384,357	399,445

C. Comparison Group Methodology

The Charter School’s facilities space entitlement is based on space provided to students at a set of District-operated comparison schools. Cal. Admin. Code, title 5, § 11969.3 governs the identification of the 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.

In a letter signed by the Charter School’s Chief Operating Officer (see attached letter signed March 15, 2019), the Charter School agreed that in exchange for a Final Offer for its middle school ADA consisting of continued exclusive use of the entire Thurgood Marshall campus, which it currently occupies, it would allow the District to forgo inclusion of comparison school analyses from its middle school Final Offer of facilities. Therefore, as this Final Offer complies with this condition, and the

Charter School has waived the comparison group school analysis, the District has met its obligation with respect to the requirements of Cal. Admin. Code tit. 5, § 11969.3(a).

D. Reasonable Equivalence Provision

In order to meet Proposition 39 standards that proposed facilities are “reasonably equivalent,” the District typically compares the proposed facilities to District-operated schools constituting the comparison school group. However, as mentioned in the previous section, the Charter School agreed to forgo inclusion of comparison school analyses, including the evaluation of reasonable equivalence of facility condition and capacity, from its middle school Final Offer of facilities in exchange for a Final Offer for its middle school ADA consisting of continued exclusive use of the entire Thurgood Marshall campus. Therefore, as this Final Offer complies with this condition, and the Charter School has waived the comparison group school analysis, the District has met its obligation with respect to Cal. Admin. Code tit. 5, § 11969.3(b) and (c).

E. Response to the Charter School’s February 28, 2019 Letter

In compliance with Cal. Admin. Code, title 5, §11969.9(h), the District addresses the Charter School’s response to the District’s preliminary offer of facilities.

Charter School’s ADA Projections: The District is allocating space in accordance with the District’s counterprojections for the reasons set forth in its November 30, 2018 letter. These counterprojections were accepted by the Charter School in its Response to District Objections To ADA Projections letter dated December 28, 2018.

Site Location: The Charter School stated their preference would be either a single location that could hold all grades (6th-12th), such as the Frick or Westlake Middle campus, as well as access to the Marshall Campus (through a long-term lease) for rehabilitation and new construction, or Marshall Campus for grades 6-8 and an OUSD campus nearby for grades 9-12, such as Lakeview, Frick, Kings, Estates, Howard.”

Education Code 47614(b) states that “[t]he school district shall make reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate ...” The District made attempts to accommodate the location preference(s) identified by the Charter School in its request for facilities. The District’s findings with respect to the Charter School’s location preference are found in the January 23, 2019 resolution adopted by the OUSD Board and amended on March 20, 2019 ([Exhibit I](#)). Here, the District exercised its discretion in determining that none of the schools in the Charter School’s preferred locations had capacity to accommodate the Charter School’s entire projected ADA. The District’s determination is subject to deference. (See, e.g., *Westchester Secondary*

Charter School v. Los Angeles Unified School District (2015) 237 Cal.App.4th 1226; *Sequoia Union High Sch. Dist. v. Aurora Charter High School* (2003) 112 Cal.App.4th 185, 194-5.) The District did not abuse its discretion by considering the cost to the District, or the impact upon District pupils, of granting the Charter School's location preference.

As agreed in the letter referenced previously, this Final Offer letter only relates to the Charter School's 6th-8th grades. The District has provided the Charter School a Final Offer for its middle school grades at its current location of the Thurgood Marshall campus, located at 3400 Malcolm Avenue, Oakland, CA 94605, which the Charter School listed as its preferred location.

Because the Charter School has consented to a waiver of the reasonable equivalence analysis for its 6th-8th grade offer, the District need not respond to the Charter School's other concerns with respect to the preliminary offer as stated in its February 28, 2019 letter.

F. Final Facilities Offer – Other Terms and Conditions

F1. Pro-Rata Share

The calculation of the Charter School's pro-rata share of facilities costs is attached as [Exhibit F](#)¹, and the Charter School's allocation, fees, and payment schedule is attached as **Exhibit G**. The pro-rata share calculation has been updated since the preliminary offer to remove restricted Prop 39 Clean Energy funds. The District notes that the Charter School's share of custodial costs may be subject to reconciliation in the event that the District is required to increase staffing as a result of the Charter School's use and occupation of the District's site. 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.

F2. Overalllocation Fee

Cal. Admin. Code tit. 5, § 11969.8 provides for a penalty in the event that a school district overallocates facilities to a charter school based on the charter school's overprojection of Average Daily Attendance ("ADA") for a school year. Subsection (a) of that regulation provides as follows:

¹Exhibits C-E, included in final offer letters for other charter schools, were not necessary for this letter as the Charter School consented to the District excluding all comparison school analyses. Therefore, these exhibit letters have been omitted in this offer letter in order to maintain consistency in exhibit references across all final offer letters for the current Proposition 39 cycle.

