

**SIERRA SANDS UNIFIED SCHOOL DISTRICT**

**Board of Education  
Special Meeting**

**To be held concurrently with the regular meeting of**

**May 21, 2009**

**Ridgecrest City Council Chambers  
100 West California Avenue  
*www.ssusd.org***

*We, the members of the Board of Education of the Sierra Sands Unified School District, are committed to providing the highest quality education in a safe environment to all K-12 students. We believe the school shares with the family, church, and community the responsibility for developing life-long learners who are responsible, productive citizens.*

**A G E N D A**

**CALL TO ORDER AND PLEDGE TO THE FLAG**

**7:00 P.M.**

Amy Covert  
Judy Dietrichson  
William Farris  
Tim Johnson  
Tom Pearl  
Kurt Rockwell, Vice President/Clerk  
Michael Scott, President

Joanna Rummer, Superintendent

**MOMENT OF SILENCE**

**1. ADOPTION OF AGENDA**

**2. PERSONNEL ADMINISTRATION**

2.1 Presentation of the Initial Contract Proposal for Reopeners for 2009-10 from the Board of Education to the Desert Area Teachers Association

**3. BUSINESS ADMINISTRATION**

3.1 Consideration of Request for Facilities from Ridgecrest Charter School for the 2009-10 School Year

**4. ADJOURNMENT**

2. PERSONNEL ADMINISTRATION

2.1 Presentation of the Initial Contract Proposal for Reopeners for 2009-10 from the Board of Education to the Desert Area Teachers Association

BACKGROUND INFORMATION: The current contract between the Desert Area Teachers Association and the Board of Education provides that both parties may reopen up to two agreement articles for 2009-10.

CURRENT CONSIDERATIONS: The Board of Education will submit its initial contract proposal for reopeners for 2009-10 at the meeting.

FISCAL IMPLICATIONS: Unknown.

SUPERINTENDENT'S RECOMMENDATION: Present the board's initial contract proposal for reopeners for 2009-10 to the Desert Area Teachers Association and set the next regular meeting date as the date for the public hearing on the proposal.

### 3 BUSINESS ADMINISTRATION

#### 3.1 Consideration of Request for Facilities from Ridgecrest Charter School for the 2009-10 School Year

---

**BACKGROUND INFORMATION:** On October 31, 2008, the Sierra Sands Unified School District (“District”) received Ridgecrest Charter School’s (Ridgecrest) Request for Proposition 39 Facilities for the 2009-10 school year (“Request”). (Attachment A.) The Request sought facilities based upon projected 273 in-district ADA.

Education Code section 47614, subdivision (b)(2), provides that for each year a charter school desires facilities it must provide a reasonable projection of its “average daily classroom attendance by in-district students for the following year.” The Regulations, title 5, section 11969.9,<sup>1</sup> establishes: “To receive facilities during a particular fiscal year, a charter school must submit a written facilities request to the school district by November 1 of the preceding fiscal year.” Section 11969.9, subdivision (c), informs charter schools of what a written facilities request must include:

- (1) The written facilities request must include: (A) reasonable projections of in-district and total ADA and in-district and total classroom ADA, based on ADA claimed for apportionment, if any, in the fiscal year prior to the fiscal year in which the facilities request is made, adjusted for expected changes in enrollment in the forthcoming fiscal year; (B) a description of the methodology for the projections; (C) if relevant (i.e., when a charter school is not yet open or to the extent an operating charter school projects a substantial increase in in-district ADA), documentation of the number of in-district students meaningfully interested in attending the charter school that is sufficient for the district to determine the reasonableness of the projection, but that need not be verifiable for precise arithmetical accuracy; (D) the charter school's operational calendar; (E) information regarding the district school site and/or general geographic area in which the charter school wishes to locate; and (F) information on the charter school's educational program, if any, that is relevant to assignment of facilities.
- (2) Projections of in-district ADA, in-district classroom ADA, and the number of in-district students shall be broken down by grade level and by the school in the school district that the student would otherwise attend.

The Regulations provide the timeline for submittal of and response to a request for facilities under Education Code section 47614. By February 1, 2009, the school district shall prepare in writing a preliminary proposal regarding the space to be allocated to the charter school and/or to which the charter school is to be provided access. At a minimum, the preliminary proposal shall include (1) the projections of in-district classroom ADA on which the proposal is based, (2) the specific location or locations of the space, (3) all

---

<sup>1</sup> All further references are to California Code of Regulations unless otherwise stated.

conditions pertaining to the space, including a draft of any proposed agreement pertaining to the charter school's use of the space, and (4) the projected pro rata share amount and a description of the methodology used to determine that amount. The district shall also provide the charter school a list and description of the comparison group schools used in developing its preliminary proposal, and a description of the differences between the preliminary proposal and the charter school's facilities request. The District provided its preliminary offer to Ridgecrest on February 1, 2009. (Attachment B.)

By March 1, 2009, the charter school shall respond in writing to the school district's preliminary proposal expressing any concerns, addressing differences between the preliminary proposal and the charter school's facilities request and/or making counter proposals. On February 27, 2009, Ridgecrest submitted its response to the preliminary proposal. (Attachment C.) By April 1, 2009, having reviewed any concerns and/or counter proposals made by the charter school, the school district shall submit in writing a final notification of the space offered to the charter school. The notification shall include a response to the charter school's concerns and/or counter proposals (if any). By May 1, 2009, the charter school must notify the school district in writing whether or not it intends to occupy the offered space. (Cal. Code Regs., tit. 5, § 11969.9(c)-(i).)

By letter agreement dated March 20, 2009, Ridgecrest and the District agreed to extend the timelines under Proposition 39. (Attachment D.) The agreement was entered into to allow the parties to attempt to negotiate an agreement related to funding in lieu of facilities. An additional extension was entered into on May 12, 2009. (Attachment E.) Pursuant to the agreement, the District's final offer is due May 22, 2009 and Ridgecrest's response thereto is due May 30, 2009. Additionally, it was agreed that should Ridgecrest accept the District's offer pursuant to Proposition 39, the District's deadline for making the space available to Ridgecrest will be extended from August 4, 2009 to August 31, 2009.

During the negotiations, the District made several offers to Ridgecrest. In exchange for waiver of Proposition 39 and other rights to request facilities for a period of five years:

1) The District offered to purchase the eight portables that RCS currently leases and which are installed on the RCS school site, transferring all title, right, interest and responsibility to RCS (cost estimated at approximately \$318,000.00) [with consideration for growth only after five years ]; or

2) The District offered to provide \$70,000 to RCS on an annual basis for a period of five years for the sole purpose of supporting RCS' annual lease payments for the portables; or

3) The District offered to purchase the eight portables that RCS currently leases and which are installed on the RCS school site, transferring all title, right, interest and responsibility to RCS [without consideration for growth after five years]; or

4) The District offered to make annual payments of \$78,920.16 for five years for payment of lease payments for eight portables that RCS currently leases and which are installed on the RCS school site.

Ridgecrest did not accept any of the District's offers.

CURRENT CONSIDERATIONS:

DISTRICT AGREES TO CONSIDER RIDGECREST FACILITIES REQUEST WITH RESERVATION OF ALL RIGHTS AND WITHOUT WAIVER:

The District will consider Ridgecrest's request for facilities for 2009-2010 school year without waiver of the deficiencies in Ridgecrest's request including, but not limited to, Ridgecrest's failure to identify the District schools where Ridgecrest students would otherwise attend, failure to support the request with documentation as required by law, and without waiver of the District's objection to Ridgecrest's failure to timely comply with Education Code section 47614 and its supporting regulations. (Cal. Code Regs., tit. 5, § 11969.9, subd. (c)(1)(2); *Environmental Charter High School v. Centinela Valley Union High School District* (2004) 122 Cal.App.4<sup>th</sup> 139.)

FACILITY REQUIREMENTS FOR 2009-10 SCHOOL YEAR: Education Code section 47614 provides in relevant part:

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. The school district shall make reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate, and shall not move the charter school unnecessarily.

*Is Ridgecrest Charter School Operating in the School District?* Either currently providing public education to in-district students, or having identified at least 80 in-district students who are meaningfully interested in enrolling in the charter school for the following year. (Education Code section 47614(b)(5).)

Ridgecrest Charter School has identified at least 80 in-district students which it contends are meaningfully interested in enrolling in the charter school for the 2009-2010 school year. However, Ridgecrest has not provided information and/or documentation to support its original projection that 273 students are meaningfully interested in enrolling in the charter school for 2009-2010. Pursuant to section

11969.9(d), the District reviewed the charter school's projections of in-district and total ADA and in-district and total classroom ADA and, on November 25, 2008, expressed its objections in writing and stated the projections the District considers reasonable. (Attachment F.) On December 31, 2008, the Charter School responded and modified its previous projections to 231. (Attachment G.)

It is the District's position that the revised projections remain unsupported. The District's preliminary offer was based upon the Charter School's 2007/2008 P-2 of 208.54 ADA (rounded to 209) which reflects the ADA claimed for apportionment by RCS in the fiscal year prior to the fiscal year in which the facilities request is made. Without waiver of its objections to Ridgecrest's revised projections including those set forth in the District's November 25, 2008 letter and as set forth in the preliminary offer, the District has allocated space based upon a projection of 231 in-district ADA which reflects the Charter School's revised projections. Ridgecrest did not provide a breakdown of where the 231 projected students would otherwise attend school nor what grade each student would attend. The District has developed the following grade breakdown based upon the Charter School's 2007-2008 P2, adding three (3) additional students each to grades K-3 and two (2) additional students each to grades 2-8. This was based upon the P2 numbers indicating a greater student population in grades K-1. The breakdown is as follows, totaling 231 ADA:

K	39
1	37
2	30
3	28
4	22
5	25
6	25
7	13
8	12

Conditions Reasonably Equivalent: Charter school students are entitled to be housed in conditions reasonably equivalent to those experienced by students enrolled in the District. Regulation section 11969.3 identifies three factors in determining whether facilities are in conditions reasonably equivalent to those provided to district students: comparison group, capacity and condition.

Comparison Group: (1) The standard for determining whether facilities are sufficient to accommodate charter school students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending public schools of the school district providing facilities shall be a comparison group of district-operated schools with similar grade levels. If none of the district-operated schools has grade levels similar to the charter school, then a contiguous facility within the meaning of subdivision (d) of section 11969.2 shall be an existing facility that is most consistent

with the needs of students in the grade levels served at the charter school. The district is not obligated to pay for the modification of an existing school site to accommodate the charter school's grade level configuration.

(2) The comparison group shall be the school district-operated schools with similar grade levels that serve students living in the high school attendance area, as defined in Education Code section 17070.15(b), in which the largest number of students of the charter school resides. The number of charter school students residing in a high school attendance area shall be determined using in-district classroom ADA projected for the fiscal year for which facilities are requested.

(3) For school districts whose students do not attend high school based on attendance areas, the comparison group shall be three schools in the school district with similar grade levels that the largest number of students of the charter school would otherwise attend. For school districts with fewer than three schools with similar grade levels, the comparison group shall be all schools in the school district with similar grade levels.

(4) Although the district is not obligated to pay for the modification of an existing school site to accommodate the charter school's grade level configuration, nothing in this article shall preclude the district from entering into an agreement with the charter school to modify an existing school site, with the costs of the modifications being paid exclusively by the charter school or by the school district, or paid jointly by the district and the charter school.

Because Ridgecrest failed to provide ADA "broken down by grade level and school that the student would attend if not attending the charter school" as required by Regulation section 11969.9(c)(1) when it revised its projections from 273 to 231, the District does not have the information to determine the comparison group.<sup>2</sup> The District has relied upon the District owned school sites with the requisite square feet per classroom for comparison (elementary - 890 sq.ft.; middle - 903 sq.ft.). The District has reviewed elementary school sites for purposes of the K-5 charter students (Faller, Inyokern, Las Flores, Rand) and has reviewed middle school sites for purposes of the 6-8 charter students (Monroe).

The Vieweg School site is located on real estate owned by the Navy, which the District occupies in a District-owned building pursuant to a ground lease with the Navy. Pierce and Richmond Elementary School sites and Murray Middle School are

---

<sup>2</sup> Ridgecrest similarly failed to provide such a breakdown in its February 27, 2009 letter, stating that it was not required to do so. However, the law provides that projections are to be broken down by grade and school the student would otherwise attend. It follows that if the charter school submits a revised projection, it must submit a revised breakdown of its projections. Ridgecrest's failure to do so serves as a waiver of objections to the allocation by grade as well as the comparison group schools.

also located on Navy property. The District's ground leases with the Navy preclude it from sub-leasing the building to third parties without express authorization of the regional Navy command. Therefore, the District does not have independent authority to make land-use decisions at the Vieweg site or the other sites under lease agreements with the Navy. Pursuant to the Education Code and Regulations, facilities offered to a charter school "shall remain the property of the school district." (Education Code section 47614.) Because the statutory scheme contemplates facilities that are "the property of the school district," property such as Vieweg that is not school district property, is not properly considered under Proposition 39. Additionally, because Vieweg has not undergone modernization on par with the schools that are in the comparison group, it is not a reasonably equivalent facility. We also note that Vieweg is the designated site for students displaced for purposes of the modernization program and to allocate it to the charter school would cause inordinate interruption to the District construction projects.

It should also be noted that Richmond is designed and equipped specifically for the special education students that it houses. It is therefore not comparable to other schools of the District. Gateway Elementary School, though owned by the District, is not comparable to other District schools in that the average classroom at Gateway Elementary is less than 820 square feet, whereas the District average is 890 square feet. Although Ridgecrest asserts that Gateway was modernized and its classroom enlarged, this is not accurate. Gateway has never been modernized and is not eligible for modernization until 2016. Ridgecrest suggests that classroom size is not relevant to determining whether Gateway is comparable, we disagree. The regulations require the District to provide reasonably equivalent facilities. Because most of the District's elementary students are housed in classrooms that are 890 square feet, the smaller classrooms are not reasonably equivalent. The allocation is to be based upon teaching stations rather than square feet (§ 11969.3(b)(1)) such that if the charter school were provided the proper number of teaching stations (classrooms) though smaller classrooms, the allocation would not be reasonably equivalent. We believe Ridgecrest invites error by suggesting the District consider Gateway as a comparable facility.

In response to the preliminary offer, Ridgecrest asserts that Inyokern is not comparable and is the least modernized of the District's school sites. This is not accurate. Inyokern has been renovated and upgraded over the years, most recently in 2001 and will undergo further modernization beginning in June 2009. All of the District's facilities have been maintained in excellent condition. Neither safety nor cleanliness has ever been an issue at any District site, including Inyokern. Inyokern has housed the District's California Blue Ribbon school and is both a fine facility and reasonably equivalent for housing the charter school students.

