

DRAFT FACILITY USE AGREEMENT
BETWEEN
EVEREST PUBLIC HIGH SCHOOL
AND
SEQUOIA UNION HIGH SCHOOL DISTRICT

THIS FACILITY USE AGREEMENT (“Agreement”) is entered into on _____, 2010, between the Everest Public High School (“School”), a California charter school operating as a nonprofit public benefit corporation and the Sequoia Union High School District (“District”).

RECITALS

A. The District is owner of the buildings, land, and improvements located at Woodside High School, 199 Churchill Ave. Woodside, County of San Mateo, State of California.

B. Proposition 39 and Education Code Section 47614 (“Prop. 39”) require school districts to provide charter schools with reasonably equivalent contiguous school facilities to operate charter school educational programs. Implementing regulations adopted by the State Board of Education further require a separate written agreement regarding allocating facilities under Prop. 39. The purpose of this Agreement is to satisfy the requirements of Prop. 39 and its implementing regulations. Unless herein provided to the contrary, this Agreement incorporates by reference Education Code Section 47614 and the regulations approved by the State Board of Education, i.e., Title 5, California Code of Regulations (“5 C.C.R.”), Sections 11969.1 et. seq., “Implementing Regulations”).

C. In response to its Proposition 39 obligations the District shall provide to the School the land, facilities, and equipment (“Facilities”) as outlined herein, located at Woodside High School., 199 Churchill Ave. Woodside, Calif.

D. The District, therefore, agrees to provide use of the Facilities in accordance with the terms and conditions of this Facilities Use Agreement. This Agreement shall not be considered a lease or other agreement as described in Sections 17400 et. seq., or Sections 17455 et. seq., of the Education Code.

NOW, THEREFORE, in accordance with the law, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the District and School (“Parties”) hereby agree as follows:

1. **FACILITIES:** District hereby provides use to School, and School hereby accepts from District, on the terms and conditions set forth herein, use of the Facilities, more fully described in the site map attached hereto as Exhibit A incorporated herein by reference. Use of facilities identified as shared use for instructional purposes will be governed by an allotment of time commensurate with the square foot to ADA ratios described in the Final Offer of facilities of dated March 31, 2010. It will be left to the administrations of Everest and Woodside High School to create a schedule that meets this guiding principle based upon the percent of usage and allotment of instructional minutes described in the Final Offer hereby attached as Exhibit B.

2. CONDITION AND DELIVERY OF FACILITIES

2.1. **Condition of Facilities:** The School acknowledges by execution of this Agreement that the Facilities provided by this Agreement are “reasonably equivalent” and meet all the requirements of Prop. 39 (Ed. Code § 47614) and its implementing regulations for the Term of this Agreement. The District represents and warrants to the School that the Facilities are compliant with all applicable state and federal laws, including access laws, antidiscrimination laws, including FEHA and the ADA, and all applicable environmental laws and regulations.

2.2 Delivery: The Facilities shall be delivered to the School on or before August 10, 2010, in a habitable condition ready for school use.

3. TERM: The term (the "Term") of this Agreement shall be for a period of one year and shall commence on August 10, 2010, (the "Commencement Date") and shall end on August 9, 2011, or if the School closes, whichever date is earlier (the "Termination Date"). Except as provided herein, the District may not terminate this Agreement. In order to terminate this Agreement the District must follow this Termination section and comply with the Dispute Resolution provisions below if requested by either the School or the District. If this Agreement is terminated for any reason other than the default and material breach of the School, or if the School is moved from the Facilities during the Term (other than by Partial or Total Destruction), the District shall pay the School the unamortized cost of all modification, alterations, and improvements that have been made to the Facilities by the School.

4. TERMINATION OF AGREEMENT: Except as otherwise set forth herein in the event of default by one of the parties hereunder, this Agreement shall only terminate at the Termination Date.

5. PRO RATA SHARE PAYMENTS: In accordance with Education Code section 47614(b), School agrees to pay an annual fee to the District as consideration for use of the Facilities. The parties agree the School shall yearly pay \$69,410 in accordance with the terms of this agreement. This amount shall be paid to the District in accordance to the schedule set down by Education Code for the payments of In-lieu property taxes to Everest.

6. USE: The Facilities are made available to School for educational and related uses in accordance with the terms and conditions of this Agreement.

7. ACCESS, OCCUPANCY, MOVING COSTS: The Facilities shall be furnished, equipped, and available for occupancy by the School. The School shall be responsible for all moving and set up costs. The District has agreed to allow the School management, employees, and contractors access to the Facilities after August 1, 2010, based upon mutual agreement between the Superintendent or designee and the Executive Director of the School.

8. OWNERSHIP: The Facilities and any furnishing and equipment provided to the School shall remain the property of the District. At the time the School takes occupancy of the Facilities, the District shall have completed its inventory of all district property that will be located on or remain on the Facilities to meet the District's Proposition 39 obligations. If any furnishings and equipment are provided to the School by the District during the Term of this Agreement, such furnishings and equipment shall be added to the District's inventory and shall remain the property of the District. All other property located on the Facilities shall be the property of the School.

9. FURNISHINGS: The District shall equip the classrooms, offices and other space in the Facilities consistent with the amended Proposition 39 regulations. This includes, but it not limited to, fixtures and furniture (such as whiteboards, chairs, desks, teacher desks, cafeteria tables, library bookshelves, etc.) that are reasonably equivalent to that provided to District students in the comparison group of schools. The School shall be responsible for the good care of furnishings and equipment provided by the District and shall be responsible for replacing or repairing any stolen, vandalized, or damaged items caused its students or staff. The School shall not surplus or dispose of unusable furnishings or equipment supplied by the District, but shall contact the District regarding any unusable furnishings or equipment for handling by the District.

10. UTILITIES AND EQUIPMENT: School shall pay a pro rata charge for utilities including all water, gas, electricity, garbage and sewer services supplied to the Facilities. The pro rata charge shall be calculated by taking the ratio of exclusive and shared space provided to Everest to the total square footage of the facilities at Woodside High School. Based on 2009-10 data and the District's Final Offer of facilities to Everest, this pro rata utilities amount is projected to be \$41,551 (17,012 sq ft / 228,869 sq ft

X \$559,000). The District shall provide Everest copies of all utility bills (water, gas, electricity, sewer, and garbage) and per Everest's ratio of square footage, its portion shall be 7.43% of the total. Everest may provide for its own garbage service and that would be removed for the above calculation.

Notwithstanding anything to the contrary contained herein, in the event the availability of utility services to the Facilities is interrupted as the result of the negligence or intentional acts of District, School shall be entitled to an equitable abatement of the Pro Rata Share commencing upon notice to District and continuing until such utility service is restored.

School shall supply its own computers, internet connectivity, servers, and any other communications equipment necessary for its operation. The District shall provide for either a hard wire or wireless network to connect all exclusive classrooms assigned to Everest to the Everest administration

11. TAXES AND ASSESSMENTS

11.1 District shall be responsible for the payment of any and all taxes, assessments, or other fees associated with School's use of the Facilities. School will be responsible for payroll related taxes, personal property taxes and other taxes applicable to School's operations.

