



**REQUEST FOR PROPOSALS (RFP)
FOR THE SALE OR LEASE OF
SURPLUS SCHOOL DISTRICT PROPERTY**

**2652 VERGIL COURT
CASTRO VALLEY, CA 94546**

Presented for
Hayward Unified School District
June 2023

RFP Release Date June 30, 2023
Proposal Submittal Deadline <i>(via email)</i> July 28, 2023 4:00 PM

Contact: DCG Strategies
7600 Dublin Boulevard, Suite 275
Dublin, CA 94568
listings@dcgstrategies.com

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CALENDAR OF EVENTS

The tentative schedule, subject to change without notice, is as follows.

Request for Proposals (RFP) Advertised	June 30, 2023
Property Tour <i>(optional)</i>	July 12, 2023 3:30 PM – 5:00 PM
Pre-Bidder's Conference <i>(optional)</i>	July 14, 2023 10:00 AM
Questions Due	July 17, 2023 2:00 PM
Final Addendum/Responses Released	July 19, 2023
Proposals Due	July 28, 2023 4:00 PM
Evaluation Committee Review	August - September 2023
Interviews at District's Discretion	TBD
Target Board Approval	September 2023

The RFP is available through the District's website: <https://www.husd.us/departments/business-services/7-11>.

Interested proposers must submit an electronic Proposal via email to listings@dcgstrategies.com. This RFP will only be receiving electronic proposals. No other form will be accepted.

Proposals must be received electronically on or before 4:00 p.m. on the date noted above in the Calendar of Events. Proposers are responsible for checking the District's website for modifications to the RFP via posted Addenda. The District is not responsible for any misunderstanding of the RFP or nonresponsive submission due to failure to check the website for updates or Addendums, and/or other information regarding the RFP. Failing to periodically check the District's website for updates is at a proposer's sole risk.

EXECUTIVE SUMMARY

BACKGROUND AND CONTEXT

The Hayward Unified School District (the “District”) owns approximately 5.4 acres of real property located at 2652 Vergil Court, Castro Valley, CA 94546; APN 416-40-44 (the “Property”). The District is currently seeking proposals from qualified proposers to purchase or lease the entire Property in its **AS IS** condition.

On June 22, 2022, the District’s Board of Education adopted Resolution 2223-09 to declare the Property as “exempt surplus Land.” The District has completed all requirements under the California Surplus Land Act; the Property is designated as exempt surplus land.

Furthermore, on September 28, 2022, the District’s Board of Education adopted Resolution 2223-15 authorizing approval for the District to seek a State Board of Education waiver so that a Request for Proposals (“RFP”) could be issued and declaring its intention to sell or lease the Property in accordance with the terms of the resolution. The District applied for and received a waiver from the State Board of Education allowing the District flexibility in the bidding and sale of the Property. As a result, the District is able to use a request for proposal process, and is not bound to select the successful proposal solely on the basis of price.

In compliance with statutory requirements and the Board-adopted resolution, the District has offered the Property for sale and/or lease to a number of designated agencies. The period in which agencies and other entities with statutorily preferential rights may make a priority offer for the Property has closed and the District now intends to extend its offer of the Property for sale or lease to the public at large.

The 7-11 Surplus Property Advisory Committee, a community advisory board tasked with reviewing the site and compiling community centric recommendations to the Board of Trustees, compiled a report of their findings and priorities. The full report can be found online at <https://www.husd.us/departments/business-services/7-11>. Proposers are encouraged to consult the report as a point of reference. The Board of Trustees are the ultimate decision makers and respect and appreciate the community’s recommendations.

The District will review all Proposals separately. The District reserves the right to reject any and all Proposals and to withdraw the Property from sale or lease.

SUBMISSION DEADLINE

The proposer must submit one electronic copy of their complete Proposal Package (PDF format is acceptable) via email to DCG Strategies at listings@dcgstrategies.com. All proposals must be received at or before **4:00 p.m. on Friday, July 28, 2023**, via email. Proposal receipt time is determined by the official clock of DCG Strategies. Any proposals submitted after the deadline may not be considered.

The point of contact for all matters regarding the property is DCG Strategies. All correspondence regarding the RFP process **must be in writing by email** to DCG Strategies. The team can be reached via email at listings@dcgstrategies.com.

OBJECTIVES

The District's objectives are as follows:

- Prioritize HUSD students' access to our best facilities
- Maximize revenues to invest in modern facilities
- Develop strategies to bring in ongoing revenue and support district goals
- Collaborate and align goals with other local municipalities
- Support land use for a positive social impact.

PROPERTY DETAILS

Location:

2652 Vergil Court
Castro Valley, CA 94546

Assessor's Parcel Number:

416-40-44

Zoning:

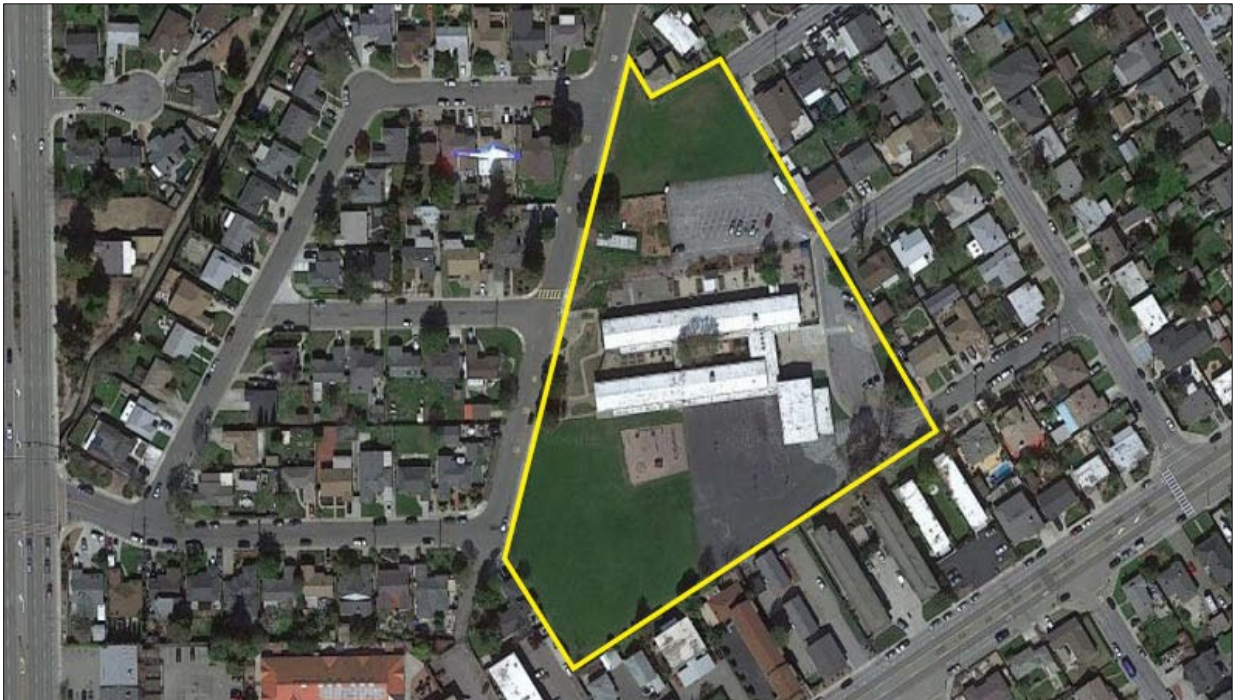
SCV: Schools

Property Size:

253,386 SF (5.4 acres)

General Plan:

Schools



The Property contains various structures, originally built in 1963, totaling approximately 22,359 square feet. As of 2021, estimated cost of repair for major infrastructure only was estimated at \$1,900,000. Additional property information, including the Facilities Master Plan Update, can be found online at <https://www.husd.us/departments/business-services/7-11>. A copy of the cost estimated from the Facilities Master Plan Update is included in Exhibit A.

Golden Oak Montessori Charter School currently has a Facility-Use Agreement for the property through June 30, 2024. A copy of the Facility-Use Agreement is included as Exhibit B.

Zoning - SCV: Schools

Located in the unincorporated community of Castro Valley, the Property is currently zoned “SCV” for Schools Castro Valley and is bordered by R1 single-family detached residential and medium-density RMF. Additionally, the Property includes a CSU/SU District overlay for Conditional Secondary Unit / Secondary Unit Districts.

Land Use Designation - Schools

Per the Castro Valley 2025 General Plan, the Property is classified as Schools. This designation identifies publicly-owned or operated educational facilities of all sizes serving all age groups in Castro Valley.

The designation also includes sites that are owned or used by school districts for school-related purposes such as maintenance or corporation yards as well as parcels which are leased to private entities.

Environmental Constraints

No information on the environmental condition of the Property has been provided as of the date of this Request For Proposals. Environmental impacts, with regard to physical site constraints and/or costs to clean/mitigate potential contamination, could have significant implications for the development, value and/or use of the Property and thus should be a primary area of investigation for any prospective proposer.

PROPERTY TOUR

The Property will be made available for access on **Wednesday, July 12, 2023 between 3:30 p.m. and 5:00 p.m.** This will be the only access provided for the Property and there will be no exceptions on additional access and/or rescheduling. While attendance is optional, all proposers will be held to the same standard of having toured the Property regardless of actual attendance.

PRE-BIDDER’S CONFERENCE

A pre-bidder’s conference will be held virtually on **Friday, July 14, 2023 at 10:00 a.m.** Attendance is optional. All proposers will be held to the same standard of having attended the pre-bidder’s conference regardless of actual attendance.

<https://us06web.zoom.us/j/85879737625>

Meeting ID: 858 7973 7625

Dial In: (669) 900-6833

TRANSACTION STRUCTURE

Respondents should verify the potential viability of the proposed project with the governing jurisdiction prior to making a proposal for the Property. A sample Letter of Intent for purchase may include, but certainly is not limited to, the terms and conditions below.

Purchase Letter of Intent

The following terms and conditions are proposed for this purchase:

1. **Purchase Price:** \$_____, payable in full in cash at Closing, less deposits, as described below.
2. **Close of Escrow:** Shall occur on the earlier of (1) City Approval, or (2) _____ (number of months from the Effective Date of the Agreement).
3. **Initial Deposit:** Buyer will make an initial deposit of \$_____ at the time a definitive Purchase and Sale Agreement is agreed and executed, which will be immediately released to the District, and is non-refundable under any and all circumstances, but applicable to the Purchase Price.
4. **Additional Deposits:** Buyer will make a series of additional deposits which will be released to the District as nonrefundable, but applicable to the Purchase Price, unless the District is unable to deliver good title to the Property. Each deposit shall be subject to the Buyer's unilateral decision to proceed with the transaction. That is, if the Buyer decides to withdraw from the transaction before making any one of the deposits, then that deposit, and any future deposits, will not be made, although those deposits already released to the District shall remain nonrefundable. The proposed deposit structure is as follows:

(describe amount and timing of deposits).
5. **Inspections:** Buyer shall be provided with the opportunity to conduct whatever physical inspections Buyer deems necessary and desirable subject to reasonable notice and noninterference with current users of the site. Buyer shall have the right to review any and all documentation, title reports, surveys, toxic and soil studies, and all other correspondence and documents relating to the Property, and the District shall promptly deliver to Buyer copies of all such documents in its possession, custody, or control, subject to entry into a Purchase and Sale Agreement. District staff and agents will cooperate fully with Buyer in providing such information as Buyer may reasonably require, regarding the history, use, and condition of the Property.
6. **Government Approvals:** Buyer shall be seeking various government approvals as may be required for development of the Property in the manner Buyer intends, including a tentative subdivision map and other City permits. The District will cooperate with and assist Buyer as reasonably necessary in submitting applications for such approvals, including signing appropriate documents that may be required by government officials.
7. **Other Provisions:**
 - 7.1 Buyer will request (in a binding Purchase and Sale Agreement) standard representations and warranties as are customary for transactions of this type, including with respect to authority, brokers, completeness of due diligence materials, absence of litigation, absence of hazardous materials or hazardous site conditions, absence of violations of law, and vacancy of all structures on the premises at Close of Escrow.

7.2 Following completion of all conditions set forth in a binding Purchase and Sale Agreement, the District shall convey the Property to Buyer at Close of Escrow in substantially the same condition as at the present time, except as regards the condition of the improvements thereon (which Buyer shall be responsible for removing), and shall have cured any violation of applicable laws, regulations and codes, and shall have removed all monetary liens or other encumbrances to title that would prevent or impair good title from being passed to Buyer.

7.3 Buyer understands that the District has retained DCG Strategies as its real estate agent in connection with this transaction, and that the District will be solely responsible for any compensation due to DCG Strategies based on its arrangements with the firm. Any compensation due to other real estate agents or brokers engaged or retained by Buyer in connection with this transaction will be the sole responsibility of the Buyer.

- 8. Definitive Purchase and Sale Agreement:** As expeditiously as possible, Buyer intends to negotiate with the District and agree to a definitive and binding Purchase and Sale Agreement, but until that has been done, either party may withdraw from this transaction without further obligation of any kind to the other.
- 9. Approval Required by District Authorities:** Buyer understands and acknowledges that the District's execution of the Purchase and Sale Agreement must be conditioned on approval of its Board of Trustees.

