

February 1, 2019

Via Email and Overnight Delivery

Jennifer Anderson-Rosse
Bullis Mountain View Charter School
102 W. Portola Ave.
Los Altos, CA 94022
janderson@bullischarterschool.com

Re: Mountain View Whisman School District, 2019-2020 Proposition 39
Application; Bullis Mountain View Charter School

Dear Ms. Anderson-Rosse:

The Board of Trustees ("Board") of Mountain View Whisman School District ("District") has considered Bullis Mountain View Charter School's ("BMV" or "Charter School") letter dated October 31, 2018, concerning a request for facilities under Proposition 39 for the 2019-20 school year ("Request"). Set forth herein is the District's preliminary proposal regarding the space to be allocated ("Preliminary Offer") made pursuant to California Code of Regulations, title 5, section 11969.9(f).

Overview of Proposition 39

The allocation of facilities to charter schools is governed by Education Code section 47614, its implementing regulations found at California Code of Regulations, title 5, section 11969.1 *et seq.* ("Regulations"), and corresponding case law. These authorities provide for the allocation of school district facilities to charter schools that have the requisite number of in-district average daily attendance ("ADA") and meet the legal requirements in applying for such facilities. The allocation of facilities under Proposition 39 is based upon a qualifying charter school's "reasonable projection of the charter school's average daily classroom attendance by in-district students for the following year." (Ed. Code, § 47614(b)(2).) In-district charter school students are those students whose primary residence entitles them to attend schools of the district. (Cal. Code Regs., tit. 5, § 11969.2(c).) In-district

charter school students do not include students eligible to attend district schools solely based upon inter-district transfer or parental employment. (*Ibid.*) As a result, the District is limited to allocating space for Charter School's *in-district* classroom ADA, and not upon its overall enrollment or classroom ADA.

Education Code section 47614 and its implementing Regulations require that the Charter School submit certain information by November 1, 2018, to be eligible for the allocation of District facilities. Importantly, Charter School was required to present the District with its projected in-district classroom ADA for the 2019-20 school year. (Cal. Code Regs., tit. 5, § 11969.9(c).) Pursuant to California Code of Regulations, title 5, section 11969.9(d), the District's objections and concerns with Charter School's projections were detailed in the District's prior correspondence to Charter School dated November 30, 2018 ("Response"). Pursuant to California Code of Regulations, title 5, section 11969.9(e), Charter School presented its reply to the District's concerns in correspondence to the District dated December 10, 2019 ("Reply"). In making this Preliminary Offer, the Board carefully considered Charter School's Reply and the points raised therein.

The District's Preliminary Offer includes: (1) projections of in-district classroom ADA on which the Preliminary Offer is based; (2) the specific location or locations of the offered space; (3) all conditions pertaining to use of District facilities, including a draft facilities use agreement ("FUA"); (4) the projected pro rata share amount and a description of the methodology used to determine that amount; (5) a list and description of the comparison group schools used in developing the Preliminary Offer; and (6) a description of the differences between the Preliminary Offer and Charter School's Request.

In preparing this Preliminary Offer, the Board considered the following factors:

- (a) The preference of Charter School that its entire student population be housed on a contiguous site;
- (b) Charter School's desire to locate its school in a geographic area that may serve students residing in the attendance areas of Mariano Castro Elementary, Theuerkauf Elementary, and Monta Loma Elementary, and the

requirement that the District use reasonable efforts to place the Charter School near where it wishes to locate;

(c) Information concerning Charter School's proposed educational program to the extent deemed relevant to the assignment of facilities;

(d) The offered facilities and whether such facilities meet the Proposition 39 definition of "reasonably equivalent" when compared to the comparison schools;

(e) The requirement that the Charter School not be moved unnecessarily;

(f) The District's need to maximize its real property assets for the benefit of the District's community and constituents and to balance current and future needs to house District educational programs and other District-sponsored charter schools at all of its school sites, including the requested site, with the needs of the Charter School; and

(g) The District's obligation to consider equally the needs of in-district Charter School students with those students enrolled in District programs, such that the allocation of facilities results in a "fair sharing" of District facilities for students attending District schools and Charter School.