Capacity: 11969.3(b)(1) Facilities made available by a school district to a charter school shall be provided in the same ratio of teaching stations (classrooms) to ADA as those provided to students in the school district attending comparison group

schools. School district ADA shall be determined using projections for the fiscal year and grade levels for which facilities are requested. Charter school ADA shall be determined using in-district classroom ADA projected for the fiscal year and grade levels for which facilities are requested. The number of teaching stations (classrooms) shall be determined using the classroom inventory prepared pursuant to California Code of Regulations, title 2, section 1859.31, adjusted to exclude classrooms identified as interim housing. "Interim housing" means the rental or lease of classrooms used to house pupils temporarily displaced as a result of the modernization of classroom facilities, as defined in California Code of Regulations, title 2, section 1859.2, and classrooms used as emergency housing for schools vacated due to structural deficiencies or natural disasters.

(2) If the school district includes specialized classroom space, such as science laboratories, in its classroom inventory, the space allocation provided pursuant to paragraph (1) of subdivision (b) shall include a share of the specialized classroom space and/or a provision for access to reasonably equivalent specialized classroom space. The amount of specialized classroom space allocated and/or the access to specialized classroom space provided shall be determined based on three factors: (A) the grade levels of the charter school's in-district students; (B) the charter school's total in-district classroom ADA; and (C) the per-student amount of specialized classroom space in the comparison group schools.

(3) The school district shall allocate and/or provide access to non-teaching station space commensurate with the in-district classroom ADA of the charter school and the per-student amount of non-teaching station space in the comparison group schools. Non-teaching station space is all of the space that is not identified as teaching station space or specialized classroom space and includes, but is not limited to, administrative space, kitchen, multi-purpose room, and play area space. If necessary to implement this paragraph, the district shall negotiate in good faith with the charter school to establish time allocations and schedules so that educational programs of the charter school and school district are least disrupted.

Classroom Space: The average elementary classroom is 890 square feet. The average middle school classroom is 903 square feet. Although historically, the District ratio of teaching stations to ADA provided to students in the school district has been 20.35 ADA per teaching station at the elementary level and 24.42 ADA per teaching station at the middle school level; commencing in 2009/10, due to the budget constraints forced upon the District by the State, the teaching station to pupil ratio will be higher than its historical average. Space will be allocated at 24.95:1 for students grades K-3; 30:1 for grades 4-5 and 32:1 for students in grades 6-8.

Specialized Classroom Space: The "specialized classroom space" at the comparison elementary schools is limited to the computer lab. The specialized classroom space at the middle school includes the computer lab, gymnasium, music room, industrial arts

and science lab. Although Ridgecrest asserts that the comparison schools also have performing arts and music rooms, this is not correct. Neither Rand nor Faller has performing arts rooms. Inyokern and Los Flores each has a multipurpose room with stage. None of the schools have dedicated music rooms.

Non-Teaching Station Space: The “non-teaching station space” for the comparison elementary schools includes library, cafeteria/multiuse room, teacher area, office space, playground, and custodial.

Condition: The following factors determine whether charter school facilities are in reasonably equivalent condition to those of public schools: age from latest modernization, quality of materials, and state of maintenance, school site size; the condition of interior and exterior surfaces; the condition of mechanical, plumbing, electrical, and fire alarm systems, including conformity to applicable codes; the availability and condition of technology infrastructure; the condition of the facility as a safe learning environment including, but not limited to, the suitability of lighting, noise mitigation, and size for intended use; the condition of the facility's furnishings and equipment; the condition of athletic fields and/or play area space. (Regulation section 11969.3(c).)

The condition of comparable school sites, including age from latest modernization, quality of materials, and state of maintenance, school site size; the condition of interior and exterior surfaces; the condition of mechanical, plumbing, electrical, and fire alarm systems, including conformity to applicable codes; the availability and condition of technology infrastructure; the condition of the facility as a safe learning environment including, but not limited to, the suitability of lighting, noise mitigation, and size for intended use; the condition of the facility's furnishings and equipment; the condition of athletic fields and/or play area space, were reviewed and are generally uniform and conform to applicable codes. Each District school site is generally uniform in the availability and condition of technology infrastructure. Each District school site is a suitable facility for a learning environment.

Contiguous, Furnished, and Equipped: Education Code section 47614 requires that facilities be contiguous, furnished, and equipped and shall remain the property of the school district.

Contiguous: As used in Education Code section 47614(b), facilities are "contiguous" if they are contained on the school site or immediately adjacent to the school site. If the in-district average daily classroom attendance of the charter school cannot be accommodated on any single school district school site, contiguous facilities also includes facilities located at more than one site, provided that the school district shall minimize the number of sites assigned and shall consider student safety. In evaluating and accommodating a charter school's request for facilities pursuant to Education Code section 47614, the charter school's in-district students must be given the same

consideration as students in the district-run schools, subject to the requirement that the facilities provided to the charter school must be contiguous. (Regulations, 11969.2(d).) “If none of the district-operated schools has grade levels similar to the charter school, then a contiguous facility within the meaning of subdivision (d) of section 11969.2 shall be an existing facility that is most consistent with the needs of students in the grade levels served at the charter school. The district is not obligated to pay for the modification of an existing school site to accommodate the charter school's grade level configuration.” (Regulations, 11969.3(a)(1).)

The Charter School requests a single site to house its student population grades K-8. The District does not house its elementary students (K-5) with its middle school students (6-8). Because none of the District operated schools has a grade levels similar to the Charter School, a contiguous facility is a facility that is most consistent with the needs of the students served at the Charter School. The majority of the students served at the Charter School are in grades K-5. This fact, taken together with the request of the Charter School to be housed at an elementary school site, supports the determination that a District elementary school is a proper contiguous facility to house all of the Charter School students grades K-8.

The District’s preliminary offer was to house the charter school, grades K-8, at the Inyokern Elementary School site and provide access to Monroe Middle School specialized classroom space for students in grades 6-8. Ridgecrest objected to the preliminary offer as not contiguous. We disagree with Ridgecrest, relying upon section 11969.3 which provides that where the charter school operates with a different grade configuration than the school district, a contiguous facility “shall be an existing facility that is most consistent with the needs of students in the grade levels served at the charter school.” Again, because the majority of charter school students are grades K-5 and only 50 students are grades 6-8, and because Ridgecrest requested an elementary school site, an existing facility most consistent with the needs of the students is an elementary school site. Under these circumstances, the plain language of the regulation could be read to not require access to specialized classroom space in the middle school. However, in an effort to ensure the Ridgecrest students in grades 6-8 have access to the middle school experience, the preliminary offer included access to the Monroe Middle School for shared use of specialized classroom space.

In objecting to the preliminary offer, Ridgecrest did not provide a counter proposal to provide for use of specialized classroom space for its students in grades 6-8. The District now proposes to make a final offer which gives Ridgecrest three options: **Option 1:** House all K-8 students at Inyokern Elementary School and provide access to the middle school (Monroe) specialized classroom space on a shared basis for Ridgecrest ADA in grades 6-8; **Option 2:** House all K-8 students at Inyokern without access to middle school specialized classroom space but additional allocation for elementary level specialized classroom space based upon ADA in grades 6-8; or,

**Option 3:** House the K-5 students at Inyokern (10 classrooms for teaching and administrative space with shared access to specialized classroom space and common areas) and house the 6-8 students at Monroe (2 classrooms and shared access to specialized classroom space and common areas.) Each of the options will be discussed more fully below.

Furnished and Equipped: As used in Education Code section 47614(b), a facility is "furnished and equipped" if it includes reasonably equivalent furnishings necessary to conduct classroom instruction and to provide for student services that directly support classroom instruction as found in the comparison group schools established under section 11969.3(a), and if it has equipment that is reasonably equivalent to that in the comparison group schools. "Equipment" means property that does not lose its identity when removed from its location and is not changed materially or consumed immediately (e.g., within one year) by use. Equipment has relatively permanent value, and its purchase increases the total value of a Local Educational Agency's (LEA's) physical properties. Examples include furniture, vehicles, machinery, motion picture film, videotape, furnishings that are not an integral part of the building or building system, and certain intangible assets, such as major software programs. Furnishings and equipment acquired for a school site with non-district resources are excluded when determining reasonable equivalence. (Regulations, 11969.2(e).)

District school classrooms are furnished and equipped with desks, chairs and white boards. The offer of space will incorporate desks, chairs and white boards consistent with classrooms used by District programs. Specialized classroom space will be shared space and include the same furnishings and equipment available for use by District students. Equipment for non-teaching space, such as front office equipment, will be on a shared basis with the District's program. However, furnishings and equipment such as computers that were acquired for the school site with non-district resources are excluded from use.

ADDITIONAL CONSIDERATIONS AND IMPLICATIONS:

The District attendance area is extremely large geographically covering an area of approximately 935 square miles over county lines. Because the District is a rural school district with limited transportation resources, it must operate a mix of walking schools and bussing schools. It is not possible to convert walking schools to bussing schools. The District's bus system is extremely complicated with some students getting on a bus as early as 5:58 a.m. and not arriving home until 3:58 p.m. Student transportation is not fully funded in California and thus encroaches significantly on the District's budget. The District is limited in its ability to extend the bussing, both because of lack of resources and negative impact upon the student's educational programs.

The enrollment of each of the District's elementary schools, as reported in each school's CBEDS for 2008-2009 school year, is as follows:

Faller Elementary School:	490
Inyokern Elementary School:	203
Las Flores Elementary School:	477
Rand Elementary School:	8

James Monroe Middle School CBEDS for that period is 545.

The charter school's projected ADA for the 2009-2010 school year is 231 with all but 50 of that 231 projected for the elementary school level. Therefore, placing the approximately 231 charter school students in a single District site will result in extensive displacement of a significant percentage of that school's current students. Because district schools are miles apart, redistricting would have the same effect.

Additionally, the District is currently in Phase I of the District-wide Modernization Program. The District will be in Phase II Modernization in the 2009/10 school year. Las Flores Elementary School will not house any students in the 2009/10 school year to undergo modernization. Inyokern Elementary School is also being modernized during the 2009/10 school year. Although students will not be displaced from the Inyokern site, as the modernization proceeds incrementally, it will necessitate some moving of classrooms throughout the year.

Ridgecrest has repeatedly stated its intention to grow its student population. Inyokern Elementary School has the greatest capacity for growth. Placement of the charter school students at Inyokern with access to the Monroe Middle School specialized classroom space will minimize the number of sites provided to the Charter School, provide for the least disruption of Charter School students in years to come, and be the least disruptive to Sierra Sands students and programs.

To the degree the options which include access to Monroe Middle School or placement of the 6-8 grades at Monroe Middle School are considered "multi-site" offers, the District has minimized the number of sites to two, one elementary and one middle school site. The District has also considered student safety. The District has considered student safety noting that District students travel between sites for programs. District students travel from the Middle Schools to participate in curricular activities at the conventional high school and a number of elementary students travel to sites away from their home school area for regular classes as well as supplemental activities (after school program). Additionally, currently, three administrators' regular assignments include more than one site. Having considered student safety, the District has determined that: 1) District students that travel between sites have not experienced any safety issues; 2) District programs that share administrators have not experienced safety issues; and, 3) to the degree the charter school chooses an option to provide

access to the middle school or house the 6-8 grade students at the middle school rather than at the elementary school site, the charter school is prepared to ensure safety of the students.

**RECOMMENDED ALLOCATION OF SPACE:** The District is offering three alternatives for locating Ridgecrest's K-8 students and asks that if accepting the offer, Ridgecrest identify the specific option chosen. As set forth more fully below, the three options are as follows:

**Option 1:** House all K-8 students at Inyokern Elementary School and provide access to the middle school (Monroe) specialized classroom space on a shared basis for Ridgecrest ADA in grades 6-8;

**Option 2:** House all K-8 students at Inyokern without access to middle school specialized classroom space but additional allocation for elementary level specialized classroom space based upon ADA in grades 6-8; or,

**Option 3:** House the K-5 students at Inyokern (10 classrooms for teaching and administrative space with shared access to specialized classroom space and common areas) and house the 6-8 students at Monroe (2 classrooms and shared access to specialized classroom space and common areas.)

**OPTION 1:**

Ridgecrest's K-8 students would be housed at Inyokern Elementary School, 6601 Locust Avenue, CA. Included in this facilities offer are eleven (11) classrooms for teaching space, and one (1) classroom for non-teaching administrative space. The total classroom allocation is thus (12) classrooms. This offer also includes access to common space and specialized classroom space at Inyokern and access to specialized classroom space at James Monroe Middle School on a shared basis allocated per ADA in the relevant grades.

The breakdown in shared use of the classroom and common space between Ridgecrest, Inyokern and Monroe is calculated as follows:

Common Space (194.07 Inyokern/231 Ridgecrest)

Inyokern 46% of the day                      Ridgecrest 54% of the day

Specialized Classroom space grades K-5 (194.07 Inyokern/181 Ridgecrest)

Inyokern 52 % of the day                      Ridgecrest 48% of the day

Specialized Classroom space grades 6-8 (523/75 Monroe/50 Ridgecrest)

Monroe 91% of the day

Ridgecrest 9% of the day

Ridgecrest will be allocated exclusive use of the 12 total classrooms at the Inyokern Elementary School to house all of Ridgecrest's in-district ADA as well as its administration. Ridgecrest will be assigned specific classrooms on the Inyokern Elementary School site and will share the site with the District's program. Determination of use of the common space is based upon the relative percentage of Ridgecrest ADA compared to Inyokern ADA at the site offered. Library, custodial, cafeteria, multi-purpose room, and playground areas at the elementary school site will be available on a shared basis as "common areas." These areas are shared based on the proportion of the student population of each entity. Utility bills are to be divided and apportioned on the same basis. Sharing arrangements such as time periods for each school to utilize shared space will be worked out on a collaborative basis between the Inyokern site administration and Ridgecrest.

The "specialized classroom space" at the elementary school level is limited to the computer lab and will be shared commensurate with Ridgecrest's in-district classroom ADA in grades K-5. Access to the specialized classroom space at the middle school for Ridgecrest in-district students in grades 6-8 will be provided at the Monroe Middle School. This specialized classroom space includes the computer lab, gymnasium, music room, industrial arts, and science lab. This space will be shared at Monroe Middle School commensurate with Ridgecrest's in-district classroom ADA in grades 6-8.<sup>3</sup>

District school classrooms are furnished and equipped with desks, chairs and white boards. The offer of space will incorporate desks, chairs and white boards. Specialized classroom space will be shared space and include the same furnishings and equipment available for use by District students except for those furnishings and equipment that are excluded pursuant to section 11969.2(e). Equipment for non-teaching space, such as front office equipment, will be on a shared basis with the District's program. However, furnishings and equipment such as computers that were acquired for the school site with non-district resources are excluded from use.