A sample Letter of Intent for lease may include, but certainly is not limited to, the terms and conditions below.

Lease Letter of Intent

The following terms and conditions are proposed for this lease:

- 1. Type of Lease:** Please describe type of lease.
- 2. Term:** The term of this Lease shall be for the period of _____ months. The Term shall commence on the Commencement date as identified below.
- 3. Option to Extend:** Lessee has _____ option(s) to extend the term of this Lease for an additional _____ year(s).
- 4. Use:** The Premises shall be used for the purposes of _____.
- 5. Rent:** For the period commencing on the Rent Commencement Date, Lessee shall pay to Lessor, as base monthly rent \$_____, with _____% annual increases (include complete rent schedule as an exhibit).
- 6. Security Deposit:** Upon signing the Lease, Lessee shall pay to Lessor a Security Deposit in the amount of \$_____.
- 7. Lease Commencement:** Lease shall be effective immediately upon execution by duly authorized representatives of both parties.
- 8. Rent Commencement:** Rent shall commence upon _____.

- 9. Inspections:** Lessee shall be provided with the opportunity to conduct whatever physical inspections Lessee deems necessary and desirable subject to reasonable notice and noninterference with current users of the site. Lessee shall have the right to review any and all documentation, title reports, surveys, toxic and soil studies, and all other correspondence and documents relating to the Property, and the District shall promptly deliver to Lessee copies of all such documents in its possession, custody, or control, subject to entry into a Lease Agreement. District staff and agents will cooperate fully with Lessee in providing such information as Lessee may reasonably require, regarding the history, use, and condition of the Property.
- 10. Government Approvals:** Lessee shall be seeking various government approvals as may be required for development of the Property in the manner Lessee intends, including a tentative subdivision map and other City permits. The District will cooperate with and assist Lessee as reasonably necessary in submitting applications for such approvals, including signing appropriate documents that may be required by government officials.
- 11. Other Provisions:**
- 11.1** Lessee will request (in a binding Lease Agreement) standard representations and warranties as are customary for transactions of this type, including with respect to authority, brokers, completeness of due diligence materials, absence of litigation, absence of hazardous materials or hazardous site conditions, absence of violations of law, and vacancy of all structures on the premises.
- 11.2** Lessee understands that the District has retained DCG Strategies as its real estate agent in connection with this transaction, and that the District will be solely responsible for any compensation due to DCG Strategies based on its arrangements with the firm. Any compensation due to other real estate agents or brokers engaged or retained by Lessee in connection with this transaction will be the sole responsibility of the Lessee.
- 12. Definitive Lease Agreement:** As expeditiously as possible, Lessee intends to negotiate with the District and agree to a definitive and binding Lease Agreement, but until that has been done, either party may withdraw from this transaction without further obligation of any kind to the other.
- 13. Approval Required by District Authorities:** Lessee understands and acknowledges that the District's execution of the Lease Agreement must be conditioned on approval of its Board of Trustees.

DISCLAIMER

While the information contained herein has been provided in good faith and in an effort to provide prospective respondents with relevant property data, it is not binding on the District nor DCG Strategies and should not be considered a substitute for thorough due diligence investigation.

The District and DCG Strategies have not made any investigation, and make no warranty or representation, with respect to the income or expenses for the subject property, the future projected financial performance of the property, the property's development potential, the size and square footage of the property and improvements, the presence or absence of contaminating substances, PCBs or asbestos (or any other hazardous materials or substances), the compliance with State and Federal regulations, the physical condition of the improvements thereon, or the financial condition or business prospects of any tenant.

The information contained herein has been obtained from sources we believe to be reliable; however, the District and DCG Strategies have not verified, and will not verify, any of the information contained herein, nor has the District and DCG Strategies conducted any conclusive investigation regarding these matters and makes no warranty or representation whatsoever regarding the accuracy or completeness of the information provided.

All potential buyers or lessees must take appropriate measures to verify all information set forth herein. The Property is being offered for potential purchase or lease in **AS IS** condition.

CALIFORNIA PUBLIC RECORDS ACT

All proposals submitted in response to this RFP become the property of The District. The District shall hold each proposal confidential during its consideration and final acceptance of such proposals. However, after acceptance, all proposals are subject to the provisions of the California Public Records Act.

PROPOSAL REQUIREMENTS & REVIEW PROCESS

PROPOSER'S RESPONSIBILITIES

The District has engaged DCG Strategies, Inc. as their representative in releasing this Request For Proposals which seeks offers from prospective buyers or lessees to acquire or lease the subject property.

The selected proposer will be responsible for the payment of all costs and expenses in connection with the project including, but not limited to: costs associated with securing necessary entitlements and environmental documentation; demolition, ground clearing, site preparation, and construction of new buildings; maintenance; underground utilities; insurance and taxes; permits and inspection fees; costs and mitigation fees associated with the development including school fees; and architectural, environmental, engineering, and other related work, if any.

Proposer will be responsible for all brokerage commissions and fees to be paid to any real estate representative on the proposer's behalf, if any. The District will not pay any broker's fees or finder's fees, other than to their representative, DCG Strategies. The selected proposer will be required to:

- Select the necessary multi-disciplinary team;
- Coordinate the General Plan and Zone change process;
- Obtain all necessary entitlements and permits;
- Coordinate, manage, and facilitate the review of the project by the local jurisdiction; and
- Manage the work effort of the entire entitlement team, the architect, land planner, civil and other engineers, etc.

All proposals will have five (5) required sections in the order as set forth below. Please label each section and number all pages.

SECTION 1 - LETTER OF INTENT

SECTION 2 - DEVELOPMENT PROGRAM

SECTION 3 - PROJECT TIMETABLE AND CRITICAL ENTITLEMENT ISSUES

SECTION 4 - KEY TEAM MEMBERS AND PAST EXPERIENCE

SECTION 5 - STATEMENT OF FINANCIAL QUALIFICATIONS

SECTION 1 – LETTER OF INTENT

This section shall include the proposal contact and responsible party information, purchase/lease price, deposits, close of escrow and summary of the critical elements of expected project timeline. Any other critical information can be included in this section.

SECTION 2 – DEVELOPMENT PROGRAM

This section shall include a narrative description of the architectural and land planning theme for the project. Identify the planned improvements including the number of buildings by use, the estimated square footage devoted to each building and use, the approximate building footprints, the proposed unit mix with average unit sizes, amenities, parking, and public uses, if any. Include a preliminary site plan. While a detailed completed site plan, prototype housing and elevations are not required at this time (although strongly encouraged), a preliminary site plan is necessary to properly evaluate each proposal.