Projected ADA Upon Which Offer is Based

Charter School's Request projected an in-district classroom ADA of 159.6 for the 2019-20 school year based upon a projected in-district enrollment of 168 students in grades TK/K-2 with a 95.00% attendance rate. The District evaluated Charter School's projection pursuant to California Code of Regulations, title 5, section 11969.9, subdivisions (c) and (d). After expressing its concerns with the Charter School's projections as detailed in the District's Response, the contents of which are incorporated herein, the District accepted Charter School's projections and bases this Preliminary Offer on same.

In presenting this Preliminary Offer, the District expressly reserves all prior objections and makes no waiver of the requirements and deadlines set forth

in Proposition 39 or its implementing Regulations. Please also take notice that Charter School shall be responsible for any reimbursement penalties resulting from an over-allocation of space to Charter School for the 2019-20 school year. (Cal. Code Regs., tit. 5, § 11969.8).

Basis and Methodology for Offer of Facilities

Education Code section 47614(b) requires that a school district “make available, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the charter school’s in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district.”

California Code of Regulations, title 5, section 11969.3, defines the process and criteria for determining whether facilities offered by a school district to a charter school 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.” In order to determine whether facilities are reasonably equivalent, the District compares the offered facilities to district-operated schools constituting a comparison group of schools. The District then offers facilities to Charter School that are reasonably equivalent to the comparison group in the following ways:

Reasonable Equivalence Factors		
	Facility Characteristic	Regulatory Authority

Capacity Factors	Ratio of teaching stations to ADA.	Cal. Code Regs., tit. 5, § 11969.3(b)(1)
	Specialized classroom space if such facilities are available to the district comparison group (e.g., science laboratories).	Cal. Code Regs., tit. 5, § 11969.3(b)(2)
	Non-Teaching space, which the district can share with the charter school (e.g., administrative, kitchen, multi-purpose, and/or play area space).	Cal. Code Regs., tit. 5, § 11969.3(b)(3)
Condition Factors	School site size.	Cal. Code Regs., tit. 5, § 11969.3(c)(1)(A)
	Condition of interior and exterior surfaces.	Cal. Code Regs., tit. 5, § 11969.3(c)(1)(B)

	Mechanical, plumbing, electrical, and fire alarm systems in condition and conformity to applicable law.	Cal. Code Regs., tit. 5, § 11969.3(c)(1)(C)
	Availability and condition of technology resources.	Cal. Code Regs., tit. 5, § 11969.3(c)(1)(D)
	Overall learning environment qualities (e.g., lighting, noise mitigation, and/or size for intended use).	Cal. Code Regs., tit. 5, § 11969.3(c)(1)(E)
	Furnishings and equipment.	Cal. Code Regs., tit. 5, § 11969.3(c)(1)(F)
	Condition of athletic fields and/or play area space.	Cal. Code Regs., tit. 5, § 11969.3(c)(1)(G)

Education Code section 47614(b) also requires a school district to ensure that the facilities offered to a charter school are “contiguous.” Continuous facilities are those “contained on the school site or immediately adjacent to the school site.” (Cal. Code Regs., tit. 5, § 11969.2(d).) But if the school district cannot accommodate a charter school’s in-district ADA at any one

school site, “contiguous facilities” are also “facilities located at more than one site, provided that the school district” minimizes the number of sites assigned and takes into consideration student safety. (Cal. Code Regs., tit. 5, § 11969.2(d).)