Space is considered to be over-allocated if (1) the charter school's actual in-district classroom ADA is less than the projected in-district classroom ADA upon which the facility allocation was based and (2) the difference is greater than or equal to a threshold ADA amount of 25 ADA or 10 percent 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 overprojection of ADA, the District will exercise its rights under the Proposition 39 regulations to collect the overallocation fee from the Charter School.

F3. Response to Final Offer

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," no later than May 1, or 30 days after receipt of this Final Offer, whichever is later.

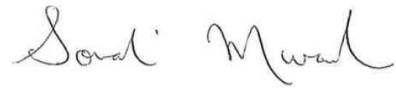
The Final Offer of Facilities may differ from the Preliminary Offer, based on any response received from the Charter School (by March 1) or other factors, including changes in the District's final enrollment projections. Should the Charter School accept the Final Offer of Facilities, the District will require it to enter into a Facilities Use Agreement (sample agreement linked as [Exhibit H](#)), containing the terms and conditions of the District's facilities allocation. Note that the District's sample Facilities Use Agreement has incorporated some of the feedback provided in charter schools' responses to Preliminary Offer letters. The District provides this proposed agreement without prejudice to its right to propose or modify terms during the process of negotiating the agreement.

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

East Bay Innovation Academy

March 29, 2019

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A handwritten signature in cursive script that reads "Sonali Murarka".

Sonali Murarka, Director
Office of Charter Schools



OFFICE OF CHARTER SCHOOLS

March 15, 2019

Michelle Cho
East Bay Innovation Academy
3400 Malcolm Ave
Oakland, CA 94605

Re: Oakland Unified School District
East Bay Innovation Academy
Proposition 39 Request for Facilities for 2019-20

Dear Ms. Michelle Cho:

This letter will confirm that East Bay Innovation Academy (EBIA) and the Oakland Unified School District (District) agree to the following:

- The District intends to issue EBIA two separate Proposition 39 final offers of facilities: one for its middle school (i.e. grades 6-8) ADA and another for its high school (i.e. grades 9-12) ADA.
- For its middle school ADA:
 - The District intends to issue to EBIA a Proposition 39 final offer of facilities for 2019-20 consisting of exclusive use of the Marshall Campus, which it currently occupies, by April 1, 2019 to cover its request for facilities for its entire in-district middle school ADA.
 - Should the District issue a final offer of facilities consisting of the space described above, the District will forgo inclusion of the comparison group analyses¹ in its middle school final offer of facilities. EBIA's acceptance of the intended 2019-20 middle school facility offer and EBIA's agreement that for 2019-20 the District does not need to provide the comparison group analyses in one version of its final offer as described here does not waive EBIA's right to seek reasonably equivalent space and full compliance with Prop. 39 in subsequent years.
 - Should the District not issue a final offer of facilities for EBIA's middle school ADA consisting of the abovementioned space for 2019-20, the District shall issue a Final Offer of reasonably equivalent facilities for EBIA's middle school ADA by April 1, 2019, in compliance with all Proposition 39 requirements.
- For its high school ADA, unless EBIA withdraws its Proposition 39 request for facilities prior to the deadlines below, EBIA and the District mutually agree to:
 - Extend the deadline for EBIA to receive a Proposition 39 final offer of facilities by six weeks, from April 1, 2019 to May 13, 2019.
 - Modify the deadline for EBIA to notify the District in writing regarding whether it intends to occupy the space offered for its high school ADA until either 30 days after it receives the high school ADA final offer of facilities or until May 28, 2019, whichever is earlier.

Sonali Murarka, Director
Office of Charter Schools

I agree to the above terms on behalf of East Bay Innovation Academy.

Date: March 15, 2019

Michelle Cho
East Bay Innovation Academy

¹ "Comparison group analyses" refers to the methodology for identifying comparison group schools and the evaluation of reasonable equivalence of facility condition and capacity, which were included in the preliminary offer of facilities as sections C & D (including subsections D1-D4), respectively

Proposition 39 Final Offer Exhibits

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

[Exhibit B](#) – MKThink Data, Facilities Master Plan and Calculation of Non-Classroom Space Entitlement