SECTION 3 – PROJECT TIMETABLE AND ENTITLEMENT ISSUES

This section shall include a general development timetable showing the various planning and entitlement steps, duration, estimated starting period, deposit amounts and release dates, and any phasing contemplated. As to acquiring the entitlements necessary for execution of the proposed development plan, please provide a narrative description of the issues the proposer has identified as critical. Also, please be sure that the timetable of approximate dates for obtaining these entitlements is realistic – in requesting both the narrative and timetable, the goal is to assess the proposer's understanding of the entitlement process rather than solicit an unrealistically aggressive schedule for this process (although an ability to expedite the process is seen as favorable).

SECTION 4 – KEY TEAM MEMBERS AND PAST EXPERIENCE

Provide resumes for each key member of the team. It is anticipated that key members could include the development entity, the architect and/or land planner, entitlements counsel, equity partner, and other key members, if applicable. Other team members such as civil engineer, traffic planner, or landscape architect, may be identified if the proposer believes that to do so would enhance the proposal, but there is no requirement to do so.

SECTION 5 – STATEMENT OF FINANCIAL QUALIFICATIONS

Provide the following information:

- Is the proposer a subsidiary of, or affiliated with, any other corporation(s), partnerships or firms? If so, please specify.
- Has the proposer or its officers, principal members, shareholders or investors, or any of its parent, subsidiary or affiliated entities or other interested parties been adjudged bankrupt, either voluntarily or involuntarily, within the past ten years? If so, please explain.
- Is there pending litigation against the proposer or its officers, principal members, shareholders or investors, or any parent, subsidiary or affiliated entities or other interested parties other than minor personal injury suits involving claims under \$250,000? If so, please explain.

Item(s) submitted should be sufficient to permit the District to determine the proposer's financial capacity for purchasing or leasing the Property. The proposer may wish to mark the financial statements, as "CONFIDENTIAL" or "PROPRIETARY." As such, it will be treated as confidential by the District and its agent to the full extent permitted by law.

SUBMISSION FORMAT AND SCHEDULE

The proposer must submit one electronic copy of their complete Proposal Package digitally (PDF format) via email to DCG Strategies at listings@dcgstrategies.com. Proposals should be organized according to the previous section, and should include at least the requested information.

All proposals must be received at or before **4:00 p.m. on Friday, July 28, 2023**, via email. Proposal receipt time is determined by the official clock of DCG Strategies. Any proposals submitted after the deadline will not be considered.

The owner's contact for all matters regarding the property is DCG Strategies. All correspondence regarding the RFP process must be in **writing by email** to DCG Strategies. The team can be reached via email at listings@dcgstrategies.com.

The District shall review the proposals, request written clarification from proposers if necessary, and may, at its sole discretion, select one or more proposers as finalists. The review process may include requests for clarifications and one or more presentations by the proposers. At the conclusion of the review process, the Board plans to select one proposer with whom to enter into an agreement.

The District reserves the right to terminate this process at any point prior to the selection of a proposer, and solicitation of proposals in no way obligates the District to proceed with any agreement. The District reserves the right to reject submittals that fail to contain all required information or fail to follow all of the instructions contained in this RFP, and to waive any irregularities.

EVALUATION CRITERIA

The District's evaluation criteria include, but are not limited to:

- Project alignment with District goals
- Proposer experience and reputation
- Purchase/lease price
- Impact on District's ability to enhance long-term fiscal sustainability
- Entitlement risk
- Project quality
- Design and construction capability and sensitivity to surrounding neighborhood
- Experience with the City of Hayward
- Experience with other relevant projects.

EVALUATION PROCESS

The initial review will compare all proposals for compliance with the submission requirements. Any proposals with significant omissions may be rejected. The District reserves the right to request that proposers bring their submissions into compliance within a very short time period after notification.

IMPORTANT NOTE: The District reserves the right, if it deems it in the best public interest, to reject any and all proposals, and to withdraw the Property from potential sale or lease.

A detailed, point-by-point comparison will be made of all complete proposals for District confidential review. Requests for clarification may be sent to a certain proposer. Based on the evaluation criteria, the proposals will be rated and, at the District's sole discretion, the District will choose finalists who will be asked to an interview.

PROPOSAL REQUIREMENTS & REVIEW PROCESS

At the pre-determined District Board of Education Meeting, the proposals which have been received will be examined and declared by the Board. One or more of the finalists may also be requested to present their proposals at this meeting.

The final selection of the successful proposer will be made at a scheduled Board Meeting, subject to approval by the Board.

RIGHT TO REJECT

At any phase, the District reserves the right to terminate, suspend, or modify the proposal process, reject any or all submittals, and waive any minor irregularities in the proposal process.

EXHIBIT A:

**COST ESTIMATES FROM
FACILITIES MASTER PLAN
UPDATE**

HAYWARD UNIFIED SCHOOL DISTRICT**Total Project Cost Estimate**

Facilities Master Plan Update
[Laurel/Golden Oak Montessori](#)
 FMP Site Meeting Date: n/a

Year of original construction:
 Age of School:
 TRi Rating 2019:
 DCA Rating Update 2021:
 2021 Enrollment:

Total No. of Classrooms: -
 No. of Permanent Classrooms:
 No. of Existing Portables: -
 No. of Portables to be replaced: -
 Total Bldg Sq. Ft.: 19,265
 Sq. Ft. of Permanent Bldgs: 19,265
 Sq. Ft. of Existing Portables: -
 Site Acreage: 5.40
 Usable Site Sq. Ft.: 215,959

# Cost Category	Qty Sq Ft	Repair Cost	Upgrade Cost	Total Cost	Cost per Sq Ft
1 Buliding Modernization Cost (includes all permanent bulidings)	19,265	\$1,373,209	\$0	\$1,373,209	\$71
2 Site Modernization Cost	215,959	\$491,992	\$0	\$491,992	\$2
3 Portable Replacement Cost	-	\$0	\$0	\$0	\$0
4 Total Project Cost Estimate	19,265	\$1,865,201	\$0	\$1,865,201	\$97

Preliminary Implementation Timeline:

- * Design months
- * DSA Approval months
- * Bid Process months
- * Construction months
- * Move-in month

Notes:

- 1 Above figures are Total Project Costs
- 2 See backup sheets for further detail of recommended scope of work and markups
- 3 Cost escalation is not included, above figures are in 2021 dollars (recommend 5% per year)
- 4 Total No. of Classrooms includes existing permanent classrooms plus new portable/prefab classrooms
- 5 Total Building Sq. Ft. includes permanent and portable buildings
- 6 Usable Site Sq. Ft. above is site acreage minus footprint of all buildings
- 7 "Repair" entails repairing existing construction, systems, finishes to functional condition (Ex: repair leaking plubming)
- 8 "Upgrade" entails upgrading of existing construction, systems, finishes above original condition (Ex: extend plumbing to new restrooms)
 Upgrade scope assumes all Repair scope will be completed concurrently
- 9 Projects in-progress, funded by Measure H are not included in above figures
- 10 Cost and timeline assume all scope will be done in one phase

HAYWARD UNIFIED SCHOOL DISTRICT

Total Project Cost Estimate

Facilities Master Plan Update
 Laurel/Golden Oak Montessori
 FMP Site Meeting Date: n/a

Year of original construction: 0
 No. of Permanent Classrooms: -
 Total Bldg Sq. Ft.: 19,265
 Site Acreage: 5.40
 Usable Site Sq. Ft.: 215,959

Recommended Scope of Work Building Modernization	Qty	Unit	Repair Unit Cost	Upgrade Unit Cost	Repair Subtotal	Upgrade Subtotal	Full Scope Total
Hazmat abatement		sf	\$6.00		\$0	\$0	\$0
Interior demo		sf	\$2.00	\$4.00	\$0	\$0	\$0
Foundation/slab repairs		sf	\$10		\$0	\$0	\$0
Misc. iron for int modernization		sf		\$5.00	\$0	\$0	\$0
Misc. iron for roof work		sf		\$2.50	\$0	\$0	\$0
Interior carpentry modifications/repairs	19,265	sf	\$5.00		\$96,325	\$0	\$96,325
Exterior carpentry repairs	19,265	sf	\$5.00		\$96,325	\$0	\$96,325
Cabinetry repairs/replacement		sf	\$8.00	\$8.00	\$0	\$0	\$0
Thermal insulation		sf		\$6.00	\$0	\$0	\$0
Roofing repairs	23,118	sf	\$5.00		\$115,590	\$0	\$115,590
Acoustic treatment		sf		\$2.50	\$0	\$0	\$0
New doors, hardware		sf	\$5.00		\$0	\$0	\$0
New windows, glazing		sf	\$4.00	\$4.00	\$0	\$0	\$0
Exterior finish repair/patching	19,265	sf	\$4.00		\$77,060	\$0	\$77,060
New drywall/patching		sf	\$4.00	\$4.00	\$0	\$0	\$0
New ceramic tile		sf	\$10	\$20	\$0	\$0	\$0
New flooring		sf	\$2.50	\$4.00	\$0	\$0	\$0
New ceilings		sf	\$2.50	\$4.00	\$0	\$0	\$0
New interior paint		sf		\$3.50	\$0	\$0	\$0
New exterior paint		sf		\$5.00	\$0	\$0	\$0
White boards		ea		\$3,500	\$0	\$0	\$0
Tackable surface		sf		\$35	\$0	\$0	\$0
Restroom partitions, specialties		ea		\$1,500	\$0	\$0	\$0
Misc. building specialties, signage		ea	\$250	\$250	\$0	\$0	\$0
Food service equipment - cooking kitchen		sf		\$500	\$0	\$0	\$0
Athletic equipment - MPR/Gym		ls	\$100,000	\$150,000	\$0	\$0	\$0
Science, lab, art specialties		ls	\$100,000	\$150,000	\$0	\$0	\$0
Stage curtain, lighting, A/V - MPR/Gym		ls		\$100,000	\$0	\$0	\$0
Blinds, shades		sf	\$3.50		\$0	\$0	\$0
Walk-off mats		ea		\$1,500	\$0	\$0	\$0
Elevator upgrades		ea	\$50,000		\$0	\$0	\$0
Fire sprinkler modifications		sf		\$10	\$0	\$0	\$0
Plumbing repairs/upgrades	19,265	sf	\$4.00		\$77,060	\$0	\$77,060
Drinking fountains/bottle fillers		ea		\$10,000	\$0	\$0	\$0
Additional restrooms		sf		\$500		\$0	\$0
HVAC repairs/upgrades	19,265	sf	\$10		\$192,650	\$0	\$192,650
Electrical repairs/upgrades	19,265	sf	\$10		\$192,650	\$0	\$192,650
Fire alarm repairs/upgrades		sf	\$2.00	\$8.00	\$0	\$0	\$0
Phone, data upgrades		sf		\$4.00	\$0	\$0	\$0
Clock/bell/speaker/PA		sf		\$4.00	\$0	\$0	\$0
Technology infrastructure		ls	\$100,000	\$100,000	\$0	\$0	\$0
Classroom technology, WiFi, audio-visual		sf		\$15	\$0	\$0	\$0
Furniture		sf		\$12	\$0	\$0	\$0
					\$0	\$0	\$0
					\$0	\$0	\$0
					\$0	\$0	\$0
Direct Cost Subtotal:					\$847,660	\$0	\$847,660
General Contractor Markups: 15.0%							\$127,149
Design Contingency: 5.0%							\$42,383
Construction Contingency: 5.0%							\$42,383
Soft Costs: 27.0%							\$228,868
Program Contingency: 10.0%							\$84,766
Escalation:							
Total Project Cost Estimate for Building Modernization:					\$1,373,209	\$0	\$1,373,209

HAYWARD UNIFIED SCHOOL DISTRICT
Total Project Cost Estimate

Facilities Master Plan Update
 Laurel/Golden Oak Montessori
 FMP Site Meeting Date: n/a

No. of Permanent Classrooms: -
 No. of Existing Portables: -
 No. of Portables to be replaced: -
 Sq. Ft. of Permanent Bldgs: 19,265
 Sq. Ft. of Existing Portables: -
 Site Acreage: 5.40
 Usable Site Sq. Ft.: 215,959