A. Comparison School Sites

In determining reasonably equivalent facilities for the Charter School for the 2019-2020 school year, the District used the following schools as the comparison group:

Comparison Schools		Size of Site
TK/K-2	<ul style="list-style-type: none"> • Benjamin Bubb Elementary • Edith Landels Elementary • Frank L. Huff Elementary • Gabriela Mistral Elementary • Jose Antonio Vargas Elementary • Mariano Castro Elementary • Monta Loma Elementary • Stevenson Elementary • Theuerkauf Elementary 	<p>9.80 Acres</p> <p>10.10 Acres</p> <p>10.60 Acres</p> <p>4.70 Acres</p> <p>9.00 Acres</p> <p>4.70 Acres</p> <p>9.9 Acres</p> <p>5.16 Acres</p> <p>6.69 Acres</p>

B. Location of Facilities

After careful consideration, the District’s Board has determined that locating Charter School at the Montecito School site presents the best option for both the Charter School and the District for the 2019-20 school year. Prior to Charter School’s charter petition approval, the Montecito School Site was slated for an expanded District preschool program and is currently housing the District’s temporary administrative offices. Accordingly, the Montecito School Site has existing capacity to accommodate Charter School with

minimal displacement of District students and programs. And while the District must revisit its future preschool plans, this location minimizes overall student displacement, provides for separate ingress and egress, and is a facility that meets the condition and capacity requirements of Proposition 39.

The Montecito School site is immediately adjacent to Theuerkauf Elementary, one of Charter School's target locations. Correspondingly, the District has satisfied its obligation to "make reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate." (Ed. Code, § 47614(b).) And because Charter School will be housed at a single school site, the Montecito School site space is contiguous within the meaning of California Code of Regulations, title 5, section 11969.2(d).

C. Condition and Capacity

District staff members have evaluated feasible facilities allocation options. In so doing, the District considered capacity, condition, location, and other relevant factors, using as a point of reference the comparison schools identified above, to allocate facilities to the Charter School that meets Proposition 39 standards for reasonable equivalence. The District has evaluated the condition of the comparison school sites relative to size, condition of interior and exterior surfaces, mechanical, plumbing, electrical, and fire alarm systems in condition and conformity to applicable law, availability and condition of technology resources, overall learning environment qualities (e.g., lighting, noise mitigation, and/or size for intended use), furnishings and equipment, and condition of athletic fields and/or play area space.

Amount and Configuration of Space

To determine and ensure a reasonably equivalent allocation of facilities to Charter School, the District carefully evaluated the amount of classroom space, specialized teaching space, and administrative space available to District students at the comparison schools.

First, the District determined the teaching station to ADA ratio at the comparison group schools, in accordance with California Code of Regulations, title 5, section 11969.3(b)(1), which 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 totaled the number of classrooms in the comparison group schools and adjusted this inventory to reflect those classrooms actually “provided to” students in the comparison group schools, regardless of whether those classrooms are staffed with a teacher. (*California Charter Sch. Assn. v. Los Angeles Unified Sch. Dist.* (2015) 60 Cal.4th 1221, 1241 (“*CCSA v. LAUSD*”).) This inventory need not include every classroom on the comparison school campuses. “[O]nly classrooms in the inventory that are ‘provided to’ noncharter public school K–12 students in the District must be counted,” which excludes “unbuilt classrooms, classrooms already used by charter schools, and classrooms dedicated to preschool, adult education, or other uses besides K–12 education.” (*Id.* at p. 1239.) Using this classroom inventory as the denominator, the District calculated in the ADA/classroom ratio and used this ratio for making this facilities allocation to Charter School based on the projected in-district classroom ADA of 159.60.

Similarly, the District accounted for all specialized teaching space provided to students at the comparison schools. California Code of Regulations, title 5, section 11969.3(b)(2) provides that if the comparison schools offer specialized instruction space, the District “shall include a share of the specialized classroom space and/or a provision for access to reasonably equivalent specialized classroom space.” The amount is “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.”