12. COMPLIANCE WITH LAW

12.1 Unless otherwise stated in this Agreement, School shall, at its own cost and expense, comply with any federal, state or local laws or regulations that are applicable to the Charter School's use of the Facilities. The 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, statute, applicable ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. District and the School shall each do all acts required to comply with all applicable laws, applicable ordinances, regulations and rules of any authority relating to their respective maintenance obligations as set forth herein. However, the District is fully responsible for (at its own cost and expense) full compliance with applicable building codes, fire and other safety laws, Environmental Laws and the California Environmental Quality Act (CEQA) related to the Facilities except as otherwise stated herein. The School's use of the Facilities shall comply in all material respects with all applicable Environmental Laws relating to industrial hygiene and environmental conditions on, under or about the Facilities, including but not limited to, air, soil and ground water conditions. The School shall not use hazardous materials on, under or about the Facilities; provided, however, that School may use normal and customary cleaning solutions and office supplies so long as the use of such solutions and supplies are in quantities and in a manner wholly consistent with all applicable Environmental Laws; and further provided that School may use normal and customary chemicals for classroom use so long as the use of such chemicals are in quantities and in a manner wholly consistent with all applicable school standards. Without limiting the generality of the foregoing, the School shall not, nor shall the School allow any party to, transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any hazardous material upon or about the Facilities in violation of Environmental Laws, nor permit any subtenant, employee, agent, invitees or contractor to engage in such activities in violation of Environmental Laws upon or about the Facilities, during the Term of this Agreement. School agrees to dispose of all chemicals, cleaning solutions, office supplies, e-waste and other materials requiring special handling in a safe and lawful manner. *"Environmental Laws" means and refers to all applicable federal, state and local laws, ordinances, court orders and administrative directives, rules and regulations now or hereafter in force, as amended from time to time, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§9601, et seq. ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. §§6901, et seq.; the Clean Water Act, 33 U.S.C. §§1251, et seq.; the Hazardous Substance Account Act, California Health & Safety Code §§25300, et seq.; the Hazardous Waste Control Law, California Health & Safety Code §§25100, et seq.; the Medical Waste*

Management Act, California Health & Safety Code §§15015, et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §§13000, et seq.; and California Education Code §§17210, et seq., and California Code of Regulations, Title 5, §§14010, et seq. The District certifies that, to the best of its current knowledge, it has maintained the Facilities in compliance with all Environmental Laws, including lead and asbestos abatement and containment. Should the School perform work that disturbs these materials, it is School's responsibility to handle and dispose of this material in accordance with the regulations, so long as those materials were properly identified in the AHERA or Lead-Based Paint Survey. The District agrees to immediately remediate any environmental hazard that is present in the Facilities that is not the result of the School's modification or improvement of the Facilities. 12.1 If, it is determined at any time by any governmental agency having, or claiming to have, jurisdiction over the Facilities, that this Agreement is not in compliance with the California Subdivision Map Act (Government Code §66410, et seq.), the School shall not be responsible for any fines, charges, costs, or expenses in bringing the Facilities into compliance therewith.

13. MAINTENANCE AND REPAIRS

13.1 Maintenance and Capital Improvements. It is agreed that District be responsible for and pay for all capital improvement projects and maintenance, replacement, and repair services to keep the Facilities on par with District's other schools including without limitation, any required upgrades or repairs to the roofing and gutters, mechanical systems (for example, heat, ventilation, air conditioning, plumbing, and sewage) and electrical system (including an electrical upgrade project to add electrical outlets necessary for the School to participate in a grant-funded technology project). District shall assume the cost and responsibility for projects eligible to be included in the District deferred maintenance plan established pursuant to Education Code section 17582 and the replacement of furnishings and equipment supplied by the District in accordance with District schedules and practices.

13.2 Custodial Obligations. The School shall be responsible for providing custodial services necessary to maintain all assigned space that is exclusive to Everest at the same level and to the same standards as District maintains at Woodside High School. The District shall be responsible for the custodial services of all shared spaces on the Woodside campus and Everest agrees to pay its pro rata share of custodial costs of shared spaces. Per Exhibit B, Everest is being provided the equivalent of 6916 square feet of shared facilities. This represents 3.0% of the total facilities square footage at Woodside. The 2009-10 budget for custodial services for Woodside was \$819,359. Everest's yearly pro rata share would be \$24,581 based on 2009-10 data. Everest will be invoiced monthly in 2010-11 based on actual payroll and custodial supply costs.

The District is responsible for all initial and periodic inspections and for the development and implementation of management plans and response options required to comply with Asbestos Hazard Emergency Response Act (AHERA) and Lead-Safe Schools Protection Act.

13.3 School's/District's Notice. School shall immediately give District written notice of any defect or need of repairs for which School believes that District is obligated to perform based on the foregoing provisions of the Agreement. District will respond to School's request in similar fashion as it does to other schools in the District but no later than ten (10) business days of the request. In the case of an emergency, School shall immediately give District verbal notice of any defect or need for repair. If, after such verbal notice, District is unable to promptly remediate such emergency, District shall grant School the right to make reasonable temporary repairs to prevent further damage to the Property pending an actual response from District as is required by this Paragraph. In the latter case, School shall, within thirty (30) days of School's delivery of invoices for any such emergency repairs to District, be entitled to reimbursement for reasonable repair costs. District shall immediately give School written notice of any defect or need of repairs for which District believes that School is obligated to perform based on the foregoing provisions of the Agreement. School will respond to District's request within ten (10) business days of the request, or sooner, if the situation is of an emergency nature. The parties will work together in

good faith to correct defects and make necessary repairs in a timely manner pursuant to their respective responsibilities and mutual desire to provide students with reasonably equivalent school facilities.

14. SURRENDER AT END OF TERM: School agrees that, upon termination of the Agreement, it will surrender possession of the Facilities, including any then-existing fixtures and personal property, to District in its "AS-IS" condition as of the Commencement Date (inclusive of all faults and defects as may then exist), reasonable wear and tear and casualty excepted, and free of School's furniture and other movable personal property. School shall have the right to remove all of its movable, unattached property, including the technology and all of its trade fixtures (whether or not attached to the Facilities); provided, however, that School shall repair any damage to the Facilities resulting from School's removal of such property.

15. ALTERATIONS

15.1 School shall not make, or allow its employees, agents, contractors or invitees to make, any improvements to the Facilities ("improvements" shall be defined as any change that is a "fixture" as defined in Civil Code 660) ("Alterations") without obtaining the prior written consent of District. School shall supply to District any documents and information reasonably requested by District in connection with any request for approval hereunder. School must have District's written approval and all appropriate permits and licenses prior to the commencement of said Alterations. All Alterations approved by District shall be made and performed by School at its sole cost and expense. Unless otherwise agreed in writing, all Alterations made after the Commencement Date shall become the property of District and surrendered to District upon the termination of this Agreement by lapse of time or otherwise; provided, however, that this clause shall not apply to trade fixtures, furniture, equipment or other personal property of School that has not become permanently affixed to the Facilities. The School shall be responsible for any code compliance work caused by School's Alterations.

15.2 District expects that it may contract for modernization and/or construction work to be completed at the Facility during the Term of this Agreement. School agrees to accommodate such work. The District will meet and confer with the School to attempt to reach agreement as to the time in which these activities may occur, but in no event will District commence these activities on less than thirty (30) days written notice to the School. District will utilize its best efforts to limit unnecessary interruptions to educational programs at the School.

15.3 District acknowledges that the School is a public charter school using the Facilities for public education purposes. District therefore agrees that any of its employees, agents, contractors or independent contractors utilized to perform any of the upgrades, modernization or repairs pursuant to this Agreement that may have contact with School's pupils, will be held to the same standards that District currently utilizes when conducting these type of activities on other school sites of the District in which District determines such individuals may have contact with students, e.g., criminal background checks.