Recommended Scope of Work Site Modernization	Qty	Unit	Repair Unit Cost	Upgrade Unit Cost	Repair Subtotal	Upgrade Subtotal	Full Scope Total
Remove, replace storm drain		lf	\$125		\$0	\$0	\$0
Remove, replace sanitary sewer	150	lf	\$125		\$18,750	\$0	\$18,750
Remove, replace domestic water lines	150	lf	\$100		\$15,000	\$0	\$15,000
New fire water service line		lf		\$125	\$0	\$0	\$0
New fire hydrant and fire dept connections		ea		\$15,000	\$0	\$0	\$0
Remove, replace electrical conduits/conductors		lf	\$100	\$50	\$0	\$0	\$0
Electrical service upgrade		ls		\$100,000	\$0	\$0	\$0
Remove, replace low voltage conduits/conductors		lf		\$75	\$0	\$0	\$0
Perimeter fencing repairs, upgrades	215,959	sf	\$0.25		\$53,990	\$0	\$53,990
Entry access control		ls		\$50,000	\$0	\$0	\$0
Video surveillance		sf		\$6.50	\$0	\$0	\$0
Accessibility, path of travel repairs, upgrades	215,959	sf	\$0.50		\$107,980	\$0	\$107,980
Drinking fountains/bottle fillers		ea		\$10,000	\$0	\$0	\$0
Playground improvements - Kinder		ls	\$25,000	\$125,000	\$0	\$0	\$0
Playground improvements - Lower Elem		ls	\$25,000	\$125,000	\$0	\$0	\$0
Playground improvements - Upper Elem		ls	\$25,000	\$125,000	\$0	\$0	\$0
Permanent shade structures - 20'x40'		ea		\$60,000	\$0	\$0	\$0
Exterior lighting improvements		sf	\$1.00	\$1.00	\$0	\$0	\$0
Paving repairs, upgrades	43,192	sf	\$2.50		\$107,980	\$0	\$107,980
Additional parking		ls		\$150,000	\$0	\$0	\$0
Reconfigure pick-up/drop-off		ls		\$250,000	\$0	\$0	\$0
New fire lane		ls		\$250,000	\$0	\$0	\$0
Landscaping, irrigation		sf	\$3.00	\$2.00	\$0	\$0	\$0
Synthetic turf maintenance		sf	\$15.00		\$0	\$0	\$0
Outdoor seating/learning areas		ea		\$50,000	\$0	\$0	\$0
Playground equipment/Ball wall		ls		\$50,000	\$0	\$0	\$0
					\$0	\$0	\$0
					\$0	\$0	\$0
Direct Cost Subtotal:					\$303,699	\$0	\$303,699
General Contractor Markups: 15.0%							\$45,555
Design Contingency: 5.0%							\$15,185
Construction Contingency: 5.0%							\$15,185
Soft Costs: 27.0%							\$81,999
Program Contingency: 10.0%							\$30,370
Escalation:							
Total Project Cost Estimate for Site Modernization:					\$491,992	\$0	\$491,992

EXHIBIT B:
GOLDEN OAK
MONTESSORI CHARTER
SCHOOL FACILITY-USE
AGREEMENT



Made in
Hayward

BOARD OF EDUCATION SUMMARY REPORT

Agenda Item: E.13.a.

Page: 1 of 80

Board Meeting Date: 07/24/19

Consent: Yes

DIVISION: Business Services
SUBMITTED BY: Allan Garde, Assistant Superintendent of Business Services
SUBJECT: Facility-Use Agreement with Golden Oak Montessori Charter School
PRIORITY/GOAL: 1.0 Priority: Financial and Operational decisions will be driven by student success and district priorities and goals.

HISTORY/BACKGROUND

Education Code 47614 (Proposition 39 of 2000) provides regulatory guidance on use of school district facilities. Education Code 47614 states: (a) The intent of the people in amending Section 47614 is that public school facilities should be shared fairly among all public school pupils, including those in charter schools.

(b) Each school district shall make available, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the charter school's in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district. Facilities provided shall be contiguous, furnished, and equipped, and shall remain the property of the school district.

Golden Oak Montessori Charter School is a District-sponsored charter school that first began operations in 2009/10. After two five-year terms, the Board approved their second renewal petition on March 13, 2019 for an additional five-year term through June 30, 2024.

IMPLEMENTATION

The following are the statutory timelines within Proposition 39 below:

- November 1st - Charter School submits formal request for space
- February 1st - District provides an initial facility placement offer
- March 1st - Charter School responds to initial offer
- April 1st - District provides a final facility placement offer

Golden Oak Montessori has agreed to a three-year facility-use agreement in-lieu of the Proposition 39 offer.

FINANCIAL IMPACT

2018/19 - 3% of Charter School Revenues Oversight Fee

2019/20 - 3% of Charter School Revenues Oversight Fee and Facility-Use Fee for Out-of-District Student Enrollment

RECOMMENDATION

Approve Facility-Use Agreement with Golden Oak Montessori Charter School.

**FACILITIES USE AGREEMENT
BY AND BETWEEN
HAYWARD UNIFIED SCHOOL DISTRICT AND
GOLDEN OAK MONTESSORI CHARTER SCHOOL**

This Facilities Use Agreement ("Agreement") is made by and between the Hayward Unified School District ("District") and Golden Oak Montessori School, a California non-profit public benefit corporation ("Non-Profit"), which operates Golden Oak Montessori 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 270 students in grades K-8.
- 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 2019-2020 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 [2652 Vergil Court, Castro Valley, CA 94546] (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 described and depicted in **Exhibit B** to this Agreement shall be governed by this Agreement.
- F. The Parties intend that this Agreement will be in-lieu of the Proposition 39 facilities requirements.

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 have exclusive use of the Site.
- 2. Capacity. The Charter School's total enrollment shall not materially exceed the total enrollment set forth in its 2019-2024 Renewal Petition (identified in **Exhibit C**) without submitting a request for material revision to the District as required by Education Code section 47607(a). A material revision under Education Code section 47607(a) shall not require a revision of this Facility Use Agreement.
- 3. Term. The term of this Agreement shall be from July 1, 2019 to June 30, 2022 ("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 2019-2020 school year under the term of this agreement. After the 2019-2020 school year, the Charter School can terminate the agreement with 180 calendar day written

notice if the Charter School secures a permanent location outside of District property. Charter School shall maintain at least 80 in-District students for the agreement to remain in effect. If Charter School falls below at least 80 in-District students, the Charter School and District will meet to revise **Exhibit B**.

4. **Facility Use Fee.** Under Title 5, California Code of Regulations, section 11969.7(f), the District shall provide the facilities as set forth herein "substantially rent free," and shall charge Charter School 3% of Charter School's revenues as defined under Education Code section 47613, including but not limited to its Local Control Funding Formula, Base grant, Supplemental and Concentration grants, (if any) as its Facility Use Fee.

In addition, Charter School shall pay an additional Facility Use Fee for each student enrolled in the charter school residing outside the geographic boundaries of the District ("out-of-District students.") For each out-of-District student enrolled in the Charter School on its first day of instruction, with an adjustment to the calculation based on enrollment on December 15, and a final calculation based on enrollment on April 15 during each school year under this agreement, the Charter School's annual fee shall be determined as follows:

Daily Commercial Facility-Use Rate per Standard Classroom of \$225.00 multiplied by 180 days, then multiplied by the Student Loading Standard per Classroom of (25:1) to obtain the Annual Rate per Out-of-District Student of \$1,620.00. The Annual Rate per Out-of-District Student multiplied by the Number of Out-of-District students enrolled will constitute the additional Facility Use Fee for Out-of-District Students. The Parties agree that for 2019-20 only, the Annual Rate will be reduced by 50% to be \$810.00 per Out-of-District Student. After 2019-20, the Annual Rate will return to \$1,620.00 per Out-of-District Student.