The space allocated to Ridgecrest must be used in a manner consistent with the final offer of facilities. Additionally, the space allocated to Ridgecrest is for occupancy by Ridgecrest only. All property remains the property of the District, and Ridgecrest shall not enter into any agreement with any party as to the use or occupancy of the property without the express written consent of the District. The proposed facilities

---

<sup>3</sup> Pursuant to Cal. Code Regs., tit. 5, § 11969.2(d.) Access to the computer labs will be limited to space only. Pursuant to Cal. Code Regs., tit. 5, § 11969.2(e), computers are not included when determining reasonable equivalence.

offer is for space only and excludes any services related to the use of such space. Use of the space will be subject to the Facilities Use Agreement included herewith. Non-teaching space including teacher lounge and RSP shall be shared with the District operated program at the site. Use of common areas and shared space may require rotation of the available times to accommodate both Ridgecrest in-district students and the students attending Inyokern Elementary School.

This offer is based upon the projected in-district ADA of 231 and is extended to Ridgecrest effective August 31, 2009, pursuant to the agreement dated March 20, 2009, for the 2009/10 school year. In conformity with the statute and regulations, this offer of the above-described facilities applies only to the school year 2009/10.

**OPTION 2:**

Ridgecrest's K-8 students would be housed at Inyokern Elementary School, 6601 Locust Avenue, CA. Included in this facilities offer are eleven (11) classrooms for teaching space, and one (1) classroom for non-teaching administrative space. The total classroom allocation is thus twelve (12) classrooms. Unlike OPTION 1, all Ridgecrest K-8 students will be housed at Inyokern without access to middle school specialized classroom space; however, this option includes additional allocation for elementary level specialized classroom space based upon ADA in grades 6-8.

The breakdown in shared use of the classroom and common space between Ridgecrest, Inyokern is calculated as follows:

Common Space (194.07 Inyokern/231 Ridgecrest)

Inyokern 46% of the day                      Ridgecrest 54% of the day

Specialized Classroom space grades K-5 (194.07 Inyokern/ 231 Ridgecrest)

Inyokern 46% of the day                      Ridgecrest 54% of the day

Ridgecrest will be allocated exclusive use of the 12 total classrooms at the Inyokern Elementary School to house all of Ridgecrest's in-district ADA as well as its administration. Ridgecrest will be assigned specific classrooms on the Inyokern Elementary School site and will share the site with the District's program. Determination of use of the common space is based upon the relative percentage of Ridgecrest ADA compared to Inyokern ADA. Library, custodial, cafeteria, multi-purpose room, and playground areas at the elementary school site will be available on a shared basis as "common areas." Utility bills are to be divided and apportioned on the same basis. Sharing arrangements such as time periods for each school to utilize shared space will be worked out on a collaborative basis between the Inyokern site administration and Ridgecrest.

The “specialized classroom space” at the elementary school level is limited to the computer lab and will be shared commensurate with Ridgecrest’s in-district classroom ADA.

District school classrooms are furnished and equipped with desks, chairs and white boards. The offer of space will incorporate desks, chairs and white boards. Specialized classroom space will be shared space and include the same furnishings and equipment available for use by District students except for those furnishings and equipment that are excluded pursuant to section 11969.2(e). Equipment for non-teaching space, such as front office equipment, will be on a shared basis with the District’s program. However, furnishings and equipment such as computers that were acquired for the school site with non-district resources are excluded from use.

The space allocated to Ridgecrest must be used in a manner consistent with the final offer of facilities. Additionally, the space allocated to Ridgecrest is for occupancy by Ridgecrest only. All property remains the property of the District, and Ridgecrest shall not enter into any agreement with any party as to the use or occupancy of the property without the express written consent of the District. The proposed facilities offer is for space only and excludes any services related to the use of such space. Use of the space will be subject to the Facilities Use Agreement included herewith. Non-teaching space including teacher lounge and RSP shall be shared with the District operated program at the site. Use of common areas and shared space may require rotation of the available times to accommodate both Ridgecrest in-district students and the students attending Inyokern Elementary School.

This offer is based upon the projected in-district ADA of 231 and is extended to Ridgecrest effective August 31, 2009, pursuant to the agreement dated March 20, 2009, for the 2009/10 school year. In conformity with the statute and regulations, this offer of the above-described facilities applies only to the school year 2009/10.

**OPTION 3:**

Ridgecrest’s K-5 students would be housed at Inyokern Elementary School, 6601 Locust Avenue, CA and Ridgecrest’s 6-8 students would be housed at James Monroe Middle School, 340 W Church Ave., Ridgecrest, CA. Included in this facilities offer are nine (9) classrooms at Inyokern for teaching space, and one (1) classroom for non-teaching administrative space and two (2) classrooms at Monroe for teaching space. The offer includes shared common space and specialized classroom space at each school commensurate with each school’s ADA as set forth below. The total classroom allocation is thus twelve (12) classrooms.

The breakdown in shared use of the classroom and common space between Ridgecrest, Inyokern and Monroe is calculated as follows:

Common Space Inyokern Grades K-5 (194.07 Inyokern/181 Ridgecrest)

Inyokern 52% of the day                      Ridgecrest 48% of the day

Specialized Classroom Space Inyokern Grades K-5 (194.07 Inyokern/181 Ridgecrest)

Inyokern 52% of the day                      Ridgecrest 48% of the day

Common Space Monroe Grades 6-8 (523.75 Monroe/50 Ridgecrest)

Monroe 91% of the day                      Ridgecrest 9% of the day

Specialized Classroom Space Monroe Grades 6-8 (523.07 Monroe/50 Ridgecrest)

Monroe 91% of the day                      Ridgecrest 9% of the day

Ridgecrest will be allocated exclusive use of the 10 total classrooms at the Inyokern Elementary School to house all of Ridgecrest's in-district K-5 ADA and its administration. Ridgecrest will be assigned specific classrooms on the Inyokern Elementary School site and will share the site with the District's program. Ridgecrest will also be allocated exclusive use of 2 classrooms at the Monroe Middle School to house all of Ridgecrest's in-district 6-8 ADA. Ridgecrest will be assigned specific classrooms on the Monroe Middle School site and will share the site with the District's program. Determination of use of the common space is based upon the relative percentage of Ridgecrest ADA compared to Inyokern/Monroe ADA at the site offered. Library, custodial, cafeteria, multi-purpose room, and playground areas at the elementary school site will be available on a shared basis as "common areas." These areas are shared based on the proportion of the student population of each entity. Utility bills are to be divided and apportioned on the same basis. Sharing arrangements such as time periods for each school to utilize shared space will be worked out on a collaborative basis between the Inyokern/Monroe site administrations and Ridgecrest.

The "specialized classroom space" at the elementary school level is limited to the computer lab and will be shared commensurate with Ridgecrest's in-district classroom ADA in grades K-5. Access to the specialized classroom space at the middle school for Ridgecrest in-district students in grades 6-8 will be provided at the Monroe Middle School. This specialized classroom space includes the computer lab, gymnasium, music room, industrial arts, and science lab. This space will be shared at Monroe Middle School on a pro rata basis based upon Ridgecrest's ADA in grades 6-8. District school classrooms are furnished and equipped with desks, chairs and white boards. The offer of space will incorporate desks, chairs and white boards. Specialized classroom space will be shared space and include the same furnishings and

equipment available for use by District students except for those furnishings and equipment that are excluded pursuant to section 11969.2(e). Equipment for non-teaching space, such as front office equipment, will be on a shared basis with the District's program. However, furnishings and equipment such as computers that were acquired for the school site with non-district resources are excluded from use.

The space allocated to Ridgecrest must be used in a manner consistent with the final offer of facilities. Additionally, the space allocated to Ridgecrest is for occupancy by Ridgecrest only. All property remains the property of the District, and Ridgecrest shall not enter into any agreement with any party as to the use or occupancy of the property without the express written consent of the District. The proposed facilities offer is for space only and excludes any services related to the use of such space. Use of the space will be subject to the Facilities Use Agreement included herewith. Non-teaching space including teacher lounge and RSP shall be shared with the District operated program at the Inyokern site. Use of common areas and shared space may require rotation of the available times to accommodate both Ridgecrest in-district students and the students attending Inyokern Elementary School.

This offer is based upon the projected in-district ADA of 231 and is extended to Ridgecrest effective August 31, 2009, pursuant to the agreement dated March 20, 2009, for the 2009/10 school year. In conformity with the statute and regulations, this offer of the above-described facilities applies only to the school year 2009/10.

### **Pro Rata Share**

The pro-rata share depends upon the option chosen by Ridgecrest:

OPTION 1: The space allocated to Ridgecrest as exclusive use is 10,680 sq. feet for the pro-rata cost of \$69,526.80, shared space in the amount of 3,920 square feet (at Inyokern Elementary School only) is charged at 54% (\$3.52) or a pro rata cost of \$13,798.40. Ridgecrest's pro-rata share will be \$83,325.20 for the 2009/10 school year.

OPTION 2: The space allocated to Ridgecrest as exclusive use is 10,680 square feet for the pro-rata cost of \$69,520.80. Shared space in the amount of 3,920 square feet is charged at 54 (\$3.52) for a pro rata cost of \$13,798. Ridgecrest's pro-rata share will be \$83,325.00 for the 2009/10 school year.

OPTION 3: The space allocated to Ridgecrest as exclusive use is 8900 square feet at Inyokern and 1806 square feet at Monroe for the pro-rata cost of \$69,696.06. Shared space in the amount of 3,920 square feet (at Inyokern Elementary School only) is charged at 48% at \$3.12 for (\$12,230.40) pro rata cost. At Monroe Ridgecrest's pro-rata share will be for 14,509 sq. feet at 9% at .59 per square foot for a pro rata cost of \$8560.31. Ridgecrest total pro-rata of \$90,486.76 for the 2009/10 school year.

Payment for the pro-rata share will be payable in 11 monthly payments. The first payment shall be due no later than August 1, 2009 and each additional payment will be due on or before the first day of each month thereafter.

### **Facilities Use Agreement**

Should Ridgecrest desire to occupy the Site and Facility, the District will require that Ridgecrest enter into a Facilities Use Agreement. The Facilities Use Agreement is not complete in that the final document will need to reflect the option chosen by Ridgecrest for housing the students. However, all terms other than those related to the allocation will be as set forth in the attached Facilities Use Agreement. An executed copy must be provided to the District, together with all required documentation, prior to obtaining access to the site. A leasehold interest in the Site and Facility will not be provided to Ridgecrest.

### **EFFORTS TO PROVIDE FACILITIES NEAR WHERE THE CHARTER SCHOOL WISHES TO BE LOCATED:**

As discussed above, Charter School's request to be placed at the Vieweg Elementary School cannot be accommodated. The Charter School will be housed in a contiguous facility at the Inyokern Elementary School. Ridgecrest asserts in response to the preliminary offer that Inyokern is the most remote from its current private location. However, distance from its current location is not relevant under the statute or regulations. Additionally, it is not the most "remote" site. Rather, the Inyokern site has been home to one of the District's California Blue Ribbon schools and is the site that provides a facility that is reasonably equivalent and which allows for growth. Housing Ridgecrest at the Inyokern site would be least likely to require a move in light of Ridgecrest's plans for growth.

To the degree that the charter school asserts that the District should purchase portables to place at another site in order to house the charter school students, this is neither feasible nor required. Moreover, other school sites such as Faller do not have infrastructure to accommodate growth or school site expansion. However, Inyokern does have this infrastructure in place to expansion. The statute expressly states that the District is not required to expend its general funds moneys to buy, rent or lease housing for charter school students (Section 47614(b)). To the degree Ridgecrest asserts that the District is required to spend its parcel tax and bond funds to provide housing to the charter school, this is not accurate and reflects a lack of understanding of the laws governing parcel tax and bond funds. First, the District does not have parcel tax funds. Moreover, bond funds are earmarked and restricted and cannot be used for purposes other than those projected identified in the bond documents. Ridgecrest has not identified available funds or how these funds may be lawfully used for the purposes they propose. Nor has Ridgecrest identified any provision requiring

the District to utilize particular funds to provide Ridgecrest with its preferred housing over the reasonably equivalent offer made by the District.

To the degree Ridgecrest suggests that the District did not consider alternate sites, this is not correct. Notably, although the District is required to make reasonable efforts to provide the charter school with facilities near where the charter school wishes to locate, the charter school's Request only identified Vieweg for consideration which has been addressed above. As further explained above, due to the District-wide Modernization Program, several schools are closed for the 2009/10 school year and others do not provide for growth for the charter school.

In response to the preliminary offer, Ridgecrest asserts that Inyokern is not comparable and is the least modernized of the District's school sites. This is not accurate. Inyokern has been renovated and upgraded over the years, most recently in 2001 and will undergo further modernization beginning in June 2009. All of the District's facilities have been maintained in excellent condition. Neither safety nor cleanliness has ever been an issue at any District site, including Inyokern. Inyokern has housed the District's California Blue Ribbon school and is both a fine facility and reasonably equivalent for housing the charter school students. Ridgecrest is also incorrect regarding its assertion that the Gateway school site was renovated to enlarge the classrooms. The Gateway school site has never been modernized and is not eligible for modernization until 2016.

CHARTER SCHOOL CONCERNS RE CLASSROOM ALLOCATION:

The District also notes that the Request states: "the facility allocated to the Charter School must provide, in addition to that required by Prop. 39 and the implementing regulations, the following: performing arts room, music room, science lab, computer lab, auditorium, 12 classrooms, restrooms, offices for staff members that include: Director, Dean of Students, Business Manager, records clerk, office clerk, resource specialist, reading specialist and a paraprofessional in addition to the gymnasium, cafeteria and parking." The District has no obligation to provide facilities beyond what is required by Proposition 39 and the implementing regulations. The District's final offer reflects an allocation of space reasonably equivalent to and commensurate with that provided to students attending District schools. Ridgecrest's Request seeks an excessive number of classrooms and facilities far beyond that provided to students attending District schools and further seeks specialized classroom space that is not found in the District's classroom inventory. As noted above, commencing in 2009/10, due to the budget constraints forced upon the District by the State, the teaching station to pupil ratio will be higher than its historical average. Space will be allocated at 24.95:1 for students grades K-3; 30:1 for grades 4-5 and 32:1 for students in grades 6-8. Under this teaching station to pupil ratio, Ridgecrest would qualify for 9 classrooms rather than 11 that are being offered for classroom instruction. Therefore, the classroom allocation amounts to a more generous offer of space than required by

Education Code section 47614 and the implementing regulations for the 2009/10 school year.

FACILITIES USE AGREEMENT: Pursuant to Cal. Code Regs., tit. 5, § 1969.9(f)(3), the District submits herewith its Facilities Use Agreement (Attachment G.) The District has considered Ridgecrest’s proposed changes to the Facilities Use Agreement and has made several changes in response thereto. However, we note that many of the issues raised are inconsistent with the law cited. For example, nothing in section 11969.10 requires the Agreement to include a dispute resolution provision. Additionally, as represented by Ridgecrest legal counsel to the California Superior Court, section 11969.9(k)(3) does not require mutual indemnification.<sup>4</sup> Pursuant to Cal. Code Regs., tit. 5, § 11969.9(f)(3), the District submits herewith its Facilities Use Agreement.