Finally, the District took inventory of the administrative facilities available to District students at the comparison schools. California Code of Regulations, title 5, section 11969.3(b)(3) provides that “[t]he 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.” This generally includes “administrative space, kitchen, multi-purpose room, and play area space.” (*Ibid.*)

The District’s obligation under Proposition 39 is to provide comparable facilities, not identical facilities. “[M]athematical exactitude is not required.” (*Bullis Charter School v. Los Altos School Dist.* (2011) 200 Cal.App.4th 1022, 1063 (“*Bullis*”).) Accommodating a Proposition 39 facilities request is a “difficult and complex process” that requires consideration of numerous factors and flexibility when making accommodation arrangements under Proposition 39. (*CSBA v. SBE, supra*, 191 Cal.App.4th 530, 549.) Every school campus is unique and the District is “*not* obligated to pay for the modification of an existing school site” under Proposition 39. (Ed. Code, 47614(b); Cal. Code Regs., title 5, § 11969.3(a)(1).) For this reason, a charter school’s allocation of facilities is intended to be flexible, necessarily conforming to features, conditions, and limitations presented by the host campus.

When reasonably feasible, fungible facilities are offered for Charter School’s exclusive use. By contrast, certain non-fungible facilities must be shared between co-located schools occupying the same campus. For example, this generally includes shared access to libraries, gymnasiums, multi-purpose rooms, etc. By necessity, these unique facilities must be balanced equitably between the District host campus and the Charter School to avoid depriving either program/school of their use. Towards that end, the shared use percentage at each host campus will be proportional to each school’s overall percentage of the total student campus population. Although Charter School is placed on a separate campus for the 2019-20 school year, the Montecito School site shares certain outdoor facilities with the adjacent Theuerkauf and Stevenson Elementary. Based upon District’s and Charter School’s 2019-20 enrollment projections, this generally amounts to a shared facilities percentage of 30% for Charter School as to shared facilities. Pro-rata sharing of non-fungible facilities arrangement prevents either program from being unfairly deprived of these unique facilities.

After a complete examination of the facilities available to students at the comparison schools and those facilities set forth in this Preliminary Offer, the Board has determined that this Preliminary Offer provides Charter School's students with facilities that are reasonably equivalent to District facilities in all material respects.

A. Teaching Stations (i.e., Classrooms)

District offers Charter School exclusive use of classroom space at the Montecito School site for the 2019-20 school year. District's offer is based upon a projected in-district total enrollment of 168 students and an in-District classroom ADA of 159.6 units. To accommodate Charter School's in-district students, the District allocates 7 classrooms for Charter School's exclusive use:

Classroom Allocation to Charter School		
Montecito School Site	7 @ 960 ft ²	6,720 ft ²

B. Specialized Teaching Space

In addition to regular classroom space, the District's comparison schools offer its students special education space, and flexible/pull-out instruction space. Accordingly, Charter School is allocated the following exclusive use specialized teaching space:

1. Special Education/Flexible Instruction Space

Charter School will have exclusive use of 1 additional classroom for special education and flexible instruction purposes, including but not limited to, resource and small group space, RSP, speech/CHAC, EL, SDC/LC, counseling, mixed-use instructional space, pull-out instruction, conferences, or discretionary use:

Special Education Space Allocation to Charter School		
Montecito School Site	1 @ 960 ft ²	480 ft ²

C. Non-Teaching Space

In addition to classroom space, the District's comparison schools offer administrative offices, libraries, restrooms, turf/field space, blacktop, and outdoor play equipment. Accordingly, Charter School is allocated the following non-teaching space:

1. Administrative Space

Charter School will have exclusive use of administrative office at the Montecito School Site, including but not limited to administrative offices, teacher work and break areas, meeting space, and administrative project space:

2. Library Space

Charter School will have exclusive use of 1 additional classroom for library and additional study space:

Library Space Allocation to Charter School		
Montecito School Site	1 @ 960 ft ²	960 ft ²

3. Student Restrooms

Charter School will have shared access to boys and girls restrooms totaling 1,371 ft².