[Exhibit C](#) – Jacobs Study, Facilities Condition Data and Classroom Inventory

[Exhibit D](#) – Form SAB 50-02

[Exhibit E](#) – Calculation of Specialized Classroom Space Entitlement

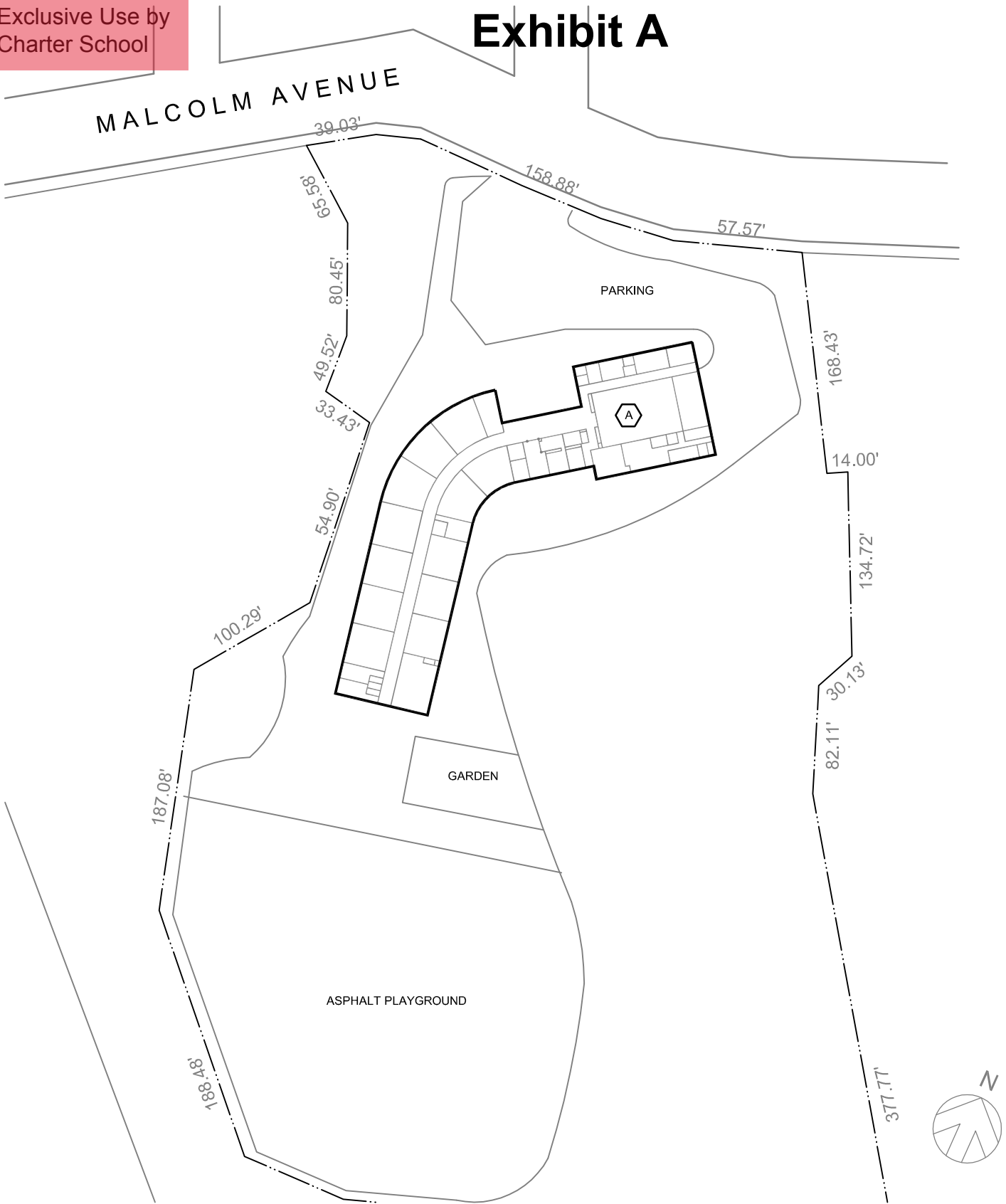
[Exhibit F](#) – Calculation of Pro Rata Share

Exhibit G – Allocation, Fees, and Payment Schedule [see below]

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

[Exhibit I](#) – Multi-Site Resolution (January 23, 2019) and Amended Resolution (March 20, 2019)