PRO-RATA SHARE: Charter School will be responsible for a pro-rata share of the facilities costs in conformity with the regulations. The pro-rata share reflects “(1) a per-square-foot amount equal to those school district facilities costs that the school district pays for with unrestricted revenues from the district’s general fund, as defined in sections 11969.2(f) and (g) and hereinafter referred to as ‘unrestricted general fund revenues, divided by the total space of the school district times (2) the amount of space allocated by the school district to the charter school.” (Cal. Code Regs., tit. 5, § 11969.7.) The District used this methodology to calculate the pro-rata share. Consistent with the regulations, the District’s pro-rata calculation amounts to \$6.51 per square foot. The specific pro-rata share depends upon the option chosen by Ridgecrest.

OPTION 1: The space allocated to Ridgecrest as exclusive use is 10,680 sq. feet for the pro-rata cost of \$69,526.80, shared space in the amount of 3,920 square feet (at Inyokern Elementary School only) is charged at 54% (\$3.52) or a pro rata cost of \$13,798.40 Ridgecrest’s pro-rata share will be \$83,325.20 for the 2009/10 school year.

OPTION 2: The space allocated to Ridgecrest as exclusive use is 10,680 square feet for the pro-rata cost of \$69,520.80. Shared space in the amount of 3,920 square feet is charged at 54 (\$3.52) for a pro rata cost of \$13,798. Ridgecrest’s pro-rata share will be \$83,325.00 for the 2009/20 school year.

---

<sup>4</sup> “At the hearing, Respondents and Intervenor [represented by Middleton Young & Minney] denied that this regulation [5 CCR § 11969.9(k)(3)] imposed a new substantive requirement because the regulation merely requires the agreement to include a reciprocal hold-harmless/indemnification clause, but does not shift liability to the school district or require any particular terms. Rather, it simply requires the parties to negotiate and agree on an assignment of risks between the charter school and the district.” (See Ruling after Hearing dated 11/24/08; *CSBA v. State Board of Education, et al.*, Sup. Ct. Case No. 34-2008-00016957.)

OPTION 3: The space allocated to Ridgecrest as exclusive use is 8900 square feet at Inyokern and 1806 square feet at Monroe for the pro-rata cost of \$69,696.06. Shared space in the amount of 3,920 square feet (at Inyokern Elementary School only) is charged at 48% at \$3.12 for (\$12,230.40) pro rata cost. At Monroe Ridgecrest's pro-rata share will be for 14,509 sq. feet at 9% at .59 per square foot for a pro rata cost of \$8560.31, for a total of \$90,486.76 for the 2009-10 school year.

Payment for the pro-rata share will be payable in 11 monthly payments. The first payment shall be due no later than August 1, 2009 and each additional payment will be due on or before the first day of each month thereafter.

Contrary to the assertions made in Ridgecrest's February 27, 2009 letter, the District has used the correct methodology to calculate the pro-rata share. The "statewide average" cited by Ridgecrest is neither accurate nor relevant to the formula set forth in regulations. Consistent with the regulations, the District's pro-rata calculation amounts to \$6.51 per square foot.

FINANCIAL IMPLICATIONS: To be determined.

SUPERINTENDENT'S RECOMMENDATION: It is recommended that the board approve providing facilities to the Ridgecrest Charter School for the 2009-10 school year under the terms and conditions outlined above, in the draft final offer and the Facilities Use Agreement and adopt this Board Report as its Statement of Reasons in support of the facilities offer to the degree a statement of reasons is required by law. The offer is legally compliant, provides for consideration of the charter school students consistent with the consideration of the students in District programs, gives options to the Charter School and balances the needs of the charter school with the facility and programmatic needs of the District.



## RIDGECREST CHARTER SCHOOL

Home of the Eagles

October 31, 2008

Ms. Joanna Rummer  
Superintendent  
Sierra Sands Unified School District  
113 Felspar  
Ridgecrest, CA 93555-3589

Delivery method: **In person**

RE: Request for Proposition 39 Facilities for the 2009-10 School Year

Dear Superintendent Rummer:

I am writing on behalf of the Ridgecrest Charter School ("Charter School") to request reasonably equivalent school facilities from the Sierra Sands Unified School District ("District") pursuant to Education Code Section 47614 (i.e., Proposition 39) and Title 5 of the California Code of Regulations ("CCR") Section 11969.1 through 11969.11, as amended ("Implementing Regulations"). A request was made to the District on October 21<sup>st</sup>, 2008 for any District policies or administrative regulations and forms regarding our charter School's request for facilities under Proposition 39 (Attachment 1). In the letter we asked that such documents be provided on or before October 24<sup>th</sup>, 2008. To date the Charter School has received no forms or correspondence in regards to this request.

Proposition 39, passed by the voters of California on November 7, 2000, requires school districts to make available, to each charter school operating within the school district, school facilities sufficient for each 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 school district. Facilities provided shall be contiguous, furnished, and equipped, and shall remain the property of the school district. In addition, the school district must make reasonable efforts to provide the charter school with facilities near to where the charter school desires to be located. (See Education Code Section 47614(b)).

The Proposition 39 Implementing Regulations adopted by the State Board of Education ("SBE") on August 29, 2002, and amended on March 29, 2008; require the Charter School to make an annual written request for facilities. Title 5 CCR Section 11969.9(c)(1) specifies the information that must be included in the annual facilities request. This request, along with the information submitted herewith, meets and exceeds the requirements of Education Code Section 47614 and the Implementing Regulations..

**Projected Average Daily Attendance (ADA):**

In accordance with Education Code Section 47614(b)(2) the District is required to allocate school facilities to the Charter School for the following school year based upon a projection of average daily classroom attendance provided by the Charter School.

The Charter School’s Governing Board has determined that a reasonable projection of the Charter School’s in-District average daily classroom attendance for the 2009-10 school year is 273. The following is a break down of the Charter School’s projected average daily attendance (“ADA”) as required by 5 CCR Section 11969.9(c)(1). The Charter School’s ADA figures are based on the methodology outlined in the following section.

Please note:

- “Prior year” means the fiscal year prior to the year in which a facilities request is made. For this request, the prior year is 2007-08.
- “Current year” means the fiscal year in which a facilities request is made. For this request, the current year is 2008-09.
- “Request year” means the fiscal year for which facilities are being requested. For this request, the request year is 2009-10.

**Table 1: Total In-District Classroom ADA<sup>1</sup>**

A	B	C	D
Grade Level	<u>Actual Total Prior Year (P-2)</u>	<u>Projected Total Current Year</u>	<u>Projected Total Request Year</u>
K	35.85	32	40
1	33.88	35	36
2	26.88	30	36
3	24.95	30	36
4	20.20	25	25
5	23.05	25	25
6	23.17	25	25
7	10.89	25	25
8	9.91	25	25
9			
10			
11			
12			
<b>Total</b>	<b>208.78</b>	<b>252</b>	<b>273</b>

The following table represents the projected **in-District ADA** and **in-District classroom ADA** (from Table 1 above) broken down by grade level and the school in the District the pupils are otherwise eligible to attend. (5 CCR Section 11969.9(c) (2).)

<sup>1</sup> The Total ADA, Total In-District ADA, Total Classroom ADA is all equal to the Total In-District Classroom ADA at the Charter School because the Charter School does not have out of district children and does not have non-classroom based ADA. Thus only one chart is provided.

**Table 2: In-District Classroom ADA Broken Down by Grade Level and District Schools Where Pupils Would Otherwise Attend:**

School Name/Grade	K	1	2	3	4	5	6	7	8	9	10	11	12
Faller Elementary	11	13	10	13	8	8							
Inyokern Elementary	5	4			1	3							
Pierce Elementary	11	9	10	10	3	3							
Gateway Elementary	3	5	5	5	1	3							
Las Flores Elementary	5	5	10	6	7	3							
Richmond Elementary	5	4	5	6	4	5							
Monroe Middle							13	19	11				
Murray Middle							2	3	2				

**Methodology Used In Making ADA Projection:**

Title 5 CCR Section 11969.9(c)(1)(B) requires the facilities request to include a description of the methodology for the ADA projections. The Charter School utilized the following methodology in calculating the ADA projections: In addition to using the P-2 ADA apportionment data for the past several years and adjusting the figures for expected changes we also anticipate a substantial increase in in-District ADA for 2009-2010. We extrapolated this information from re-enrollment forms sent to current Charter School families (Attachment 2) as well as requests for applications from parents relocating to the Larkspur Village apartments. As you are aware, our proximity to this complex is, across the street. We anticipate at a minimum 50% of the 81 units to transfer their children to the Charter School. That being said, if each unit has 1-2 children we are anticipating an ADA increase of 40-80 students. For purposes of this Prop. 39 request we have conservatively estimated our ADA increase for next year to be 21 ADA.

School Year	Enrollment	ADA Claimed at P-2
2005-06	232	224.97
2006-07	215	204.12
2007-08	224	208.54
2008-09	193	N/A

As demonstrated herein, we have analyzed our School’s historical enrollment and current enrollment, prior ADA figures and proximity to a new 81 unit apartment complex opening during the Fall/Winter 2008-09 school year in order to arrive at our total projected in-District classroom ADA figure for the request year.

**Supporting Documentation**

Title 5 CCR Section 11969.9(c)(1)(C) requires the facilities request to include supporting documentation. The Implementing Regulations state that when a charter school is not yet open (i.e., not yet providing instruction) or to the extent an operating charter school projects a substantial increase in in-District ADA, the annual request must include documentation of the number of in-District students meaningfully interested in attending the Charter School. Please be advised that because the Charter school projects a substantial increase in ADA, we have attached

and incorporated herein by reference the following supporting documentation that fully substantiates the reasonableness of our in-District ADA projections for the 2009-10 school year:

- (1) a roster of current year students, by name, address, and phone number;
- (2) a declaration from the Principal regarding the Charter School's annual ADA and retention rate;
- (3) newly received enrollment applications for new students for the current year;
- (4) signed parental "Intent to Re/Enroll" Forms for all students for the current year;
- (5) CBEDS forms for prior school years; and
- (6) P-2 ADA forms for prior school years;

Should the District desire additional documentation or information regarding the Charter School's ADA projections please contact me as soon as possible. We remain willing to cooperate with the District to immediately address any questions or concerns about this request and the supporting documentation.

### **Operational Calendar:**

Title 5 CCR Section 11969.9(c)(1)(D) requires the facilities request to include the Charter School's operational calendar. The Charter School's operational calendar is attached (Attachment 3) for your review. The Charter School's first day of instruction is on August 18<sup>th</sup>, 2009; therefore we will need access to the facility on or before July 01, 2009 in order to prepare. Please note that Title 5 CCR Section 11969.9(j) requires the District to ensure that a furnished and equipped facility meeting the requirement of Proposition 39 be made available to the Charter School no less than ten (10) working days prior to the charter school's first day of instruction. In addition, in accordance with Section 11969.5, the space allocated must be made available for the Charter School's entire school year regardless of the School District's instructional year or class schedule.

### **Educational Program:**

Title 5 CCR Section 11969.9(c)(1)(F) requires the facilities request to provide information regarding the charter school's educational program that is relevant to the assignment of facilities. The Charter School's educational program does have unique facilities needs. As you are aware, key components of the educational program of the Charter School include performing arts, music, science lab, computer lab, special education, professional development days, after school enrichment programs, academic clubs and after school tutoring. In order to provide this aspect of our educational program, the facility allocated to the Charter School must provide, in addition to that required by Prop. 39 and the implementing regulations, the following: performing arts room, music room, science lab, computer lab, auditorium, 13 classrooms, restrooms, offices for staff members that include: Director, Dean of Students, Business Manager, records clerk, office clerk, resource specialist, reading specialist and a paraprofessional in addition to the gymnasium, cafeteria and parking.

In addition, and in accordance with its charter and its budget, the Charter School operates grade levels K through 8 on one contiguous school site. Consequently, the Charter School's educational program requires a single contiguous school site in which to operate.

### **Facility Location:**

Title 5 CCR Section 11969.9(c)(1)(E) requires the Charter School to provide information regarding the District school site and/or general geographic area in which the Charter School wishes to locate. Based upon the needs of the Charter School and the residency of the projected student enrollment, the Charter School desires to locate its facility at the former Vieweg Elementary School site.

### **Procedures and Timelines:**

In accordance with the Implementing Regulations, the District is required to review the Charter School's attendance projections and to express any objections that it has about the Charter School's attendance projections in writing on or before December 1, 2008. The Charter School must respond to the District's written objections, if any, on or before January 2, 2009, and will either reaffirm or modify its projections as it deems necessary. (5 CCR Section 11969.9(d).)

Furthermore, we look forward to receiving a written preliminary facilities proposal from the District on or before February 1, 2009, as required under the Implementing Regulations. (5 CCR Section 11969.9(f).) The preliminary proposal must include, at a minimum, the following information: (1) a breakdown of the number of teaching stations (classrooms), specialized and non-classroom based space to be allocated to the Charter School, with an indication as to whether the space is exclusive or shared use; (2) the projections of in-District classroom ADA on which the proposal is based; (3) the specific location of the space; (4) all conditions pertaining to the space, including a draft of any proposed agreement pertaining to the Charter School's use of the space, (typically referred to as a facilities use agreement); (5) the projected pro rata share amount and a description of the methodology used to determine that amount; and (6) a list and description of the comparison group schools used in developing its preliminary proposal, and a description of the differences between the preliminary proposal and the Charter School's facilities request. The Charter School has until March 1, 2009, to respond to the preliminary proposal.

The Implementing Regulations Section 11969.9(h) requires the District to provide a written final notification regarding the space to be allocated to the Charter School prior to April 1, 2009. The final notification specifically must include, at a minimum, the following:

- (1) the teaching station, specialized classroom space, and non-teaching station space offered for the exclusive use of the charter school and the teaching station, specialized classroom space, and non-teaching station space which the charter is to be provided access on a shared basis with District operated programs, if any;
- (2) for shared space, if any, the proposed arrangements for sharing;
- (3) the in-District classroom ADA assumptions for the charter school upon which the allocation is based and, if the assumptions are different than those submitted by the charter school, a written explanation of the reasons for the differences;
- (4) the specific location of the space;
- (5) all conditions pertaining to the Charter School's use of the space;
- (6) the pro rata share amount and a description of the methodology used to determine that amount;

- (7) the payment schedule for the pro rata share amount, which shall take into account the timing of revenues from the state and from local property taxes; and
- (8) a response to the Charter School's concerns and/or counter-proposals, if any.