4. Adult Restrooms

Charter School will have shared access to adult/staff restrooms totaling 296 ft².

5. Outdoor Turf/Field

Charter School will have shared use of the turf area at each campus during normal school hours as follows:

Turf Allocation to Charter School		
Montecito School Site	154,358 ft ² @ 30%	46,307.4 ft ²

Sharing of these facilities may be accomplished by assignment of specific days to each school or by assigning specific times/class periods each day to the respective schools. The principals at each site shall coordinate an appropriate schedule to best accommodate the educational programs of Charter School and the District schools.

6. Blacktop

Charter School will have shared access to outdoor blacktop space totaling 28,906 ft².

7. Play Equipment

Charter School will have shared access to outdoor play equipment space totaling 5,296 ft².

As set forth above, this offer includes a total of 10,827 ft² in building space and 80,509.4 ft² in outdoor space for a total facilities offer of 102,163.4 ft².

Availability

The above-described facilities will be made available to the Charter School by no later than July 31, 2019, ten working days prior to the first day of instruction in accord with California Code of Regulations, title 5, section 11969.9(j). Access will be conditioned upon a signed Facilities Use Agreement and proper insurance in place.

Furniture and Equipment

Desks, chairs and whiteboards sufficient for 159.6 in-district classroom ADA will be provided as required by applicable Regulations. Furniture and equipment will be provided from existing District inventory. The District will retain ownership of all furniture and equipment provided to the Charter School by the District and will expect all furniture and equipment to be returned to the District at the end of the use term in the same condition as received, reasonable wear and tear excepted. Charter School may use furnishings and equipment but does not have privileges to remove furnishings and equipment from the site or provide for use by anyone other than Charter School's students, employees, and/or parents. No furnishings or equipment may be moved or removed from the space. Furnishings and equipment do not include supplies for the operation of the program.

Pro Rata Share and Payment Schedule

The District is entitled to charge the Charter School a pro-rata share of the District's facilities costs paid from unrestricted general fund revenues. The Charter School's pro-rata share for the 2019-2020 school year is estimated to be \$165,638. This pro-rata share will be payable to the District in ten installment payments, commencing September 1, 2019 and ending June 1, 2020. The methodology for computing the pro-rata share is as follows:

Total District facilities costs that the school district paid for with unrestricted general funds, divided by total District square footage, multiplied by the total square footage allocated for use by the charter school. Where the Charter School shares space, the per-square-foot amount was reduced in proportion to the percentage of time allocated to the Charter School.

The District's pro-rata share is \$1.61 per square foot. As set forth in the Facilities Use Agreement, Charter School shall provide custodial service and supplies for the building facilities that have been allocated to the Charter School for its exclusive use. The District shall provide landscape and grounds maintenance and custodial service for common areas, outdoor areas, and shared building space.

Other Terms and Conditions

This Preliminary Offer of facilities is valid only for the 2019-20 school year and may not be approved for allocation in future years or may not be approved on an exclusive basis. The District will require that the Charter School enter into an FUA with the District, a draft of which is attached to this proposal, and have compliant A-rated insurance in place. Charter School is solely responsible for the operation and supervision of the Charter School and the students enrolled therein as well as parents/guardians, vendors, visitors and volunteers. No use of services, including site administrative services, are provided with this offer. Charter School is precluded from making any representation that it is in any way affiliated with the District.

Reimbursement

This offer is subject to Regulations regarding reimbursement for over allocated space (Cal. Code Regs., title 5, § 11969.8). While the District offers Charter School 7 teaching stations based on in-district classroom ADA of 159.6, the District will hold Charter School accountable for any over allocation penalty in the 2019-20 school year.

Thank you for your application. Should you have any questions regarding the foregoing, please feel free to contact me.

Sincerely,



Ayindé Rudolph, Ed.D.
Superintendent
Mountain View Whisman School District