Exhibit A



SITE PLAN

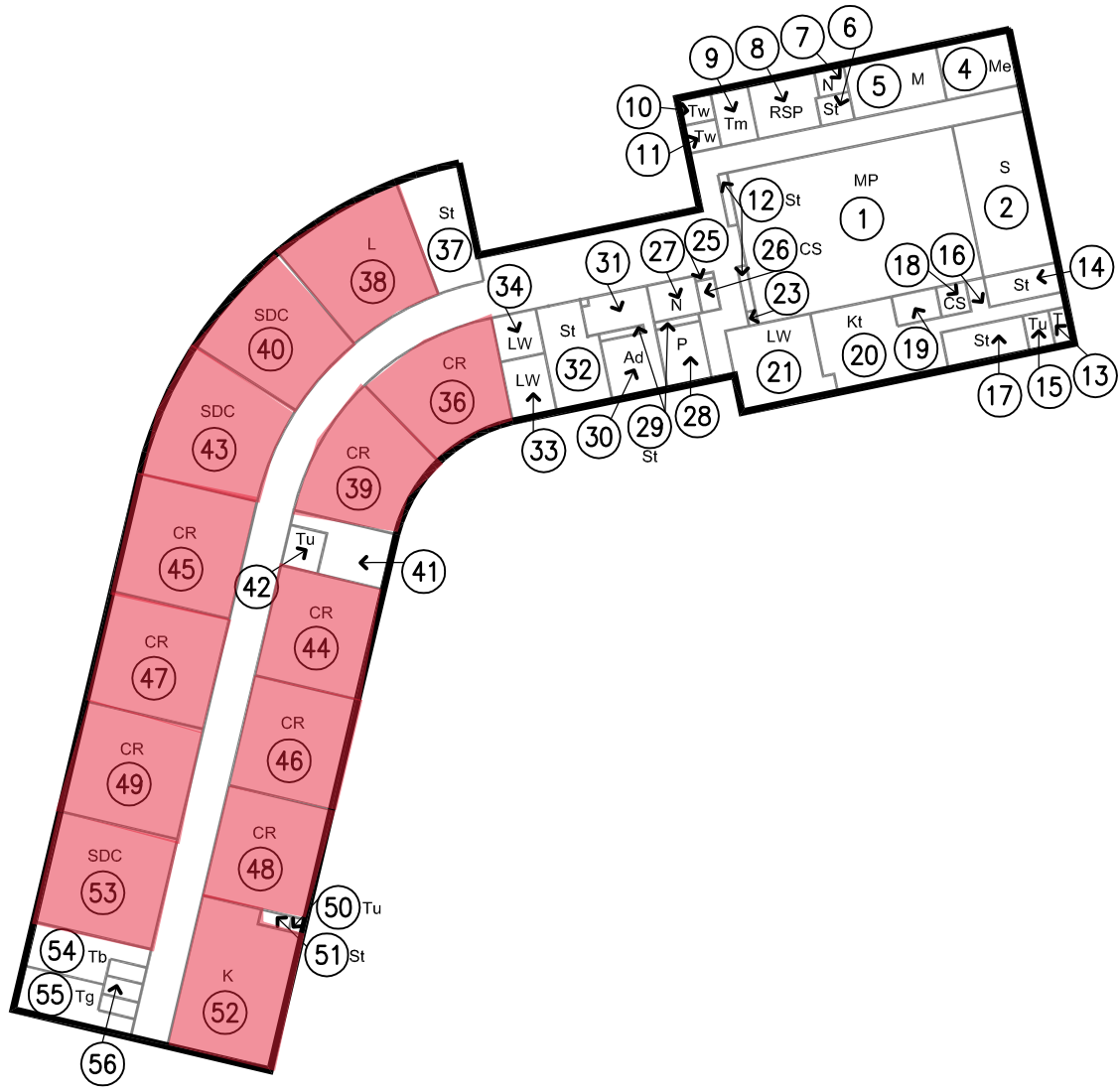


174 - THURGOOD MARSHALL ELEMENTARY SCHOOL
3400 MALCOLM AVENUE, OAKLAND, CA 94605-5353



Date: 1/18/2013

Scale: 1"=100'-0"



BLDG A - 1ST FLOOR PLAN



BLDG A - 1ST FLOOR PLAN



174 - THURGOOD MARSHALL ELEMENTARY SCHOOL
 3400 MALCOLM AVENUE, OAKLAND, CA 94605-5353



Date: 1/18/2013

Scale: 1"=50'-0"

Exhibit G

Allocation, Fees, & Payment Schedule

Contract Term (Fiscal Year):	2019-20
Charter School Name:	East Bay Innovation Academy
Site Name:	Thurgood Marshall Campus
Address:	3400 Malcolm Ave, Oakland, CA
SPACE ALLOCATION	
Exclusive Use Space (sqft)	27,428
+ Proportion of Shared Space (sqft)	0
Total Space Allocation at Site (sqft)*	27,428
FACILITY USE FEE	
Total Space Allocation at Site (sqft)	27,428
x Facility Fee Sqft Rate	\$4.62
Facility Use Fee	\$126,717.36
UTILITIES FEE	
Projected Charter School ADA at Site**	586.90
÷ Projected Total Site ADA	586.90
Charter School Percent of Site Use	100.00%
PAYMENT SCHEDULE	
25% by October 1, 2019	
25% by December 1, 2019	
25% by April 1, 2020	
25% by July 1, 2020	

Note: All calculations subject to change.

*Includes only interior space.

**Includes total (in-district + out-of-district) projected ADA as reported in the schools' facilities request form.