A California Court of Appeal decision has made clear that in meeting their Proposition 39 obligation, school districts must give the same degree of consideration to the needs of charter school students as it does to the students in district run schools. The court noted that "accommodating a charter school might involve moving district-operated programs or changing attendance areas" and that providing a contiguous school facility to a charter school might require disruption and dislocation among district students, staff and programs. Ridgecrest Charter School v. Sierra Sands Unified School District, 130 Cal.App.4<sup>th</sup> 986 (2005). In addition, the Court concluded that a school district responding to a request for facilities must issue a statement of reasons at the time it makes its final determination that is "thorough" and "factual" enough to permit "effective review by the courts"; the statement of reasons issued by the school district must demonstrate that the district has "adequately considered all relevant factors" and that the district can "demonstrate a rational connection between those factors, the choice made, and the purposes of [Proposition 39]."

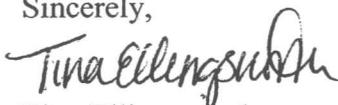
Although Proposition 39 requires the District to allocate a school facility for Charter School use, the Charter School is amenable to discussing alternative facilities arrangements that meet both the needs of the District and the Charter School.

The Charter School Governing Board has delegated to me the responsibility to negotiate the allocation of a facility under Proposition 39. All communications regarding this matter should be sent to my attention at the address below. My contact information is as follows:

Tina Ellingsworth  
325 S Downs  
Ridgecrest, CA 93555  
(760) 375-1010  
(760) 375-7766  
tellingsworth@rcharter.org

I appreciate your time and consideration of this request and I look forward to developing a mutually agreeable plan to meet the facilities needs of the Charter School's in-District students.

Sincerely,



Tina Ellingsworth  
Director

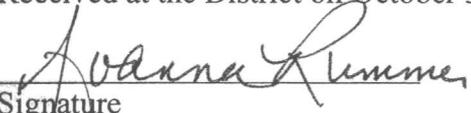
cc: Richard Smith, Craig Bradley, Jerry Perez, Deborah Kurti, Linda Greenlee RCS Governing Board members and Paul Minney, Legal Counsel.

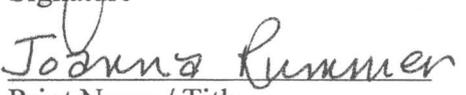
Attachments (the following attachments are incorporated by reference herein):

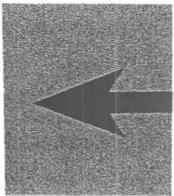
- Attachment 1: Charter School Request for District Board policies or administrative regulations or any forms regarding Proposition 39
- Attachment 2: Signed copies of Re-Enrollment Forms the request year
- Attachment 3: Operation Calendar 2009-2010
- Attachment 4: Roster of current year students, by name, address, and phone number
- Attachment 5: Declaration from the Principal regarding the Charter School's annual ADA and retention rate
- Attachment 6: CBEDS forms for prior school years
- Attachment 7: P-2 ADA forms for prior school years

Cc: Deborah Probst, California Department of Education

Received at the District on October 31, 2008, at 2:20 ~~am~~ /p.m.

  
\_\_\_\_\_  
Signature

 Superintendent  
Print Name / Title





**RIDGECREST CHARTER SCHOOL**  
Home of the Eagles

October 31, 2008

Ms. Joanna Rummer  
Superintendent  
Sierra Sands Unified School District  
113 Felspar  
Ridgecrest, CA 93555-3589

Dear Ms. Rummer,

Please accept this submission as a Request for Proposition 39 Facilities for the 2009-10 School Year. This information contained herein is true and accurate to the best of my knowledge.

School Year	Enrollment	ADA Claimed at P-2
2005-06	232	224.97
2006-07	215	204.12
2007-08	224	208.54
2008-09	193	N/A

\* \* \*

We thank you in advance for your effort and consideration of our Proposition 39 Request. Please feel free to contact me, Tina Ellingsworth, Director, at (760) 375-1010 if you should have any questions regarding this submission.

Sincerely,

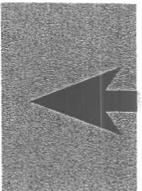
Tina Ellingsworth  
Ridgecrest Charter School

Received at the District on October 31, 2008, at 2:20 ~~am~~ /p.m.

Signature

Joanna Rummer, Superintendent

Print Name / Title





**SIERRA SANDS**  
UNIFIED SCHOOL DISTRICT

**Joanna Rummer**  
Superintendent

113 W. Felspar Avenue • Ridgecrest, CA • 93555 • 760 375-3363 •  
Website: [www.ssusd.org](http://www.ssusd.org)

January 30, 2009

Mrs. Tina Ellingsworth  
Ridgecrest Charter School  
325 South Downs  
Ridgecrest, CA 93555

Dear Ms. Ellingsworth:

Please find attached the letter constituting the District's preliminary offer of facilities to Ridgecrest Charter School for the 2009/10 school year.

Sincerely,

*Joanna Rummer* <sup>AB</sup>  
Joanna Rummer  
Superintendent

Received at Ridgecrest Charter School on January 30, 2009

*Tina Ellingsworth*                      1/30/09  
Signature                                      Date  
Tina Ellingsworth, Director  
Print Name/Title

**Board of Education**

Amy Covert • Judy Dietrichson • Bill Farris • Tim Johnson • Tom Pearl • Kurt Rockwell • Michael Scott



**SIERRA SANDS**  
UNIFIED SCHOOL DISTRICT

**Joanna Rummer**  
Superintendent

113 W. Felspar Avenue • Ridgecrest, CA • 93555 • 760 375-3363 •  
Website: [www.ssusd.org](http://www.ssusd.org)

January 29, 2009

Tina Ellingsworth  
Ridgecrest Charter School  
325 South Downs  
Ridgecrest, California 93555

Re: Sierra Sands Unified School District,  
2009–10 Proposition 39 Application;  
Ridgecrest Charter School

Dear Ms. Ellingsworth:

On October 31, 2008, the Sierra Sands Unified School District (“District”) received Ridgecrest Charter School’s (“Charter School”) request for facilities for the 2009/10 school year (“Request”). This letter constitutes the District’s preliminary offer of facilities to Charter School for the 2009/10 school year. As set forth more fully below, this preliminary offer is based upon a projected in-district ADA of 209.

Education Code section 47614, subdivision (b)(2), provides that for each year a charter school desires facilities it must provide a reasonable projection of its “average daily classroom attendance by in-district students for the following year.” The Regulations, title 5, section 11969.9(b), establishes: “To receive facilities during a particular fiscal year, a charter school must submit a written facilities request to the school district on or before November 1 of the preceding fiscal year.” Section 11969.9, subdivision (c)(1)-(2), informs charter schools of what a written facilities request must include:

(1) The written facilities request must include: (A) reasonable projections of in-district and total ADA and in-district and total classroom ADA, based on ADA claimed for apportionment, if any, in the fiscal year prior to the fiscal year in which the facilities request is made, adjusted for expected changes in enrollment in the forthcoming fiscal year; (B) a description of the methodology for the projections; (C) if relevant (i.e., when a charter school is not yet open or to the extent an operating charter school projects a substantial increase in in-district ADA), documentation of the number of in-district students meaningfully interested in attending the charter school that is sufficient for the district to determine the reasonableness of the projection, but that need not be verifiable for precise arithmetical accuracy; (D) the charter school's operational calendar; (E) information regarding the district school site and/or general geographic area in which the charter school wishes to locate; and (F) information on the charter school's educational program, if any, that is relevant to assignment of facilities. (2) Projections of in-

**Board of Education**

Amy Covert • Judy Dietrichson • Bill Farris • Tim Johnson<sup>33</sup> • Tom Pearl • Kurt Rockwell • Michael Scott

Tina Ellingsworth  
Ridgecrest Charter School  
February 1, 2009  
Page 2

district ADA, in-district classroom ADA, and the number of in-district students shall be broken down by grade level and by the school in the school district that the student would otherwise attend.

The Regulations provide the timeline for submittal of and response to a request for facilities under Education Code section 47614. By December 1, 2008, the school district shall review the charter school's projections and express any objections in writing and state the projections the district considers reasonable. The charter school shall respond to any objections expressed by the school district and to the district's projections by January 2, 2009.

A district must prepare a preliminary proposal by February 1 to which the charter school must respond by March 1, and the district must then provide a final notification of the facilities to be provided to the school by April 1 preceding the fiscal year for which facilities are sought. A charter school is to accept or reject the facilities offer by May 1. (Cal. Code Regs., tit. 5, § 11969.9(f)-(h).)

#### **The Projections of In-District Classroom ADA on Which the Proposal Is Based**

The October 31, 2008 Request seeks facilities based upon projected 273 in-district ADA. On November 25, 2008, the District wrote to Charter School regarding concerns with the Charter School projections and also outlining the deficiencies in the Request. The District has agreed to consider the Request and whether to make an offer of facilities, reserving any and all rights and without waiver of any objections to the form or timing of the Request. As set forth in the November 25 letter, the District's review of the documentation and Charter School's enrollment and ADA history, demonstrated that a reasonable projection did not exceed 200 ADA. The District incorporates herein by this reference the content of its November 25 correspondence. The Charter School responded by letter dated December 31, 2008, reducing its projections from 273 to 231.<sup>1</sup> However, and as explained more fully below, the revised projections remain unsupported and the District's preliminary offer is based upon the Charter School's 2007/2008 P-2 of 208.54 ADA (rounded to 209).

Contrary to the statements in the Charter School's December 31 letter, at no point has the District relied upon old or outdated implementing regulations in its analysis of reasonable projected in-district ADA figures for the request year. The District has cited competent legal authority, including controlling statutory and case law, as well as the

---

<sup>1</sup> It is noted that in reducing its projections, Charter School did not provide a revised breakdown of the grades of the projected students or where projected students would otherwise attend school.

Tina Ellingsworth  
Ridgecrest Charter School  
February 1, 2009  
Page 3

implementing regulations as they currently apply.<sup>2</sup> The facilities request submitted October 31, 2008, cited a projection of 273 ADA for the request year. This is an increase in ADA from 2007/08 P-2 to the request year of approximately 65 ADA, even in the face of the Charter School's history of declining enrollment. The Charter School's suggestion that such an increase is not a "substantial increase" is wholly unsupported. As discussed in the District's November 25, 2008 letter, the Charter School has failed to provide adequate documentation to support any projected increase in ADA, let alone an increase of approximately 30%.

The Charter School contends that its revised ADA projections from 273 to 231 submitted December 31, 2008, constitutes only a 10% increase from its 2007/08 P2 ADA, and therefore no documentary support is required. However, we do not agree that a 10% increase is insubstantial and the Charter School makes this assertion without supporting authority. Once the District stated its objections, citing the lack of such documentary support, the Charter School may not simply lower the ADA projections to an increase that it believes makes such support unnecessary. The revised projection of 231 ADA is still an unsupported estimation. Moreover, an increase of 22 ADA over 2007/2008 P-2 remains a "substantial increase," particularly where the current year CBEDs and the Charter School's recent Board documents reflect less than 200 total current enrollment.

The District further notes that the Charter School has not timely submitted a facilities request based upon any revised projections. The *Environmental Charter High School v. Centinela Valley Union High School District* (2004) 122 Cal.App.4th 139, Court's holding that an application must be complete upon the deadline set forth in the regulations remains applicable. Therefore, the Charter School was required to submit any supporting documentation by the November 1, 2008 deadline set forth in the regulations. Nor has the Charter School submitted any additional documentation to support its revised projections. As previously noted, in reducing its projections, Charter School did not provide a revised breakdown of the grades of the projected students or where projected students would otherwise attend school.

---

<sup>2</sup> The District's November 25, 2008 letter objecting to the Charter School's projections set forth, in summary fashion, the current requirements of title 5 section 11969.9(c). Although the regulation was not recited verbatim, the letter does reflect the current law and Charter School has failed to identify how the statement of law was in any way inaccurate. With regard to *Environmental Charter High School v. Centinela Valley Union High School District* (2004) 122 Cal.App.4th 139, the case remains good law as reflected by State Board of Education reliance upon the case in its Final Statement of Reasons.

Tina Ellingsworth  
Ridgecrest Charter School  
February 1, 2009  
Page 4

The Charter School has demonstrated fluctuating enrollment figures, and thus cannot show a consistent ADA relative to percentage of enrollment. While the Charter School states it had an enrollment of 220 at P2 of 2007/08, previous numbers presented by the Charter School indicated an enrollment of 224 relative to an actual ADA of 208.54.<sup>3</sup> The Charter School's own Board documents reflect a decline in ADA realization relative to enrollment. The Charter School's realization rate in terms of ADA to enrollment dipped to 93% for the previous year, and the District's original projection of 94% was entirely accurate given the yearly decline in this realization rate leading up to the request year.

The Charter School also claims the District cannot make a "reasonable projection" of ADA based on the school's present year CBEDS data, indicating that it is "common knowledge" that ADA at charter schools increases throughout the year and further contends that it will have an enrollment of 200 in January and expects to increase to an enrollment of 220 by next semester. However, these conclusory statements offered without support simply do not meet the obligation of the Charter School to support its projections. Particularly where, as here, the Charter School's own information demonstrates a reduction in enrollment over the last several years.

Finally, the District had originally called attention to the fact that the Charter School's Intent to Re/Enroll forms were missing information, contained duplicate information or appeared to be filled out by the students themselves. In response, the Charter School states that if the District had a problem with this documentation, "it should have called these families prior to the December 1 deadline to test their meaningful interest." It is not the District's obligation to follow up with individual parents to gauge their meaningful interest in enrolling or re-enrolling their student(s). It is the Charter School's obligation to provide adequate documentation to support its ADA projections. It also seems disingenuous to suggest the District should contact the Charter School parents as the Charter School would no doubt object to such communications.

For all the reasons stated in the District's November 25, 2008 letter and on the grounds that Charter School has failed to demonstrate that an increase of ADA beyond the 209 as reflected in the 2007/08 P-2 is a reasonable projection, the District has allocated space based upon a projection of 209 in-district ADA which reflects the Charter School's P-2 ADA, by grade level, for 2007/2008:

K 36

---

<sup>3</sup> It should be noted that while the Charter School's request for facilities cites to 224 as its enrollment for 2007/08, documents from California Department of Education, the oversight agency for Ridgecrest Charter School, reflects enrollment of 211 for 2007/08.

1	34
2	27
3	25
4	20
5	23
6	23
7	11
8	10

### **The Specific Location of the Space and All Conditions Pertaining to the Space**

Locate Charter School K-8 students at Inyokern Elementary School

10 classrooms for teaching space; 1 classroom for non-teaching administrative space

Common Space:

Inyokern 48% of the day          RCS 52% of the day

Specialized Classroom space grades K-5: Inyokern 50% of the day    RCS 50% of the day

Specialized Classroom space grades 6-8: Monroe 92% of the day    RCS 8% of the day

The Charter School will be allocated exclusive use of 10 classrooms and one non-teaching administrative space at the Inyokern Elementary School, 6601 Locust Avenue, CA, to house all of Charter School's in-district ADA. Charter School will be assigned specific classrooms on the Inyokern Elementary School site and will share the site with the District's program. Determination of use of the common space is based upon the relative percentage of Charter School ADA at the site offered. Library, custodial, cafeteria, multi-purpose room, and playground areas at the elementary school site will be available on a shared basis as "common areas". These areas are shared based on the proportion of the student population of each entity. Utility bills are divided on the same basis.