The 3% of Charter School Revenues as defined under Education Code section 47613 and the additional Facility Use Fee for Out-of-District Students is the combined total fee for the facilities depicted in **Exhibit B**. Adjustments to the Facilities Use Fees would be made based on out-of-District student counts on December 15 and April 15. Facilities Use Fees shall be paid out in equal installments each month throughout the Term. Beginning on September 1, 2019, 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 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. **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 DISTRICT 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.

6. Conditions of Use.

- 6.1 *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.
- 6.2 *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.
- 6.3 *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.
- 6.4 *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.
- 6.5 *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, 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.
- 6.6 *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.

6.7 *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.

6.8 *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.

7. 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.

8. 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.
9. 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.
10. 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.
11. Routine Maintenance. The Charter School shall provide routine maintenance services for the Charter School's exclusive-use Facilities consistent with the maintenance services provided for the District's facilities. The Charter School will provide routine custodial services to Charter School's exclusive use classrooms and space.
12. 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.

13. 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. 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.

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. Charter School shall bear full responsibility for ensuring that the construction or installation of improvements shall be performed in a sound and workmanlike manner, in compliance with all laws applicable to public schools including building codes and prevailing wage laws. Charter School is encouraged to incorporate Collaborative for High-Performing Schools standards into the design of all improvements to the site, and shall comply with all editions of the California Green Building Standards Code. Charter School shall also follow all sustainability guidelines under the Division of the State Architect's 7x7x7: Design Energy Water sustainability initiative.

14. 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.

15. 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.

16. 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.

17. **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.

18. 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 shall make best efforts to 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.

19. 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.
20. 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.
21. 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.
22. 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.
23. 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, non-judicial 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.

24. 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.
25. 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.
26. 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.

27. Amendment. No provision of this Agreement may be amended or modified except by an agreement in writing signed by the parties hereto.
28. 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 drafter or otherwise.
29. 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 Alameda.
30. 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.
31. 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.
32. 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.
33. No Admission. Except as expressly agreed herein, nothing contained herein shall constitute an admission of fact or law.
34. 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.
35. 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.
36. Subject to Approval by Governing Board. This Agreement shall become effective upon ratification by the District's Governing Board.
37. 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:
Assistant Superintendent of Business Services

Final Offer

Hayward Unified School District
24411 Amador Street
Hayward CA 94545

To Non-Profit or Charter School:
Gena Englefried, Head of School
Golden Oak Montessori School
2652 Vergil Court
Castro Valley, CA

38. 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.
39. 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.

Non-Profit and Charter School

Hayward Unified School District

By: Gena Englefried

By: [Signature]

Date: May 23, 2019

Date: 8/20/19

Approved and ratified this 24th day of July, 2019, by the Board of Trustees of the Hayward Unified School District by the following vote:

AYES:

5

NOES:

0

Abstentions:

0

Absent:

0

[Signature]
Secretary to the Board of Trustees
Hayward Unified School District

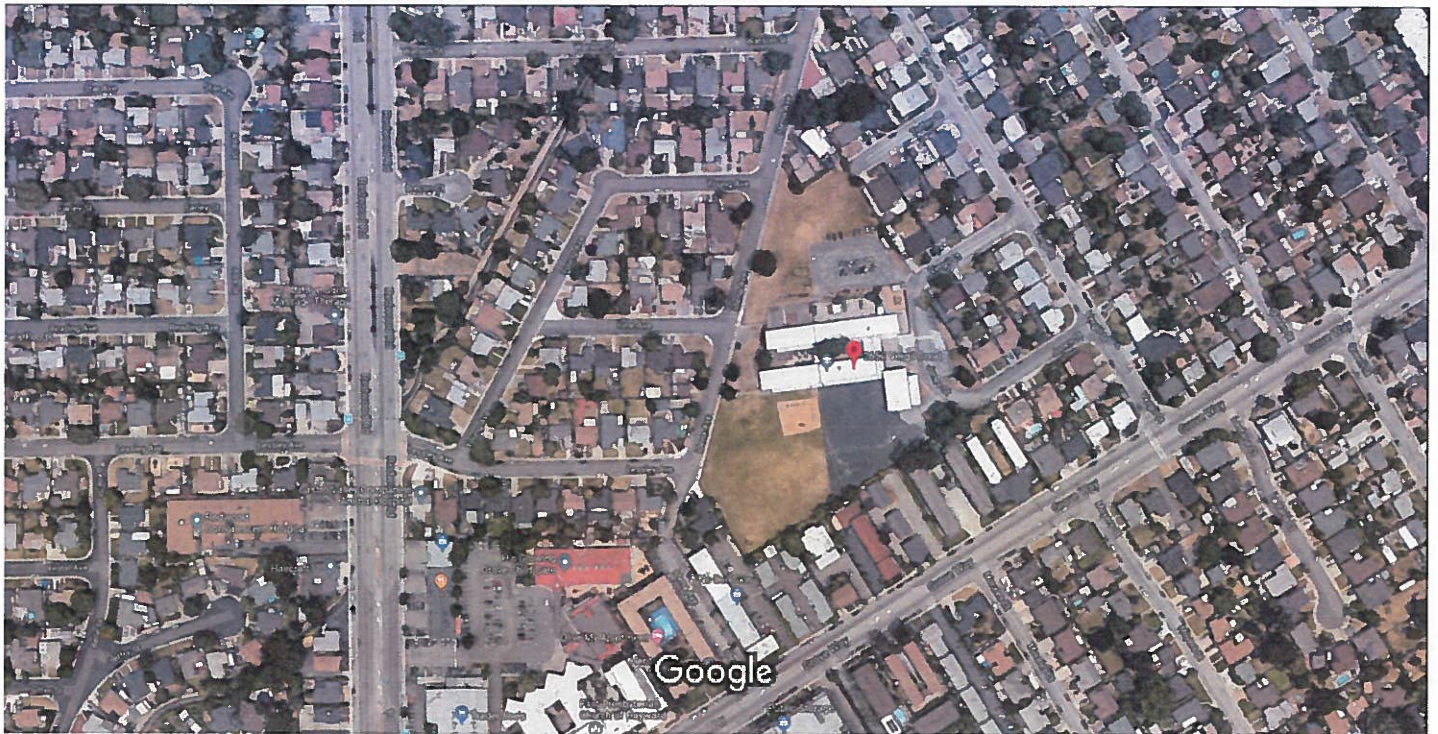
Final Offer

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

Final Offer

**EXHIBIT B –
FINAL OFFER OF FACILITIES**

Google Maps 2652 Vergil Ct



Imagery ©2019 Google, Map data ©2019 Google 100 ft



2652 Vergil Ct
Castro Valley, CA 94546

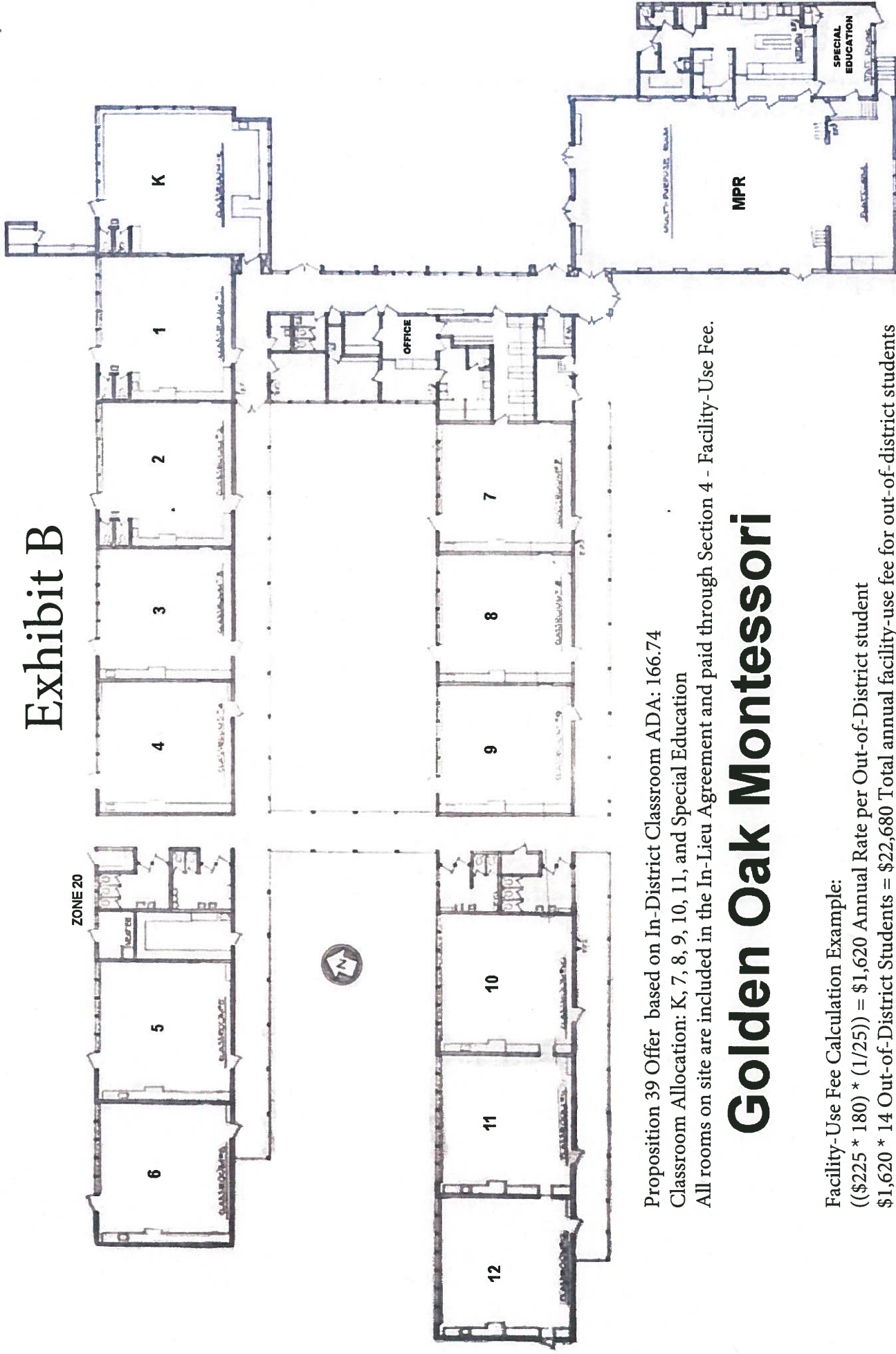


At this location



Exhibit B

ZONE 20



DESIGN QUIT	DESIGN BY	SCALE	DATE	REV
UNIVERSITY	7-15	1/8" = 1'-0"	01/21/79	1
SCHOOL				
DISTRICT				

Proposition 39 Offer based on In-District Classroom ADA: 166.74
Classroom Allocation: K, 7, 8, 9, 10, 11, and Special Education
All rooms on site are included in the In-Lieu Agreement and paid through Section 4 - Facility-Use Fee.

Golden Oak Montessori

Facility-Use Fee Calculation Example:
 $((\$225 * 180) * (1/25)) = \$1,620$ Annual Rate per Out-of-District student
 $\$1,620 * 14$ Out-of-District Students = $\$22,680$ Total annual facility-use fee for out-of-district students

In-Lieu Agreement

FUA Item 7 Addendum

The language in item 7. Furnishings and Equipment does not take into account the charter school has occupied the space for a previous term. As such, we would like to add this addendum referencing the general, materially significant property of Golden Oak Montessori that exists on the site on the date of execution of this agreement which will not be subject to the provisions of item 7.

Property of Golden Oak Montessori Located at the Laurel Site:

- All classroom furniture including desks, tables, chairs, non-built in shelving/cabinets, and area rugs.
- All office furniture including desks, chairs, and filing cabinets/storage cabinets.
- All classroom materials related to instruction.
- All exterior furniture including picnic tables, metal cafe tables with umbrellas, and wooden benches that are not bolted to the ground.
- MPR burgundy window curtains and stage curtains and black backdrop curtain on stage.
- Folding tables in the MPR used for lunch.
- Kitchen items including new side-by-side door refrigerator and warming ovens.
- Refrigerator in staff workroom and mini fridge in office.
- All A/V equipment, copy machines, laminators, computers, printers, etc.
- All equipment and hardware related to Network services
- Garden beds, fruit trees in orchard, and related gardening tools and irrigation equipment
- All PE and recess equipment including basketball hoops and soccer goals
- Custodial supplies including floor mats and cleaning equipment (excluding HUSD marked ladders and floor buffer)

EXHIBIT C:

ASSESSOR'S PARCEL MAP