16. INDEMNITIES

16.1 School shall fully indemnify, defend and hold harmless the District and its officers, employees, contractors and agents (collectively "District") from and against all liability, claims, suits, sanctions, costs or expenses for injuries to or death of any third party including, but not limited to, any student, parent, guardian, employee, agent, contractor or subcontractor or invitee of the District, and damage to or loss of property (including, but not limited to, property owned, leased, occupied or used or in the care, custody or control of the District), arising out of or resulting from any negligent act or omission by School or arising from School's particular use of the Facilities or School's performance of its responsibilities, representations, warranties or covenants under this Agreement excepting only those claims, demands, actions, suits, losses liability expenses and costs caused by the negligence of District. The duty to indemnify' and hold harmless, as set forth herein shall include the duty to defend as described in California Civil Code Section 2778.

16.2 District shall fully indemnify, defend and hold harmless the School and its officers, employees, contractors and agents (collectively "School") from and against all liability, claims, suits, sanctions, costs or expenses for injuries to or death of any third party including, but not limited to, any student, parent, guardian, employee, agent, contractor or subcontractor or invitee of the School, and damage to or loss of property (including, but not limited to, property owned, leased, occupied or used or in the care, custody or control of the School), arising out of or resulting from any negligent act or omission by District or arising from District's performance of its responsibilities, representations, warranties or covenants under this Agreement excepting only those claims, demands, actions, suits, losses liability expenses and costs caused by the negligence or legal liability of School. The duty to indemnify and hold harmless, as set forth herein shall include the duty to defend as described in section 2778 of the California Civil Code. 16.3 In the event of concurrent negligence of School and District, any liability for any and all claims for injuries or damages to persons and/or property that arise out of the terms and conditions of this Agreement shall be apportioned according to the theory of comparative negligence as defined by California law.

17. INSURANCE

17.1 Throughout the Term of the Agreement, School, at its sole cost and expense, shall keep, or cause to be kept, insurance on its business, contents, equipment, books, records, and all other assets, tangible or intangible, and all improvements on or appurtenant to the Facilities against loss or damage by fire and other risk as are now or hereafter included in the extended coverage endorsement for public educational entities, including vandalism and malicious mischief. School shall not be obligated to insure any furniture, equipment, machinery, goods or supplies not covered by this Agreement that District may keep or maintain in the Facilities. School shall, at its sole cost and expense, maintain a minimum of \$2 million in Comprehensive General Liability insurance. School shall provide the District with certificates of insurance evidencing said coverage and shall add District as additional insured on said policies.

17.2 The District, at its own cost and expense, shall keep and maintain premises liability insurance insuring all portions of the Facilities, including without limitation the School Facilities and any buildings used solely or jointly between District and School against fire, lightning, extended coverage, vandalism and malicious mischief in an amount not less than one hundred percent (100%) of the replacement cost thereof. The District shall provide the School with a certificate of insurance evidencing said coverage and shall add School as additional insured on said policy. School shall, at its sole cost and expense, maintain a minimum of \$2 million in Comprehensive General Liability insurance. The District's insurance policies shall be the first party insurance for any loss or damage to the Facilities not caused by the School; the School shall be liable for any deductible to the extent that it is solely responsible for the loss or damage to the Facilities.

17.3 During the Term of the Agreement, School, at its sole cost and expense, shall comply with all provisions of law applicable to School with respect to obtaining and maintaining Workers' Compensation insurance for its employees. School shall provide District with a certificate of such insurance. During the Term of the Agreement, District shall also comply with all provisions of law applicable to District with respect to obtaining and maintaining workers compensation insurance for District's employees performing work on or services to the Facilities. District shall also require any subcontractors performing work for District on the Facilities to carry workers compensation insurance, and to name the District as an additional insured on such policies.

18. ASSIGNMENT OR SUBLETTING: The School shall not assign, transfer, mortgage, pledge, hypothecate or encumber, voluntarily or involuntarily, this Agreement or any interest herein, and shall not submit the Facilities or any part thereof, or any right or privilege appurtenant thereto, without the prior written consent of District. The School shall enjoy access to and use of the Facilities in the same manner as any other District facility, under all applicable laws. The School will be permitted to utilize the Facilities for any and all School related activities, not limited to, but including school festivals, dances,

sports activities, and open house nights. Arrangements for use of shared and other District facilities on the Woodside campus need to be made in advance with Woodside's administration. The School shall not grant use of any space at Woodside High School under the Civic Center Act to an outside group without first securing the written consent of the District.

19. SIGNS: School may only place signs identifying its exclusive spaces at Woodside High School on the doorways to those spaces and a sign will be placed by the District near the Administrative / Library building identifying those exclusive spaces used by the School parents and visitors.

20. SAFETY AND SECURITY OF STUDENTS, PARENTS, AND VISITORS: All parents and visitors to the School during instructional hours will first check in at either the Everest administration room or the Woodside's administration building to receive a Visitor's Pass. They shall wear this pass in a way that it will be visible at all times. The administrations of the School and Woodside shall adopt communication and disciplinary procedures to provide for a safe learning environment for all students.

21. PARKING: Everest staff will be given staff parking permits and will use the Visitors parking lot adjacent to the A wing. This will also apply to any Everest parent, visitor, or student. Any Everest student seeking a student parking permit will obtain it through the Woodside administration and adhere to all procedures set down for Woodside students.

22. PROJECTED ENROLLMENT OF IN-DISTRICT STUDENTS: The District and School disagree on the projected numbers of 2010-11 in-district students for the School. Space is being provided on a contingency basis utilizing the School's projections. If in-district enrollment does not reach the School's projections and the number of exclusive classrooms assigned to the school exceeds the teaching station / student ratio of the comparison schools for in-district students, the procedures described in 5 CCR 11969.8 will be applied.

23. SHARED FACILITIES: The administrations of Everest and Woodside will meet to work out exact schedules for the use of shared facilities based on the daily time allocations due Everest described in Exhibit B. Everest's use of the Performing Arts Center requires the presence of the theater manager who is an hourly employee of the District paid through school and community use of the performing arts center. Any use of the performing arts center by Everest will require reimbursement to the District for the payment to the theater manager covering all hours he is present. Any evening or weekend use of the performing arts theater will also require reimbursement to the District for custodial costs. Woodside/District events shall have priority over Everest events, however Everest events shall have priority in scheduling over community events. Once scheduled, an event shall not be displaced. District sports teams will have priority over Everest's use of the large Gym, but Everest shall have priority over outside community use of the large Gym. Weekend use of the gym will require the presence of a District custodian whose hourly cost will be the responsibility of Everest. The fitness center will be made available to Everest provided an Everest staff member is trained and certified to supervise the facility. Everest students may make use of the Library Media Center during scheduled times. They may make use of computers and reference materials, but they will not be able to check out reference materials that belong to Woodside High School. Everest will need to provide its own supervision and assistance to its students.

24. HOLDING OVER: Any holding over after the expiration of the term of this Agreement, with the consent of District, shall be construed to be a tenancy from month to month on the same terms and conditions herein specified, including the same consideration amount stated above, unless otherwise agreed by the parties in writing.