The "specialized classroom space" at the elementary school level is limited to the computer lab and will be shared commensurate with the in-district classroom ADA of the Charter School in grades K-5. Access to the specialized classroom space at the middle school for Charter School in-district students in grades 6-8 will be provided at the Monroe Middle School. This specialized classroom space includes the computer lab, gymnasium, music room, and science lab. This space will be shared at Monroe Middle School on a pro rata basis based upon the Charter School's ADA in grades 6-8.<sup>4</sup>

---

<sup>4</sup> Access to the computer labs will be limited to space only. Pursuant to Cal. Code Regs., tit. 5, § 11969.2(e), computers are not included when determining reasonable equivalence.

Tina Ellingsworth  
Ridgecrest Charter School  
February 1, 2009  
Page 6

District school classrooms are furnished and equipped with desks, chairs and [white/black] boards. The offer of space will incorporate desks, chairs and [white/black] boards. Specialized classroom space will be shared space and include the same furnishings and equipment available for use by District students except for those furnishings and equipment that are excluded pursuant to section 11969.2(e). Equipment for non-teaching space, such as front office equipment, will be on a shared basis with the District's program. However, furnishings and equipment such as computers that were acquired for the school site with non-district resources are excluded from use.

The space allocated to Charter School must be used in a manner consistent with the final offer of facilities. Additionally, the space allocated to Charter School is for occupancy of Charter School only. All property remains the property of the District and Charter School shall not enter into any agreement with any party as to the use or occupancy of the property without the express written consent of the District. The proposed facilities offer is for space only and excludes any services related to the use of such space. Use of the space will be subject to the Facilities Use Agreement included herewith.

Non-teaching space including teacher lounge and RSP shall be shared with the District operated program at the site.

Use of common areas and shared space may require rotation of the available times to accommodate both Charter School in-district students and the students attending Inyokern Elementary School.

This offer is based upon the projected in-district ADA of 209 and is extended to Charter School effective August 4, 2009, ten working days prior to the first day of instruction, for the 2009/10 school year. In conformity with the statute and regulations, this offer of the above-described facilities applies to the school year 2009/10, only.

### **Draft of the Proposed Agreement Pertaining to the Charter School's Use of the Space**

Pursuant to Cal. Code Regs., tit. 5, § 11969.9(f)(3), the District submits herewith its Facilities Use Agreement

### **The Projected Pro-rata Share and a Description of Methodology Used to Determine Amount**

Charter School will be responsible for a pro-rata share of the facilities costs in conformity with the regulations. The pro-rata share reflects "(1) a per-square-foot amount equal to those school district facilities costs that the school district pays for with

Tina Ellingsworth  
Ridgecrest Charter School  
February 1, 2009  
Page 7

unrestricted revenues from the district's general fund, as defined in sections 11969.2(f) and (g) and hereinafter referred to as 'unrestricted general fund revenues,' divided by the total space of the school district times (2) the amount of space allocated by the school district to the charter school." (Cal. Code Regs., tit. 5, § 11969.7.) The District used this methodology to calculate the pro-rata share. Consistent with the regulations, the District's pro-rata calculation amounts to \$6.51 per square foot. The space allocated to the Charter School as exclusive use is 9,790 square feet for the pro-rata cost of \$63,732.90. Shared space in the amount of 3,920 square feet (at Inyokern Elementary School only) is charged at 50% (\$3.26) for a pro rata cost of \$12,782.10.

Charter School's pro-rata share will be \$76,515.00 for the 2009/10 school year. Payment for the pro-rata share will be payable in 11 monthly payments. The first payment shall be due no later than August 1, 2009 and each additional payment will be due on or before the first day of each month thereafter. This pro-rata share may be adjusted to conform to any changes in the District's final offer.

#### **List and Description of the Comparison Group Schools Used In Developing the Preliminary Proposal**

When revising its projections, the Charter School provided no information regarding which grade levels were being reduced or the impact on the school site where the students would otherwise attend. The District does not have adequate information to identify the District schools where the Charter School pupils would otherwise attend. The District has relied upon the District owned school sites with the requisite square feet per classroom for comparison (elementary - 890 sq.ft.; middle - 903 sq.ft.). The District has reviewed elementary school sites for purposes of the K-5 charter students (Faller, Inyokern, Las Flores, Rand) and has reviewed middle school sites for purposes of the 6-8 charter students (Monroe).

Specialized classroom space at the comparison elementary schools are limited to the computer lab. Non teaching space for the comparison elementary schools includes library, cafeteria/multiuse room, teacher area, office space, playground, and custodial. The specialized classroom space at the middle school includes the computer lab, gymnasium, music room, and science lab.

The condition of school sites, including age from latest modernization, quality of materials, and state of maintenance, school site size; the condition of interior and exterior surfaces; the condition of mechanical, plumbing, electrical, and fire alarm systems, including conformity to applicable codes; the availability and condition of technology infrastructure; the condition of the facility as a safe learning environment including, but not limited to, the suitability of lighting, noise mitigation, and size for intended use; the condition of the facility's furnishings and equipment; the condition of

Tina Ellingsworth  
Ridgecrest Charter School  
February 1, 2009  
Page 8

athletic fields and/or play area space, were reviewed and are generally uniform and conform to applicable codes. Each District school site is generally uniform in the availability and condition of technology infrastructure. Each District school site is a suitable facility for a learning environment.

### **Description of the Differences Between the Preliminary Proposal and the Charter School's Facilities Request**

#### **Access to Facility**

The Charter School requests access to the facility on or before July 1, 2009. However, the operational calendar provided with the Request shows August 18, 2009 as the first day of instruction for the 2009/10 academic year. As the Request acknowledges, the District's obligation under section 11969.9(j) is to provide access to the space allocated to the charter school no less than ten (10) working days prior to the first day of instruction at the charter school. For good cause, the period is subject to reduction by the school district, but to no fewer than seven working days. Based upon this provision, the District's offer is to provide access to the facility on August 4, 2009, which is ten working days prior to the Charter School's first day of instruction on August 18, 2009.

#### **Educational Program**

The District also notes that the Request states, "the facility allocated to the Charter School must provide, in addition to that required by Prop. 39 and the implementing regulations, the following: performing arts room, music room, science lab, computer lab, auditorium, 13 classrooms, restrooms, offices for staff members that include: Director, Dean of Students, Business Manager, records clerk, office clerk, resource specialist, reading specialist and a paraprofessional in addition to the gymnasium, cafeteria and parking." The District has no obligation to provide facilities beyond what is required by Proposition 39 and the implementing regulations. The District's preliminary offer reflects an allocation of space reasonably equivalent to and commensurate with that provided to students attending District schools. The Charter School's Request seeks an excessive number of classrooms and facilities for the projected ADA and further seeks specialized classroom space that is not found in the District. As set forth more fully above, the Charter School is allocated 11 classrooms and specialized classroom space at the elementary school and access to the specialized classroom space at the middle school. Shared space is being offered for a resource specialist commensurate with the space allocated to the District schools. Common areas, including restrooms, will be shared.

The Charter School Request states that it requires a contiguous site in which to operate. The District has allocated all classrooms on a contiguous site, the Inyokern Elementary

Tina Ellingsworth  
Ridgecrest Charter School  
February 1, 2009  
Page 9

School, because the majority of the Charter School students are in grades K-5 and therefore the elementary school site is “the most consistent with the charter school grade levels.” (Final Statement of Reasons, page 20.) However, the District has provided access to the Monroe Middle School specialized classroom space for the Charter School’s ADA in grades 6-8 as the District is not obligated to pay for modification of any school site to accommodate a charter school’s grade level configuration. (*Ibid.*; tit. 5, § 11969.3(a).)

### **Facility Location**

The Request identifies the former Vieweg Elementary School (“Vieweg”) as a site where the charter school wishes to locate. The Vieweg School site is located on real estate owned by the Navy, which the District occupies in a District-owned building pursuant to a ground lease with the Navy. The District’s ground lease with the Navy precludes it from sub-leasing the building to third parties without express authorization of the regional Navy command. Therefore, the District does not have independent authority to make land-use decisions at the Vieweg site. Pursuant to the Education Code and Regulations, facilities offered to a charter school “shall remain the property of the school district” (Education Code section 47614.) Because the statutory scheme contemplates facilities that are “the property of the school district,” property such as Vieweg that is not school district property, is not properly considered under Proposition 39. Additionally, because Vieweg has not undergone modernization on par with the schools that are in the comparison group, it is not a reasonably equivalent facility.

Sincerely,



Joanna Rummer  
Superintendent  
Sierra Sands Unified School District

**FACILITIES USE AGREEMENT  
BY AND BETWEEN  
SIERRA SANDS UNIFIED SCHOOL DISTRICT AND  
RIDGECREST CHARTER SCHOOL**

THIS AGREEMENT ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the Sierra Sands Unified School District, a public school district organized and existing under the laws of the State of California ("District") and Ridgecrest Charter School, a California public charter school ("Charter School"). The District and the Charter School are collectively referred to as "the parties."

**R E C I T A L S**

**WHEREAS**, the Charter School is a charter school approved by the State Board of Education and operates pursuant to its Charter and any Memorandum of Understanding ("MOU"); and

**WHEREAS**, pursuant to the requirements of California Education Code section 47614 and its implementing regulations ("Proposition 39"), on October 31, 2008, the Charter School submitted to the District a written request for facilities for the 2009/10 school year, projecting 273 in-district ADA ("Request"). A true and correct copy of the request is attached as **Exhibit A** and incorporated herein by reference; and

**WHEREAS**, pursuant to Cal. Code Regs., tit. 5, section 11969.9(d), the District timely reviewed the Charter School's projections of in-district and total ADA and in-district and total classroom ADA and, on or before December 1, expressed objections in writing and stated the reduced projection of 190 in-district ADA that the District considers reasonable; and,

**WHEREAS**, the Charter School responded to the District's objections by letter dated December 31, 2008, reducing its projection from 273 to 231 in-district ADA; however, the District's evaluation is that the information does not support an increase in ADA from the Charter School's 2007/08 P-2 ADA of 208.54; and,

**WHEREAS**, pursuant to the requirements of Proposition 39 and its implementing regulations, on \_\_\_\_\_ 2009, the District Board of Education evaluated the Request, the projections, the District's facilities options and a variety of additional factors as required by law and made a written final offer on or before April 1, 2009, to provide the Charter School with facilities for its in-District students, a true and correct copy of which is attached as **Exhibit B** and hereby incorporated by reference; and

**WHEREAS**, the Charter School accepted the District's facilities offer in a letter dated \_\_\_\_\_, 2009, a copy of which is attached as **Exhibit C** and herein incorporated by reference; and

**WHEREAS**, the parties desire to set forth the terms and conditions pursuant to which the Charter School will occupy classrooms and use facilities, including recreation, play space, and furniture and equipment installed therein by the District (collectively "Facilities") at the Inyokern Elementary School, 6601 Locust Avenue, Ridgecrest, California ("Site") for the 2009/10 school year. Charter School in-district students in middle school grades shall have access on a pro rata shared basis to specialized classroom space at the Monroe Middle School including the computer lab, gymnasium, music room, and science lab as described more fully in **Exhibit E**. A description of the Site and Facilities is attached hereto as **Exhibit D**.

**NOW THEREFORE**, in consideration of the covenants and agreements hereinafter set forth, the parties agree as follows:

**Section 1. Use of Site and Facilities.** District agrees to allow Charter School exclusive use of the classrooms allocated to the Charter School, for the sole purpose of operating the Charter School and its related educational programs in accordance with the Charter School's charter and any MOU with the State Board of Education. The Site and Facilities and Monroe Middle School will be shared with a District program and the terms related to Charter School's shared use shall be described and outlined in **Exhibit E** to this Agreement, which terms and conditions are incorporated into this Agreement by reference.

Upon the termination of this Agreement pursuant to Section [8] hereof, the right to use and occupation of the Site and Facilities and Monroe Middle School shall revert to the District. As titleholder to the Site and Facilities and Monroe Middle School (with the exception of those Charter School furnishings and equipment referenced in Section [4] below), the District reserves the right at the termination of this Agreement to recoup the full rights and benefits of such ownership, including but not limited to use of such Site and Facilities and Monroe Middle School for District programs and services.

Subject to the terms of **Exhibit E**, Charter School shall have full and exclusive use of the classroom space allocated to the Charter School. Although Charter School shall have full and exclusive use of the classrooms allocated, Charter School is bound by the terms of the Civic Center Act (Education Code section 38131 *et seq.*) and/or any joint use or recreational program use established by the District.

Pursuant to the requirements of Proposition 39, the allocation of space as set forth in this Section is based upon an assumption of 209 in-district ADA for the 2009/2010 school year. Future requests for additional facilities or furnishings and equipment based on enrollment increases may be made in the manner specified in Section 11969.9 of the Proposition 39 regulations (Cal. Code Regs., tit. 5, § 11969.9.)

**Section 2. Allocation of Space.** Pursuant to the requirements of Proposition 39, the allocation of classrooms and shared space on the Site and Facilities is based upon an assumption of 209 in-District ADA for the 2009/10 school year. The allocation of space to the Charter School is made by the District with the express understanding and on

the assumption that the total space provided pursuant to this Agreement is based upon square footage believed sufficient for the housing of in-District ADA only. The Charter School is not authorized to make any physical changes to the space. Charter School will have shared use of common spaces at the Site and Facilities and Charter School in-district students in middle school grades shall have access on a pro rata shared basis to specialized classroom space at the Monroe Middle School including the computer lab, gymnasium, music room, and science lab as described more fully in **Exhibit E**.

**Section 3. Civic Center Act Compliance.** The Charter School shall have primary use of the space allocated to the Charter School for the operation of its educational program during its regular school hours; provided, however, that after 5 pm during the week and all day on weekends and holidays, the Site and Facilities shall be subject to use by the public pursuant to the Civic Center Act and/or any joint use or recreational program use that has been established by the District. Civic Center Act use requests for use of the Site and/or Facilities by users other than Charter School shall be evaluated and handled by the District, but coordinated with the Charter School. Civic Center requests for use should be directed to the District Administration at: **113 W. Felspar Ave., Ridgecrest, CA 93555**

**Section 4. Furnishings and Equipment.** The District shall provide furniture and equipment necessary for Charter School to conduct basic classroom instruction (specifically, student desks, chairs and white/blackboards) and additional front office furnishings and equipment on a shared basis as further described in **Exhibit E** hereto. Charter School shall not sell or otherwise dispose of furniture or equipment and the District will not replace furnishings and equipment disposed of by the Charter School. Furniture and equipment will be provided from existing District inventory, and will remain the property of the District. The Charter School shall return all District-owned furniture and equipment to the District at the end of the Term, or upon vacating the Site and Facilities and Monroe Middle School, in the same condition as received, with the exception of reasonable wear and tear. To the degree Charter School is authorized to utilize furniture and equipment on a shared basis with the District's program at the Site and at the Monroe Middle School, it will be responsible for any damage caused by its use. The parties shall develop a mutually agreeable inventory of the furnishings and equipment that will be located at the Site and Facilities and Monroe Middle School.

No later than November 1, 2009, the District shall provide a complete inventory of all furnishings and equipment provided by the District for use by the Charter School. Charter School shall have until December 1, 2009 to execute and return the inventory list. Charter School shall maintain an inventory of all personal property of the Charter School. The Charter School inventory shall be updated as the Charter School purchases new furnishings and equipment and/or surpluses and sells its own furnishings and equipment.

**Section 5. Telecommunications.** The facilities are wired for telephone and computer data connectivity, including servers, routers and switches. The responsibility to provide all communications equipment, including telephones, computer and related hardware, software, and all required services, shall be the responsibility of the Charter

School.

**Section 6. Reimbursement:** In the event that the space allocated to the Charter School has been “over allocated” in accordance with Cal. Code Regs., tit. 5, § 11969.8, the Charter School shall reimburse the District accordingly. For purposes of monitoring compliance with these regulations, Charter School shall provide the District with its actual ADA count and the number of in-District students of Charter School at the time of the filing of the P-1 state attendance report and at the time of the filing of the P-2 state attendance report. Upon written request of the District, the Charter School shall additionally provide to the District on the foregoing dates the names and addresses of in-District students, along with proof of residency for each in-District student, which proof may include a current utility bill for the stated address of residency or an executed and current property lease or any other form of proof approved by the District. The District shall only use the names and addresses for the purpose of verifying residency, and will not use the information to contact such students except upon the consent of the Charter School. The District will invoice the Charter School in the event of over-allocation.

**Section 7. Term.** The term of this Agreement shall commence on August 1, 2009 and end on June 30, 2010; however, the Site and Facilities or use of Monroe Middle School shall not be delivered to the Charter School until August 4, 2009. Should the Charter School require facilities for the subsequent school year, Charter School shall submit a request for facilities pursuant to Education Code section 47614 and the implementing regulations (Cal. Code Regs., tit. 5, §§ 11969.1 et seq.) The District makes no guarantee or representation that the Site and Facilities will be available for any additional term beyond the current term and/or that a Site shall not be required to be shared with other programs or District charter schools in future years. The District retains all rights including the right to move the Charter School in the future in conformity with law.

**Section 8. Termination.** This Agreement will automatically terminate upon the effective date of any termination, non-renewal, or revocation of Charter School’s charter or the cessation of Charter School’s operations for any reason or upon the commission of a default or breach of its obligations 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:

- (a) The failure by Charter School to make timely payment of any fees due under this Agreement where such failure shall continue for a period of thirty (30) days after receipt of written notice thereof by District to Charter School.
- (b) The failure by Charter School to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by Charter School (including shared use terms, if applicable) where such failure shall continue for a period of thirty (30) days after receipt of written notice thereof by District to Charter School;

- (c) Revocation or non-renewal of Charter School's charter by the State Board of Education or cessation of the Charter School's program for any reason;
- (d) The failure by Charter School to utilize the Site or Facility or the shared space at Monroe Middle School for the sole purpose of operating a charter school as authorized by this Agreement and the Charter School's charter and any MOU.
- (e) The failure of Charter School to limit its use of the Site and Facility to the space allocated to Charter School pursuant to this Agreement and in conformity with the District's policies and practices for use of District facilities.

**Section 9. Costs.** The pro-rata charge for the Charter School's use of the Site and Facility and Monroe Middle School shall be \$6.51 per square foot of exclusive space and \$3.26 of shared space as calculated in conformity with Cal. Code Regs., tit. 5, § 11969.7. The Charter School has been allocated 13,710 square feet of space for a total pro-rata charge of \$76,515.00. Payment for the pro-rata share will be payable in 11 monthly payments. The first payment shall be due no later than August 1, 2009 and each additional payment will be due on or before the first day of each month thereafter.

**Section 10. Utilities.** Charter School shall be solely responsible for the cost of utilities used or consumed by the Charter School on the Site and Facility, including, if applicable, the cost of internet access services. **[Reference to Exhibit F for co-locators.]**

**Section 11. Maintenance of Site and Facilities.** The District shall provide routine maintenance and repair of the Site and Facilities, which includes existing irrigation systems but excludes landscape and grounds maintenance and all custodial service. If Charter School desires, it may request that District provide landscape and grounds maintenance or custodial service, which shall be at an additional cost to be determined by the District. If Charter School elects to provide its own landscape and grounds maintenance or custodial services, Charter School shall comply with all District's policies and practices for maintenance of its facilities and grounds. Notwithstanding the foregoing, however, Charter School shall be solely responsible for providing all supplies necessary for maintenance, for custodial services as well as all restroom supplies. District shall be responsible for repair of vandalism not caused by the Charter School or its students, employees, agents, representatives or invitees, and consistent with District policy for District schools. Charter School shall be responsible for repairs or corrections required as the result of damage caused by Charter School, its students, employees, agents, representatives or invitees.

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 customary practices. The District shall be responsible for the major maintenance of the Site and Facilities. For purposes of this section, "major maintenance" includes the major repair or replacement of plumbing, heating, ventilation, air conditioning, communication wiring, electrical, roofing, and floor systems, exterior and interior painting, and any other items considered deferred maintenance under Education Code section 17582. All other kinds of maintenance shall be the Charter School's responsibility. District shall have access to the Site and Facilities to perform maintenance and inspections and will coordinate such work with the Charter School administration.

Contact Information:

Emergency:

District: School Police:

Charter Site Administrator: \_\_\_\_\_

Charter Lead Operations: \_\_\_\_\_

Major Maintenance Request:

District:

Minor Maintenance Request for Service:

District:

**Section 12. Installation of Improvements.** No structures, improvements, fixtures (as defined in Civil Code 660), alterations (including painting of any interior or exterior surfaces), or facilities, shall be constructed, erected, altered, added, or made on or within the Site or Facility or Monroe Middle School without the prior written consent of District and subject to terms agreeable to District, and, if required, the Division of State Architect. In the event Charter School makes any modification to the Site or Facility or Monroe Middle School in violation of this provision it shall be required to restore the Site and Facility and Monroe Middle School to its original condition at Charter School's sole expense and shall pay a fee in the amount of one thousand dollars (\$1,000) per day for each day that the Site or Facility or Monroe Middle School is out of conformity with its original condition. "Original condition" as used in this provision shall refer to the condition in which the Site and Facilities and Monroe Middle School existed upon the walk through as referenced in Section 13.

**Section 13. Condition of Property.** The District agrees to provide a facility suitable for use as an instructional school site. The Charter School shall have an opportunity to "walk-through" the facilities with District Personnel to inspect and notate the condition of the facilities at the time of turnover. The Charter School, at its sole cost and expense, shall comply with all applicable laws, regulations, rules and orders with respect to its use and occupancy of the Site. District is responsible for appropriate modifications to existing facilities that may be necessary to comply with new laws or regulations consistent with the support provided to other District school sites.

The Charter School shall not be responsible for any and all legal compliance or environmental conditions that existed prior to the Charter School's occupancy of the Site on August 4, 2009. The District shall remain responsible for all legal compliance with, for example, the ADA, environmental laws, and other applicable building code standards, for any existing compliance issue prior to the date of the Charter School's occupancy of the Site on August 4, 2009 and continuing through the Term of this Agreement. The Charter School shall assume responsibility for legal compliance to the extent that such compliance is triggered by any activities or conduct of the Charter School or by any modifications or improvements made by the Charter School.

In the event that allocation of the Site and Facilities or use or modification of the Site and Facilities and/or Monroe Middle School by the Charter School triggers the application of and/or compliance with the California Environmental Quality Act ("CEQA") or compliance with any existing environmental mitigation measures related to ongoing use of the Site or Facility or Monroe Middle School, Charter School shall comply with same. Should Charter School engage in any activity on the Site or Facility or Monroe Middle School that constitutes a "project" under CEQA, the cost of CEQA compliance shall be borne in full by the Charter School, but District shall act as the lead agency for the purposes of such CEQA compliance. Should Charter School fail to inform District of activities that may require CEQA compliance in advance of engaging in such activities, Charter School shall assume all liability for legal claims arising out of said failure.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Site or Facility or upon or from the Monroe Middle School in whole or in part as a result of the Charter School's use and occupancy thereof, the Charter School, at its expense, shall be obligated to clean all the property affected, to the satisfaction of the District and any governmental agencies having jurisdiction over the Site. Where the resulting discharge, leakage, spillage, emission, or pollution results from a facilities system failure, the District will assume responsibility for required clean up of the affected property.

**Section 14. Title to Property.** The parties acknowledge that title to the Site and Facilities and Monroe Middle School is held by the District and shall remain in the District at all times. In the event Charter School fails to limit its use of the Site and Facility and Monroe Middle School to the space allocated to Charter School pursuant to this Agreement it shall be in breach of the Agreement as set forth in Section 8(e), and shall be further subject to a fee at the rate of \$10 per square foot per day for any such space used or partially used by Charter School.

**Section 15. Fingerprinting.** Charter School shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1. The District shall be responsible for complying with all criminal background check laws for all employees or vendors that it directs to the Site for any work to be performed at its direction.

**Section 16. Insurance.** The Charter School shall, at its sole costs and expense, commencing as of the date of this Agreement, and during the entire Term hereof, procure, pay for and keep in full force and effect the following insurance:

- (a) **General Liability Insurance.** The Charter School shall maintain throughout the Term of this contract, at its own expense, general liability insurance with limits of liability of \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If any form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limit. This insurance shall include products and completed operations of the same limits as the policy limits. This insurance shall be endorsed to include the following: (i) the District, its officers, officials, employees, agents and volunteers as additional insureds; (ii) a waiver of any right to contributions from any other coverage purchased by, or on behalf of, the District; and (iii) a written notice to be mailed to the District 30 days prior to the effective date of a cancellation or non-renewal of such insurance.
  
- (b) **Automobile Liability.** The Charter School shall maintain throughout the Term of this Agreement at its own expense, automobile liability insurance with limits of liability of \$2,000,000 per occurrence, for owned, non-owned or hired vehicles. If any form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limit. Such insurance shall apply to any automobile, Symbol 1 of the ISO Form. Such insurance shall be endorsed to include the following: (i) the District, its officers, officials, employees, agents and volunteers as additional insureds; (ii) a waiver of any right to contributions from any other coverage purchased by, or on behalf of, the District; and (iii) a written notice to be mailed to the District 30 days prior to the effective date of a cancellation or non-renewal of such insurance.
  
- (c) **Property Insurance.** The District will continue to maintain its current levels of first party insurance on the structures on the Site. The Charter School shall secure and maintain property insurance that addresses business interruption and casualty needs, including flood and fire, and other hazards with replacement costs coverage for all assets listed in the Charter School's property inventory and consumables. The Charter School shall secure property coverage with a minimum policy limit of 80% of the fair market value of the Charter School's contents.
  
- (d) **Workers' Compensation insurance** as required by the State of California and Employer's Liability insurance (for lessees with employees). This insurance shall be endorsed to include the following: (i) a waiver of any right to contributions from any other coverage purchased by, or on behalf

of, the District; and (ii) a written notice to be mailed to the District 30 days prior to the effective date of a cancellation or non-renewal of such insurance.

Any and all deductibles or self-insured retentions applicable to the above required insurance shall be specifically approved by the District prior to its application, except the Property Insurance required above may include a deductible of not more than \$10,000 without prior approval.

The insurances required above shall be provided by a company or insurance joint powers authority with the consent of the District prior to commencement of such insurance.

The Charter School shall provide proof of such insurance prior to taking possession of the Site and Facilities, including copies of the endorsements specifically required above. The Charter School shall provide proof of renewal of any insurance required above, including any endorsements required, at least 15 days prior to the expiration of such insurance.

**Section 17. Indemnification.** The Charter School shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the District, its officers, directors, and employees, attorneys, agents, representatives, volunteers, successors and assigns (collectively hereinafter District and District Personnel) from and against any and all actions, suits, claims, demands, losses, costs, penalties, obligations, errors, omissions, or liabilities, including legal costs, attorney's fees, and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered against District and/or District Personnel, that may be asserted or claimed by any person, firm or entity arising out of the Charter School's use of the Site or Facility or Monroe Middle School or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by Charter School in or about the Site or Facility or Monroe Middle School after District delivers possession and/or use of the Site or Facility or Monroe Middle School to the Charter School. This indemnity and hold harmless provision shall exclude actions brought by third persons against the District arising out of the willful negligence or intentional acts, errors or omissions of the District and/or District Personnel.

District shall indemnify, hold harmless, and defend Charter School, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Site or Facility or Monroe Middle School after District delivers possession or use of the Site or Facility or Monroe Middle School to the Charter School, arising from the District's prior or current use or maintenance of the Site or Facility or Monroe Middle School or from prior or current conduct of its business or from any activity, work, or other things done by the District its trustees, officers, employees and agents in or about the Site or Facility or Monroe Middle School; provided, however, that District shall not have any obligation to indemnify, hold harmless or defend the Charter School, its trustees, officers, employees and agents

against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Site or Facility or Monroe Middle School after District delivers possession and/or use of the Site or Facility or Monroe Middle School to the Charter School, resulting from or arising out of the negligence or willful malfeasance of the Charter School, its trustees, officers, employees and agents or any person or entity not subject to the District's control and supervision.

**Section 18. Full Satisfaction of Proposition 39/Release of Claims.** Charter School agrees that by accepting the Site and Facilities, the District has fully and completely satisfied the District's obligation to provide facilities to the Charter School under Education Code section 47614 and the Proposition 39 regulations for the 2009/10 school year and Charter School waives any claims under section 47614 and the Proposition 39 regulations.

**Section 19. Access.** Charter School shall permit District, its agents, representatives or employees, to enter upon the Site or Facility for the purpose of inspecting same or to make repairs, alterations, or additions to any portion of the Site or Facility required by this Agreement. District shall attempt to give reasonable notice where practicable but shall not be obligated to do so in the event of emergency or imminent threat to health or safety of occupants.

**Section 20. Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

If to the District:      Attn:

If to the School:      [Charter School]

Attn: Principal

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

**Section 21. Subcontract and Assignment.** Neither party shall assign its rights, duties or privileges under this Agreement, nor shall a party attempt to confer any of its rights, duties or privileges under this Agreement (including that of sublease) on any third party, without the written consent of the other party. Charter School shall not

sublease, pledge, encumber, mortgage or otherwise transfer or assign to any party whatsoever any interest in the Site or Facilities or Monroe Middle School.