25. APPLICABLE LAW: This Agreement shall be governed by the applicable laws of the State of California.

26. DISPUTE RESOLUTION: Disputes between the School and the District regarding the alleged

violation, misinterpretation, or misapplication of this Agreement, Proposition 39, or Implementing Regulations shall be resolved using the dispute resolution process identified below. The party initiating the dispute resolution process shall prepare and send to the other party a notice of dispute that shall include the following information:

26.1 the name, addresses and phone numbers of designated representatives of the party;

26.2 a statement of the facts of the dispute, including information regarding the parties attempts to resolve the dispute;

26.3 the specific sections of the Agreement that are in dispute; and

26.4 the specific resolution sought by the party. As soon as practicable from receipt of the notice of dispute the representatives from the School shall meet with representatives from the District in an informal setting to try to resolve the dispute. If the informal meeting fails to resolve the dispute then two governing board members from the School and the District shall meet in an informal setting to try to resolve the dispute. If the informal meeting fails to resolve the dispute the party initiating the dispute resolution process shall notify the other party (the responding party) in writing that it intends to proceed to mediation of the dispute. The parties shall work together to identify a mutually acceptable mediator and a time for the mediation. The party initiating the dispute shall forward a copy of the notice of the dispute to the appointed mediator. The responding party shall file a written response with the mediator and serve a copy on the initiating party within seven business days of the first scheduled mediation. The Mediation procedure shall be entirely informal in nature; however, copies of exhibits upon which either party bases its case shall be shared with the other party in advance of the mediation. The relevant facts should be elicited in a narrative fashion to the extent possible, rather than through examination and cross-examination of witnesses. The rules of evidence will not apply and no record of the proceedings will be made. If an agreement is reached, the agreement shall be reduced to writing and shall be signed by the District and School. The cost of mediation shall be split between the parties. Either party may seek equitable or injunctive relief prior to the mediation to preserve the status quo or prevent irreparable injury pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or 45 calendar days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire. At any time, including following unsuccessful mediation, either party may file an action in San Mateo Superior Court.

27. BREACH NOTICE AND RIGHT TO CURE: The occurrence of any one or more of the following events shall constitute a default and material breach of this Agreement by the School:

27.1 The failure by the School to make timely payment of the Pro Rata Share as required under this Agreement where such failure shall continue for a period of forty-five (45) days after receipt of written notice thereof by District to the School.

27.2 The failure by the School to observe or perform any of the express covenants, conditions or provisions of this Agreement to be observed or performed by the School where such failure shall continue for a period of forty-five (45) days after receipt of written notice thereof by District to the School; provided, however, that if the nature of the School's default is such that more than forty-five (45) days are reasonably required for its cure, then the School shall not be deemed to be in default if the School commences such cure within said forty-five (45) days period and thereafter diligently prosecutes such cure to completion.

27.3 Cessation of the Charter School's operations based upon a revocation of School's charter by its granting agency.

27.4 District shall be in default and in material breach of this Agreement if District fails to perform any obligation required by this Agreement within a reasonable time, but in no event later than forty-five (45) days after receipt of written notice by the School to District specifying wherein District has failed to perform such obligation; provided, however, that if the nature of District's obligation is such that more than forty-five (45) days are required for performance, then District shall not be in default if District commences performance within such forty-five (45) day period and thereafter diligently pursues the same to completion. The remedies District may pursue with written notice and demand which District may have by reason of such default and breach are as follows: Terminate the School's right to use the Facilities, in which case this Agreement shall terminate and the School shall immediately vacate the Facilities; In the event of material default or breach by District, the School may terminate this Agreement or pursue remedies as provided in this Agreement or in law. Neither party may terminate this Agreement without first complying with the Dispute Resolution procedures outlined in Section 22 above.

28. QUIET ENJOYMENT: District represents that it has full right and authority to enter into this Agreement as outlined herein and upon proper notice to the School and that School, upon performing its covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Facilities for the Term hereof without hindrance or molestation from District or any other third party, subject to the terms and provisions of this Agreement.

29. NOTICES: Any notices provided for herein shall be deemed delivered when delivered personally to the other party or when delivered by certified mail, return receipt requested, addressed as follows:

FOR DISTRICT: Chief Business Official
Sequoia Union High School District
480 James Avenue
Redwood City, CA 94062

FOR SCHOOL: Executive Director
Everest Charter High School
305 Main St.
Redwood City, CA 94063

30. GENERAL PROVISIONS

30.1 Waiver. The waiver by District and/or the School of any term, covenant or condition herein contained shall not be deemed to a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

30.2 Marginal Headings. The marginal headings and article titles to the articles of this Agreement are not a part of the Agreement and shall have no effect upon the construction or interpretation of any part hereof.

30.3 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.

30.4 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. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto to their respective successors in interest. This Agreement shall not be effective or binding on any party until fully executed by both parties hereto.

30.5 Severability. Any provision of this Agreement that proves to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provision shall remain in full force and effect.

30.6 Choice of Law. This Agreement is subject to the laws and jurisdiction of the State of California. In the event that any court action should be brought in conjunction with this Agreement, it shall be subject to interpretation under the laws of the State of California.

30.7 Independent Entities. This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, joint employer, or association. School expressly agrees that its employees and contractors are not employees of the District, and will not represent itself, its officers, employees and contractors as being District employees.

31. AUTHORITY TO EXECUTE AGREEMENT: The Parties each warrant that they have the authority to execute this Agreement and that all actions have occurred, and all necessary approvals or consents have been obtained to allow each party to enter into this Agreement.

IN WITNESS WHEREOF, the parties have set their hands; DISTRICT and the SCHOOL have signed this Agreement on the dates set forth below.

SEQUOIA UNION HIGH SCHOOL DISTRICT

Patrick R. Gemma, Superintendent

Date: _____ Date: _____

Approved and ratified this _____ day of _____ 2010 by the Board of Trustees of the Sequoia Union High School District by the following vote:

AYES:

NOES:

Abstentions:

Secretary to the Board of Trustees

EVEREST CHARTER HIGH SCHOOL

Diane Tavenner, Executive Director

Approved and ratified this _____ day of _____, 2010 by the Governing Board of the Everest Charter High School by the following vote:

YES:

NOES:

Abstentions:

Secretary to the Charter School Board of Director

Exhibit A

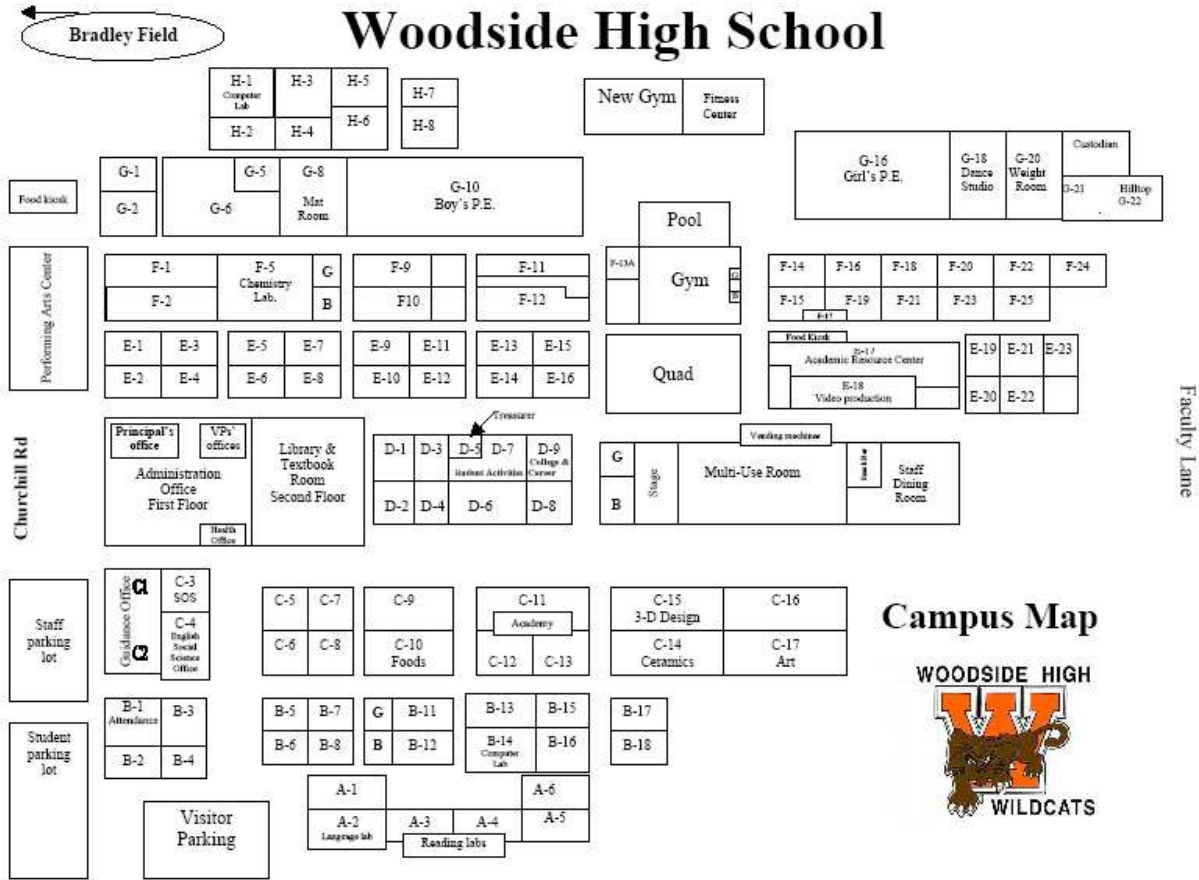


Exhibit B

SEQUOIA UNION HIGH SCHOOL DISTRICT

480 JAMES AVENUE, REDWOOD CITY, CALIFORNIA 94062-1098

ADMINISTRATIVE OFFICES (650) 369-1412

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March 31, 2010

Ms. Diane Tavenner
Everest Charter High School
305 Main St
Redwood City, CA 94063

Dear Ms. Tavenner:

This letter constitutes the Sequoia Union High School District's ("District's") Final Offer of Facilities to Everest Charter High School ("ECHS") under Education Code section 47614 ("Proposition 39") and its implementing regulations (5 C.C.R. §11969.1 *et seq.*).

The District's Governing Board has determined that the final facilities offer below meets the statutory and regulatory requirement that the District provide in-district charter school students use of District facilities reasonably equivalent to those used by District students. This final offer complies with all of the requirements (5 C.C.R. §11969.9(1)).

The District also reserves its right to, and will seek reimbursement from ECHS for over-allocated space in accordance with 5 C.C.R. §11969.8 based on inaccurate enrollment projections by ECHS.

Factors Considered:

In making a facilities allocation, the Board considered the following factors:

- (a) The request for teaching, specialized, and non-teaching spaces put forth in the ECHS October 2009 facilities request and ECHS's March 1, 2010, response.
- (b) The request of ECHS to be located in Redwood City;
- (c) The availability of suitable space at the comprehensive high schools, in particular Sequoia High School, and all other district owned property
- (d) Information concerning ECHS' s educational program to the extent deemed relevant to the assignment of facilities;

- (e) The site that meets the Proposition 39 definition of "reasonably equivalent" when compared to the comparison schools;
- (f) The fact that ECHS rejected the District's 2009-10 offer of Green St in East Palo Alto, which, with planned additions for Year 2, would have served Everest's facility needs through the 2010-11 school year. Had ECHS accepted the District's offer for 2009-10, a move to a new facility in 2010-11 would not have been necessary.
- (g) The current location where Everest is housed, 305 Main St, Redwood City, does not meet Proposition 39 requirements and ECHS has given the district no indication that it wants to remain there for the 2010-11 school year as a negotiated agreement.
- (h) 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 and other local educational programs at all of its school sites.
- (i) The District's obligation to consider equally the needs of in-District ECHS students with those in regular programs, such that the allocation of facilities results in a "fair sharing" of District facilities for regular and ECHS students.
- (j) Providing for a safe learning environment for both district and charter students.

REVIEW OF AVAILABLE FACILITIES AT DISTRICT SITES

The District owns the following properties:

- 1) Carlmont High School – 1400 Alameda, Belmont
- 2) Woodside High School – 199 Churchill, Woodside
- 3) Sequoia High School – 1201 Brewster Ave. Redwood City
- 4) Menlo Atherton High School – 555 Middlefield Rd, Atherton
- 5) Redwood Continuation High School – 1968 Old County Rd, Redwood City
- 6) Adult School -- 3247 Middlefield Rd. Menlo Park
- 7) Summit Preparatory Charter High School -- 890 Broadway, Redwood City
- 8) Property on 4th / 5th Avenue in unincorporated Redwood City
- 9) 763 Green St, East Palo Alto
- 10) Five contiguous small parcels on Myrtle St, East Palo Alto (1010-1056 Myrtle)

The February 2010-11 enrollment projections for the comprehensive high schools show the following:

School	2010-11 Projected enrollment
Carlmont	2070
Woodside	1758
Sequoia	1909
Menlo Atherton	1928

Given the number of available teaching stations and the 2010-11 projected enrollments, there is not sufficient space to house the facility needs of Everest (190 in-district students) at Carlmont, Menlo Atherton, or Sequoia. Sequoia High school has experienced significant growth since the 2008-09 CBEDS count of 1708 to its current 2010-11 projection of 1909. This growth, coupled with its program of lower class sizes for EL classes, small learning communities, and lower class sizes for freshman classes, will necessitate the use of all available classrooms to house its students and meet their instructional needs.

Given the number of its teaching stations, the projected 2010-11 enrollment of Woodside High School does allow for shared use of the campus with ECHS.

Redwood Continuation High School is projected to serve approximately 300 students and will make use of every available classroom for its instructional program. It cannot house an additional 190 in-district ECHS students.

The adult school offers classes mornings, afternoons, and evenings serving mainly the community that surrounds it on Middlefield Road. The District plans to continue the program in 2010-11 and there is not sufficient space for both programs, nor is the building compliant for a Proposition 39 facilities offer.

The building used by Summit Preparatory Charter High School located on 890 Broadway cannot accommodate additional students beyond Summit's current enrollment.

The District property located between 4th and 5th Avenues in unincorporated Redwood City is now vacant land and construction will begin this summer on an alternative education / adult school facility that will be complete in August 2011.

The District site at 763 Green St, East Palo Alto, was the first year offer to Everest in March 2009. This was to be a two year offer and the district would have taken steps to add capacity to the site for the second year to accommodate Everest's enrollment growth. Everest's rejection of the site for Year 1 resulted in the District not taking the necessary steps to expand the site's capacity.

The small parcels on Myrtle St in East Palo Alto still contain the small family homes of their former owners. Construction will begin this summer to build an alternative education facility that will house up to 250 students. This facility will open in July 2011.

Thus, Woodside High School represents the only available site in which ECHS may be housed. Over 70% of the student body of Woodside High School lives in Redwood City or in its adjacent unincorporated areas. Its location at the corner of Woodside Rd and Alameda places it adjacent to the city limits. While consideration was made to place Everest at Sequoia High School per its specific request, the offer of Woodside High School clearly meets the intent of Education Code Section 47614 that requires that a District make reasonable efforts to place a charter school near to where the charter school wishes to locate. In addition, Woodside High School offers a contiguous facility. All exclusive and shared spaces available to ECHS are located on the campus.

As was indicated in the Preliminary Offer, the 2010-11 offer of Woodside High School is only for one year. In 2011-12 the District plans to house ECHS at an interim site in the Redwood City area where it may remain until a permanent site within the District will be ready. ECHS's acceptance of 763 Green St for two years would have reduced the number of necessary moves for ECHS allowing it to be placed into its permanent facility in its second move.

OFFER OF FACILITIES

The District offers placement of ECHS on the Woodside High School campus for the 2010-11 school year.

- (A) Everest will be provided with exclusive use of 6 standard classrooms for regular instruction, exclusive use of one additional standard classroom for electives, exclusive use of one additional standard classroom for special education, exclusive use of one science lab, and 50% of Woodside’s instructional day use of a second science classroom that could also serve as a computer or other lab. (a total of 9 ½ classrooms)
- (B) Exclusive use of classroom (at least 912 sq ft) that will be modified by the District for use by ECHS administration, counselors, teachers (work and break room),
- (C) Shared use of library / media center
- (D) Shared use of multipurpose room, gym, performing arts center, pool, fields, hardscape, locker rooms, and kitchen per square footage to ADA formulas and the facilities use agreement.
- (E) Access to staff and student bathrooms and parking
- (F) District and DCS shall enter into a Facilities Use Agreement regarding such matters as insurance, indemnity, access, safety, utilities and the appropriate maintenance and usage requirements of the provided facilities for a one-year period.
- (G) The pro rata facilities charge to DCS shall be \$4.08 per square foot per year. Assuming ECHS makes use of all exclusive and shared spaces offered to it, the pro rata share will be \$69,410. The payment schedule shall be in installments proportionate to and occurring contemporaneous with DCS’s incremental receipt of in lieu property tax payments for 2010-2011 school year.
- (H) Facilities shall be furnished with furnishings comparable to that currently in use in the comparison group schools. The quantity of furnishings will be in an amount to provide comparable furnishings for 190 units of in-district ADA.

BASIS FOR OFFER OF FACILITIES

Education Code section 47614, subdivision (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 that 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 must compare district-operated schools serving similar grade levels. The District must offer facilities to DCS that are comparable to the comparison group in all of the following ways:

#	Facility Characteristic	Regulatory Authority
1	Ratio of teaching stations to ADA.	5 C.C.R. § 11969.3, subd.

		(b)(1)
2	Specialized classroom space if such facilities are available to the district comparison group (e.g., science laboratories)	5 C.C.R. § 11969.3, subd. (b)(2)
3	Non-Teaching space, which the district can share with the charter school (e.g., administrative, kitchen, multi-purpose, and/or play area space).	5 C.C.R. § 11969.3, subd. (b)(3)
4	School site size.	5 C.C.R. § 11969.3, subd. (c)(1)(A)
5	Condition of interior and exterior surfaces.	5 C.C.R. § 11969.3, subd. (c)(1)(B)
6	Mechanical, plumbing, electrical, and fire alarm systems condition and conformity to applicable law.	5 C.C.R. § 11969.3, subds. (c)(1)(C)-(D)
7	Availability and condition of technology resources.	5 C.C.R. § 11969.3, subd. (c)(1)(F)
8	Overall learning environment qualities (e.g., lighting, noise mitigation, and/or size for intended use).	5 C.C.R. § 11969.3, subd. (c)(1)(F)
9	Furnishing and equipment.	5 C.C.R. § 11969.3, subd. (c)(1)(G)

Education Code section 47614, subdivision (b), also requires a school district to ensure that the facilities offered to a charter school are "contiguous." 5 C.C.R. § 11969.2, subdivision (d), defines contiguous as facilities that are "contained on the school site or immediately adjacent to the school site." Further, if the school district cannot accommodate a charter school's in-district ADA at anyone 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 take into consideration student safety. (Cal. Code Regs., tit. 5, § 11969.2, subd. (d).) However, "charter school students are not entitled to better facilities choices than other district resident pupils." (*Ridgecrest Charter School v. Sierra Sands Unified School District* (2005) 130 Cal.App.4th 986,1001 (fn. 16).)

Under 5 C.C.R. § 11969.3(a), the District selected the three high schools (Woodside, Menlo Atherton, and Sequoia) in which the greatest number of ECHS students reside facilities to serve as the comparison group school for ECHS students.

OFFER OF EXCLUSIVE AND SHARED SPACE

Based on the number of in-district students ECHS has indicated will be attending the Charter School, the District has determined that it will provide ECHS facilities as set forth below. As required by the California Code of Regulations, the District has calculated the overall ratios of standard and specialized facilities in the comparison group. These ratios are expressed as the number of student average daily attendance ("ADA") per type of facility, assuming an ADA rate of 96%.

To determine the number of classrooms or square footage the District offers ECHS, the ratios were then applied to the Charter School's projected in-district ADA for in district students. (5 C.C.R.

§ 11969.3(b)(I).). ECHS has projected in-district enrollment of 190.

On November 25, 2009, pursuant to 5 C.C.R. §11969.9(d), the District issued a written objection to ECHS's projections, and issued a counter-projection of 170 in-district ADA. The District does not waive its objections to ECHS's projections, nor does it agree with DCS's response to the District's objections as contained in its December 30, 2009 letter. Specifically, the District does not believe that ECHS has provided sufficient documentation to support its projection of 104 *in District* ninth grade students, a number significantly above the 2009-10 ninth grade in district ADA of 86 . However, reserving its rights under 5 C.C.R. §11969.9(d), the District in this Final Offer will base the allocation of teaching stations, specialized teaching space, and non-teaching space based on ECHS's projection of 190 in-District ADA.

The District's final facilities offer is summarized as follows:

Type of Facility	Number of Classrooms due per 5 CCR 11969.3 (b) Regulations	District Offer	Notes / Classroom Assignments
Standard Classrooms	5.9	6	Room #s B-13, B-17, B-18, E-14, E-15, E-16 (exclusive use)
Science Classrooms	1.2	1.2	Combine with classroom labs to make 1.5 classrooms (one exclusive science classroom, a second science classroom for one half Woodside's instructional day Room # C-9 (exclusive) Room # H-2 (shared use)
Special Education Classroom	1.0	1	Room # B-14 (exclusive use)
Special elective classrooms	1.0	1	Room# E-13 (exclusive use)
Classroom labs	0.3	0.3	(see science)
Administration Space (includes administration, counseling, teacher break and workroom)	912 square feet	District offers a double classroom with a total of 1500 sq ft that will be modified by the District to serve as an administrative space for ECHS	Rooms B15 & B16 (exclusive use)
Server Space		Included in admin space	B15 & B16
Storage Space		Included in admin space	B15 & B16

Summary of Shared Spaces

Shared Space	Sq ft to ADA ratio of Comparison Schools	Total square footage due Everest (ratio X 190)	Square footage of Woodside's facility/space	% usage due Everest	Daily usage (based on 350 minute instructional day)
Library - Media	4.2:1	798	9289	8.6%	30 minutes
Locker rooms	5.9:1	1121	11,715	9.6%	34 minutes
Gyms	10.1:1	1919	22,467	8.5%	30 minutes
Multipurpose room	2.5:1	475	5,248	9.0%	32 minutes
Performing Arts Center	6.6:1	1254	16,027	7.8%	27 minutes
Pool	4.2:1	798	7,500	10.6%	37 minutes
Fields	223:1	42370	470,448	9.0%	32 minutes
Hardscape	25.9:1	4921	45,048	10.9%	38 minutes
Kitchen	1.1:1	209	1698	12.3%	
Student Bathrooms	1.8:1	342	4738	7.2%	

Notes:

- 1) See facilities use agreement for requirements and restrictions for the use of certain facilities and equipment. Science specialty classroom H-2 will be provided for exclusive use by Everest for 50% of Woodside's instructional day. The mid-point time in Woodside's instructional day is 11:00 a.m.. Everest will have exclusive use of H-2 from 11:00 a.m. through the end of the instructional day.
- 2) The administrations of Woodside High School and ECHS will meet to work out a schedule for use of shared facilities that reasonably meets the needs of both schools based on the percentages or minutes from the above chart. Except for the Performing Arts Center, the minutes in the above chart shall be provided to Everest on a daily basis with an exact time schedule to be worked out by the two site administrations. Unfortunately, Everest's March 1

response to the District’s preliminary offer did not provide any information that would have allowed this scheduling of exact times to be provided for in the Final Offer.

- 3) The use of the Performing Arts Center requires the presence of the Theater Manager, whose hourly costs would need to be paid for by Everest. The daily use calculation of 27 minutes shall serve as a guide for clustering blocks of time over the school year. Final scheduling of the Performing Arts Center will be done by the two site administrations based on the above chart.
- 4) ECHS will be given space in the library / media center to house its own reference materials for check out purposes.
- 5) If ECHS desires to utilize the Woodside kitchen at least one of its employees needs to be ServSafe certified or agree that any ECHS kitchen staff to be under the supervision of the Woodside ServSafe employee. This is necessary for the Woodside High School program to remain compliant under California law. As an alternative ECHS may choose to have its lunch catered as it currently does and will be provided a serving area with a serving table in the multipurpose room if it chooses this option.
- 6) ECHS will be given a section in the boys and girls locker rooms with sufficient lockers for its in-district students.
- (7) ECHS students will have access to any student restroom on campus. ECHS staff will have access to any staff bathroom.

Below is the methodology for the District’s calculations supporting the facilities allocation to ECHS. No classrooms are counted twice. Those classrooms included as standard classrooms are currently used for non-science and non-elective instruction. Science and elective classrooms are teaching stations for teachers in these subject areas and are not extra classrooms in which other teachers bring their classes. Those classrooms designated as labs are extra classrooms not assigned as teaching stations, but are available for teachers to bring their classes for specialized instruction. The most common lab is a computer lab. All classrooms available for instruction are accounted for in the charts. Enrollment numbers are from 2009-10.

Standard Classrooms

#	Comparison School	Enrollment	ADA (96%)	Teaching Stations	Ratio
1	Sequoia	1807	1735	52	33:1
2	Woodside	1800	1728	54	32:1
3	Menlo Atherton	1957	1879	58	32:1
Average					32:1

Standard classrooms due ECHS = 190/32 = 5.9

Science labs (includes all sciences)

#	Comparison School	Enrollment	ADA (96%)	Teaching Stations	Ratio

1	Sequoia	1807	1735	12	145:1
2	Woodside	1800	1728	11	157:1
3	Menlo Atherton	1957	1879	11	171:1
Average					158:1

Science labs due ECHS= 190/158 = 1.2

Art / Music/ Other Elective Classrooms Assigned to Teachers as Work Stations

#	Comparison School	Enrollment	ADA (96%)	Teaching Stations	Ratio
1	Sequoia	1807	1735	8	217:1
2	Woodside	1800	1728	10	173:1
3	Menlo Atherton	1957	1879	10	188:1
Average					193:1

Specialty elective classrooms due ECHS= 190/193 = 1.0

Special Education Classrooms

#	Comparison School	Enrollment	ADA (96%)	Teaching Stations	Ratio
1	Sequoia	1807	1735	9	193:1
2	Woodside	1800	1728	9	192:1
3	Menlo Atherton	1957	1879	9	209:1
Average					198:1

Special education classrooms due ECHS= 190/198 = 1.0

Note:

The count of special education classrooms at Sequoia High School does not include the Top Flight classrooms along James Ave. The two current classes are administered out of the District Office and the students are not included in enrollment totals for Sequoia High School. The Top Flight classes have their own address and separate entrance. This program is scheduled to expand this Fall into the remainder of the existing portable classrooms.

Computer labs / other labs (extra classrooms to which teachers may bring classes)

#	Comparison School	Enrollment	ADA (96%)	Teaching Stations	Ratio
1	Sequoia	1807	1735	2	867 : 1
2	Woodside	1800	1728	3	576:1
3	Menlo Atherton	1957	1879	4	470:1
Average					<i>638:1</i>

Computer labs/other labs due ECHS= 190/638 = 0.3

Administrative space / counseling / teacher work space

#	Comparison School	Enrollment	ADA (96%)	Total square footage	Ratio (sq. ft. to ADA)
1	Sequoia	1807	1735	6167	3.6: 1
2	Woodside	1800	1728	9289	5.4:1
3	Menlo Atherton	1957	1879	9666	5.1:1
Average					<i>4.8:1</i>

ECHS is entitled to 912 square feet (4.8 x 190) for administration, counseling, and teacher break/work space.

Library/ Media space

#	Comparison School	Enrollment	ADA (96%)	Total square footage	Ratio (sq. ft. to ADA)
1	Sequoia	1807	1735	4258	2.5: 1
2	Woodside	1800	1728	9289	5.4:1
3	Menlo Atherton	1957	1879	8910	4.7:1

Average					4.2:1
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ECHS is entitled to 798 square feet (4.2 x 190) for library media.

Gyms

#	Comparison School	Enrollment	ADA (96%)	Total square footage	Ratio (sq. ft. to ADA)
1	Sequoia	1807	1735	14578	8.4: 1
2	Woodside	1800	1728	22467	13.0:1
3	Menlo Atherton	1957	1879	16807	8.9:1
Average					10.1:1

ECHS is entitled to 1919 square feet (10.1 x 190) for gym use.

Multipurpose room

#	Comparison School	Enrollment	ADA (96%)	Total square footage	Ratio (sq. ft. to ADA)
1	Sequoia	1807	1735	5465	3.2: 1
2	Woodside	1800	1728	5248	3.0:1
3	Menlo Atherton	1957	1879	2288	1.2:1
Average					2.5:1

ECHS is entitled to 475 square feet (2.5 x 190) for multipurpose room use

Performing Arts Center (theater only; adjacent spaces are included in other classroom counts)

#	Comparison School	Enrollment	ADA (96%)	Total square footage	Ratio (sq. ft. to ADA)
1	Sequoia	1807	1735	7846	4.5: 1
2	Woodside	1800	1728	16027	9.3:1
3	Menlo Atherton	1957	1879	11472	6.1:1

Average					6.6:1
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ECHS is entitled to 1254 square feet (6.6 x 190) for performing art center use

Pools

#	Comparison School	Enrollment	ADA (96%)	Total square footage	Ratio (sq. ft. to ADA)
1	Sequoia	1807	1735	6150	3.5: 1
2	Woodside	1800	1728	7500	4.3:1
3	Menlo Atherton	1957	1879	8740	4.7:1
Average					4.2:1

ECHS is entitled to 798 square feet (4.2 x 190) for pool use.

Fields

#	Comparison School	Enrollment	ADA (96%)	Total square footage	Ratio (sq. ft. to ADA)
1	Sequoia	1807	1735	434,293	250: 1
2	Woodside	1800	1728	470,448	272:1
3	Menlo Atherton	1957	1879	288,803	148:1
Average					223:1

ECHS is entitled to 42370 square feet (223 x 190) for field use.

Hardscape (Basketball and tennis)

#	Comparison School	Enrollment	ADA (96%)	Total square footage	Ratio (sq. ft. to ADA)
1	Sequoia	1807	1735	33,768	19.5
2	Woodside	1800	1728	59,136	34.2
3	Menlo Atherton	1957	1879	45,048	24.0

Average					25.9
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ECHS is entitled to 4921 square feet (25.9 x 190) for hardscape use.

Locker rooms

#	Comparison School	Enrollment	ADA (96%)	Total square footage	Ratio (sq. ft. to ADA)
1	Sequoia	1807	1735	11,330	6.5
2	Woodside	1800	1728	11,715	6.8
3	Menlo Atherton	1957	1879	8,049	4.3
Average					5.9

ECHS is entitled to 1121 square feet (5.9 x 190) for locker room use.

Kitchens

#	Comparison School	Enrollment	ADA (96%)	Total square footage	Ratio (sq. ft. to ADA)
1	Sequoia	1807	1735	2168	1.3
2	Woodside	1800	1728	1698	1.0
3	Menlo Atherton	1957	1879	1938	1.0
Average					1.1

ECHS is entitled to 209 square feet (1.1 x 190) for kitchen use.

Student Bathrooms

	Comparison School	Enrollment	ADA (96%)	Total square footage	Ratio (sq. ft. to ADA)
1	Sequoia	1807	1735	2932	1.7
2	Woodside	1800	1728	4219	2.4
3	Menlo Atherton	1957	1879	2322	1.2

Average					1.8
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ECHS is entitled to 342 square feet (1.8 X 190) for student bathroom use.

CONDITION OF FACILITIES OFFERED TO ECHS

5 C.C.R. §11969.3 requires the District in preparing its offer of facilities to consider the condition of facilities in the comparison groups including school site size, interior and exterior surface condition, conformity to law and conditions of mechanical, plumbing, electrical and fire alarm systems, condition and availability of technology resources and overall quality of the lighting, noise and condition of the site.

As was noted in ECHS's response to the District's preliminary offer (page 2 of 17), the District through its various bonds has built new instructional buildings and renovated existing classrooms and specialized spaces. Woodside High School has facilities equal to those of the other comparison schools in terms of size, type, and condition. ECHS's allocation of exclusive spaces is representative of classrooms and space Woodside High School students experience and, in fact, these classrooms are in current use this year. The exclusive spaces offered to ECHS are similar to other Woodside High School classrooms in terms of their interior and exterior surface condition, conformity to law and conditions of mechanical, plumbing, electrical and fire alarm systems, condition and availability of technology resources and overall quality of the lighting and noise mitigation. The spaces that will be shared between Woodside and Everest are comparable in size, type, and condition as those in the other comparison schools.

FURNISHINGS AND EQUIPMENT

Below were requests from ECHS that related to furnishings and equipment followed by the District offer:

ECHS request	District Offer
Classrooms contain white boards, pull down screens, storage cabinets, and book shelves	All classrooms will have white boards, pull down screens, storage cabinets, and book shelves.
Seating for 25 students at 4 person tables	All classrooms will have seating for a minimum of 25 students at four person tables.
Sinks and lab tables for two science labs	The District offer provides Everest an exclusive use of one science lab and 50% use of a second science lab. Both science labs will contain sinks and lab tables for the instruction of science.
Facilities and equipment sufficient to conduct a high school physical education program	ECHS will have access to furnishings and equipment necessary for P.E. instruction. Use of the fitness center will require staff training and certification for safety reasons.
Furnishings for a reception area, director's office, assistant director's office, work area for teachers, faculty kitchen, and conference room (seating for 10)	The 1500 square foot administrative double classroom will be customized with temporary walls and partitions to create ECHS's necessary spaces. The District will furnish these spaces based on District standards for their varied uses.

In shared spaces ECHS will have access to the same furnishings and equipment provided to Woodside students. The furnishings provided to ECHS for its exclusive spaces will be of similar quality, age, and condition as furnishings in Woodside classrooms.

CALCULATION OF PRO RATA SHARE

5 C.C.R. §11969.7 states that “facilities costs include (1) contributions from unrestricted general fund revenues to the school district’s Ongoing and Major maintenance Account (Education Code section 17070.75), Routine Restricted Maintenance Account (Education Code section 17014), and/or deferred maintenance fund; (2) costs paid from unrestricted general fund revenues for projects eligible for funding but not funded from the deferred maintenance fund; (3) costs paid from unrestricted general fund revenue for replacement of facilities-related furnishings and equipment that have not been included in paragraphs (1) and (2), according to school district schedules and practices”; and (4) debt service costs.

Expenditures for maintenance and grounds are as follows:

2009-2010 Second Interim Budget	
Routine maintenance and repair	\$2,946,062
Deferred maintenance (Fund 14)	\$750,231
Grounds (unrestricted)	\$597,526
Total	\$4,293,819

This amount does not include expenditures for custodial services, expenditures from Fund 21 (Building Fund), nor expenditures for grounds maintenance paid through the Maintenance Assessment District. The square footage of District facilities are as follows:

Facility	Square footage
Adult school	17,600
Carlmont	206,008
Menlo Atherton	208,468
Redwood	19,520
Sequoia	269,107
Woodside	228,869
District Office / Maintenance	69,198
890 Broadway	27,000
760 Green St	6,720
Total	1,052,490

The pro rata facilities cost is \$4.08 per square foot (\$4,293,819 / 1,052,490).

Calculation of Everest's pro rata charges

Facility	Square footage	Pro Rata Charge
Standard Classrooms	6 X 850 = 5100	\$20,808
Science Classrooms	1.5 X 1200 = 1800	\$7,344
Special Education Classroom	1 X 850 = 850	\$3,468
Special elective classrooms	1 X 850 = 1000	\$3,468
Classroom labs	(see science)	
Administration Space (includes administration, counseling, teacher break and workroom)	1496	\$6,104
Library Media Space	798	\$3,256
Storage Space / Server space	Included in administrative space	
Locker rooms	1121	\$4,574
Gyms	1919	\$7,830
Multipurpose room	475	\$1,938
Performing Arts Center	1254	\$5,116
Pool	798	\$3,256
Fields	42370	(already in calculations)
Hardscape	4921	(already in calculations)
Kitchen	209	\$853
Student Bathrooms	342	\$1395

Total charge to Everest = **\$69,410**

This pro rata calculation amounts assumes that ECHS will utilize all exclusive and shared spaces in this Final Offer. ECHS in its March 1 response to the District's Preliminary Offer indicated that it wanted reasonably equivalent access to each kind of specialized space. The Final Offer provides for this. In ECHS's March 1 response to the District's preliminary offer it indicated that ECHS will provide its own custodial services per 5 C.C.R. §11969.4. This does apply to the exclusive spaces offered to ECHS, but it does not apply to the shared spaces, which will be cleaned by District custodial staff. Within the facilities use agreement, a pro rata formula for custodial services related to shared spaces is included. Using 2009-10 data this amount is estimated at \$24,581. In addition, ECHS will pay a pro rata portion of site utilities based on the ratio of its facilities square footage versus total facilities square footage at Woodside High School. This is also described in the facilities use agreement. This amount is estimated at \$41,551.

We look forward to receiving ECHS's response on or before May 1, 2010.

Respectfully,

James Lianides, Ed.D.
Assistant Superintendent