**Section 22. Independent Status.** 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, or association.

**Section 23. Entire Agreement of Parties.** This Agreement, and all its incorporated documents, constitute the entire agreement between the parties and supersede all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by the parties expressly indicating an intent to modify or amend this Agreement.

**Section 24. California Law.** This Agreement shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Kern County, California.

**Section 25. Waiver.** The waiver by any party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

**Section 26. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns.

**Section 27. Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

**Section 28. Captions.** The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the parties hereto.

**Section 29. Severability.** Should any provision of this Agreement be legally determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.

**Section 30. Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

**SIERRA SANDS UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**RIDGECREST CHARTER SCHOOL**

By: \_\_\_\_\_

Title: \_\_\_\_\_



LAW OFFICES OF MIDDLETON, YOUNG & MINNEY, LLP

FEBRUARY 27, 2009

VIA FACSIMILE, EMAIL AND U.S. MAIL

PAUL C. MINNEY  
JAMES E. YOUNG  
MICHAEL S. MIDDLETON  
LISA A. CORR  
AMANDA J. MCKECHNIE

Joanne Rummer, Superintendent  
SIERRA SANDS UNIFIED SCHOOL DISTRICT  
113 W. Felspar Ave.  
Ridgecrest, CA 93555

***Re: Ridgecrest Charter School  
Response to District Preliminary Offer of Facilities***

JESSICA ADAMS ROBISON  
JERRY W. SIMMONS  
CHASTIN H. PIERMAN  
JULIE D. ROBBINS  
JAMES L. SHEA  
KIMBERLY RODRIGUEZ  
ANDREA C. SEXTON  
SARAH J. KOLLMAN  
JANELLE A. RULEY  
AMY L. ROBERTS  
ANDREW G. MINNEY

Dear Superintendent Rummer:

Our office is in receipt of the Proposition 39 Preliminary Offer the Sierra Sands Unified School District (“District”) made to Ridgecrest Charter School (“Charter School”) pursuant to District Board of Education (“District Board”) action on January 27, 2009. As you are aware, the District proposes to locate the Charter School at Inokern Elementary School and to allocate specialized and non-classroom space for the Charter School’s middle school students at Monroe Middle School. Please let us know if you would prefer that we confer directly with your legal counsel on this matter.

OF COUNSEL  
SUZANNE A. TOLLEFSON

Given the Charter School’s history of successful litigation against the District for breaches of Proposition 39, we were disappointed to see that the District’s offer contains numerous substantive violations of Proposition 39 and its Implementing Regulations. While the Charter School has made significant efforts to provide the District with all necessary information and documentation, as well as to ensure that all projections the Charter School makes are accurate and up-to-date, it is clear that despite the Charter School’s efforts the District is continuing to deny the Charter School the reasonably equivalent and contiguous facilities to which it is entitled.

Specifically, the District must be aware that the offer is legally deficient in many areas in that it has failed to properly allocate a contiguous facility located near where the Charter School requested to be located, has miscalculated the pro rata share fee, has under-allocated teaching stations, specialized, and non-classroom space to the Charter School, and has included provisions in its draft facilities used agreement that are unacceptable to the Charter School and in violation of Proposition 39 and the State Board of Education’s Implementing Regulations. Full compliance with Proposition 39 and the Implementing Regulations obligate the District to allocate space on the former Vieweg Elementary Site or the Faller Elementary School site, and that the District’s offer

*Superintendent Rummer*

*Re: Ridgecrest Charter School*

*Response to District Preliminary Offer of Facilities*

*February 27, 2009*

*Page 2 of 23*

be revised to offer no less than **thirteen(13)** classrooms to the Charter School, in addition to a reasonably equivalent allocation of the specialized and non-teaching space on the site, to which the Charter School is entitled as further outlined herein.

Finally, we are hopeful that after the District has had an opportunity to review this response to the District's Preliminary Offer, that the attorneys can remove themselves from the process and that the Charter School and the District can resume their dialogue over potential settlement of this matter.

**THE CHARTER SCHOOL REASSERTS THAT ITS REVISED ENROLLMENT PROJECTIONS ARE ACCURATE**

In its letter of November 25, 2008, the District disputed the Charter School's original projections of an in-District Average Daily Attendance ("ADA") of 273 in the 2008-2009 school year. In its letter, the District failed to verify any of the Charter School's projections, used incompatible attendance data, inaccurate attendance rates, and misstatements of attendance trends, and ignored documentation submitted by the Charter School in attempting to reduce the Charter School's projected ADA from 273 to 190.

The Charter School responded by letter dated December 31, 2008, and set forth in great detail why the District's revised ADA projections were faulty, misleading, and ignored crucial pieces of information. In addition, because the opening of the apartment complex across the street from its current location, which was to have increased the Charter School's enrollment significantly, was delayed, the Charter School reduced its projection to 231 students. The Charter School noted in its letter that its new projection only resulted in an increase of 10% from its current enrollment, not substantial enough to require additional supporting documentation from the Charter School. As a result, the Intent-to-Reenroll forms reflecting 154 students who intend to reenroll, as well as the historical attendance data submitted by the Charter School submitted with its initial request was more than sufficient to satisfy any supporting documentation standard and required the District to allocate facilities to the Charter School based on a projection of 231 students.

In its Preliminary Offer, the District readjusted the Charter School's ADA projections to 209 students. Citing to 5 CCR Section 11969.9(c)(1), the District also states that "the Charter School has not timely submitted a facilities request based on any revised projections" because the Charter School did not provide ADA broken down by grade level and District school when it revised its attendance projections, and claims that a 10% increase in projected enrollment is substantial, though the District fails to cite any statutory authority for this claim.

**The Charter School Has Submitted a Timely Request for Facilities**

5 CCR Section 11969.9(c) requires a charter school to submit, as part of its original request for facilities, reasonable projections of in-district ADA for the following school year. In addition, if a charter school is projecting a substantial increase in in-District ADA, it must also submit "documentation of the number of in-district students meaningfully interested in attending

*Superintendent Rummer*  
*Re: Ridgecrest Charter School*  
*Response to District Preliminary Offer of Facilities*  
*February 27, 2009*  
*Page 3 of 23*

the charter school that is sufficient for the district to determine the reasonableness of the projection, but that need not be verifiable for precise arithmetical accuracy.” Pursuant to 5 CCR Section 11969.9(d) and (e), a district may then object to those projections in writing, and subsequently the charter school may respond to the “district’s objections and to the district’s projections provided.”

The District cited to this regulatory provision to support its argument that the Charter School did not submit a timely request. However, 5 CCR Section 11969.9(c)(1) relates only to the original Proposition 39 request, not any revisions to enrollment projections made as a result of the iterative process outlined in the regulations. Furthermore, 5 CCR Section 11969.9(e) only states that a charter school may “reaffirm or modify its previous projections as necessary to respond to the information received from the district.” It does not specifically require the Charter School to provide further breakdown of enrollment, and thus the District makes this assertion without supporting authority.

The Charter School would also remind the District that the new Proposition 39 Final Statement of Reasons, adopted by the State Board of Education, notes that the purpose of the Preliminary Proposal, and the Charter School’s opportunity to respond, is “to ensure that preliminary proposal ties back to the original facilities request, thereby forming the basis for dialogue and negotiation prior to issuance of the final notification, and to ensure that the charter school addresses differences between the preliminary proposal and its original submission.” Furthermore, the new Implementing Regulations specifically anticipate changes to enrollment projections by a charter school: 5 CCR Section 11969.9(e) states that “the charter school shall reaffirm or modify its previous projections as necessary to respond to the information received from the district”. No further requirements are placed on the charter school other than to reaffirm or modify its projections. Therefore, the Charter School has submitted a timely facilities request to the District, and has modified it based on information received from the District. No other steps are required.

Lastly, it is also extremely disappointing that, rather than attempt to work collegially with the Charter School by taking advantage of the back-and-forth discussions provided for in the new regulations, and rather than performing its due diligence by simply requesting this information from the Charter School between December 31, 2008 and now, the District chose to instead waste time trying to play “Gotcha!” by falsely alleging that the Charter School had not timely submitted a facilities request and stating that it thus could not properly determine comparison schools.

Rather than continue to debate this issue with the District, however, and without waiving its objections to the District’s allegations, the Charter School has provided a complete breakdown of the schools of attendance for all 231 projected students, attached to this letter as **Exhibit A**. If the District is at all committed to ensuring that it properly allocates reasonably equivalent facilities, it will accept and consider this additional supporting documentation which mirrors that submitted with the original request.

An Increase of 10% is Not Substantial

Superintendent Rummer

Re: Ridgecrest Charter School

Response to District Preliminary Offer of Facilities

February 27, 2009

Page 4 of 23

5 CCR Section 11969.9(c)(1)(C) requires an existing charter school that projects “a substantial increase in in-district ADA” to provide “documentation of the number of in-district students meaningfully interested in attending the charter school that is sufficient for the district to determine the reasonableness of the projection, but that need not be verifiable for precise arithmetical accuracy.”

The District’s allegation that a 10% increase in the Charter School’s projected enrollment is a “substantial increase” is wholly unsupported by law. As the Charter School noted in its letter of December 31, 2008, this term is not defined in law or regulation, nor is it defined in the Final Statement of Reasons prepared by the State Board of Education. In any case, the Charter School’s submission of Intent-to-Reenroll forms reflecting 154 current students who intend to reenroll, as well as proof (based on enrollment figures cited by both the District and the Charter School) of how the Charter School’s enrollment has historically increased over the course of a school year, and historical enrollment data (see table below), is sufficient to support its projected enrollment increase and even to support a substantial increase in enrollment. Furthermore, while the Charter School is not required by law to provide this documentation, to further allay any District concerns, attached as **Exhibit B** to this letter please find 139 Intent to Enroll forms, signed by parents and representing 203 of the Charter School’s current enrollment of 214 students. In addition, the student roster attached as **Exhibit C** shows a current enrollment of 214, as well as 5 non-K siblings of current students who will be enrolling for 2009-2010, and 17 new Kindergarten students who will be enrolling for 2009-2010. With at least 21 7<sup>th</sup> grade students returning for 8<sup>th</sup> grade, this is documentary proof that the Charter School’s projection of 231 in-District ADA is fully supported. As a result, the Charter School has provided sufficient documentation to support its enrollment projection of 231 in-District students, and pursuant to 5 CCR Section 11969.9, the District must allocate facilities to accommodate 231 students in facilities reasonably equivalent to those enjoyed by District students.

#### Response to Enrollment Projections in District’s Preliminary Offer

The law requires the Charter School to make a “reasonable projection” of its enrollment for the following school year. As the Appeals Court made clear in *Sequoia Union High School Dist. v. Aurora Charter High School*, 112 Cal.App.4th 185 (2003), “...the statute does not require the school to demonstrate arithmetical precision in its projection or provide the kind of documentary or testimonial evidence that would be admissible at a trial. Rather, the school is subsequently penalized if its projection was incorrect by having to reimburse the district for over-allocated space.” Here, the Charter School identified the number of currently enrolled students, the number of currently enrolled students who intend to re-enroll, the number of anticipated new students, and the historical retention rates, all pieces of information mentioned by the court in *Environmental Charter High School v. Centinela Valley Union High School Dist.*, 122 Cal. App. 4th 139, 152 (Cal. Ct. App. 2004). It is obviously not possible for any charter school to provide intent to enroll forms in October, 2008 for every student it expects to enroll in August, 2009, but the Charter School provided forms for over two thirds of its anticipated enrollment, and this is sufficient to satisfy the *Aurora* standard.

*Superintendent Rummer*

*Re: Ridgecrest Charter School*

*Response to District Preliminary Offer of Facilities*

*February 27, 2009*

*Page 5 of 23*

While the Proposition 39 Implementing Regulations upon which *Aurora* and *Environmental* are based have been revised, in fact the new Implementing Regulations reduce the amount of supporting documentation required for established charter schools not experiencing a substantial increase in enrollment. The Charter School's expected increase in enrollment has a basis in fact given its history of increased enrollment over the course of a school year. Therefore, documentation beyond intent-to-enroll forms and a list of currently enrolled students is not necessary.

Furthermore, the District claims it is disingenuous for the Charter School to ask the District to actually confirm its allegations that the Charter School's intent to re-enroll forms did not reflect meaningful interest on the part of Charter School families. However, it is certainly not disingenuous for the Charter School to ask the District to support its allegations with actual evidence before the District reduces the Charter School's legitimate enrollment projections. A statement by the District that the intent to re-enroll forms "appear" to be filled out by students is unsupported by any actual proof, and if the District was legitimately concerned about the validity of the forms, it should have made some effort to confirm its suspicions prior to baselessly accusing the Charter School of submitting invalid information – even if that was simply a request to the Charter School to confirm the information.

Therefore, pursuant to 5 CCR Section 11969.9(e), the Charter School reasserts that the enrollment projections of 231 in-District ADA, contained in its December 31, 2008 letter, is reasonable and must be used by the District in its Final Offer to allocate facilities under Proposition 39. The District's Preliminary Offer makes vague allusions to "recent [Charter School] Board documents" to support its allegation that the Charter School's enrollment projections are too high, without providing any specific support for its allegations. However, the Charter School has responded to all of the District's concerns in its letter of December 31, 2008, and, with this letter, will have submitted copies of Enrollment Applications and Intent to Re-enroll forms for 203 students, as well as a list of 214 current students and 22 new students. Proposition 39 and its Implementing Regulations do not require more. In addition, the Charter School's projections as to its current year enrollment have already been fulfilled; the Charter School's current enrollment is 214 students, an increase of 36 students from its initial enrollment of 178. Attached to this letter as **Exhibit C**, please find a list of currently enrolled students, demonstrating a current enrollment of 214 students and an enrollment next year of at least 236. Lastly, the Charter School has already enrolled 5 students from the recently-opened Larkspur Village, when only 10 of the units are occupied. When the occupancy rate goes up, it will likely result in an even higher enrollment.

As set forth above, the Charter School's projection of 231 in-District students for the 2009-2010 school year is fully supported by the evidence and the District must allocate facilities based on this projection.

**CHARTER SCHOOL AND DISTRICT STUDENTS ARE SUPPOSED TO BE TREATED EQUALLY WHEN IT COMES THE ALLOCATION OF FACILITIES BETWEEN THEM**

Superintendent Rummer

Re: Ridgecrest Charter School

Response to District Preliminary Offer of Facilities

February 27, 2009

Page 6 of 23

In allocating the Charter School a site located as far as possible from the Charter School's traditional residence area and by providing noncontiguous facilities, the District has violated the basic premise of Proposition 39: that public school facilities be shared equally and fairly among all public school students.

Specifically, the California Court of Appeal has made clear that in meeting their Proposition 39 obligation, "[a school district shall] give the same degree of consideration to the needs of charter school students as it does to the students in district-run schools." *Ridgecrest Charter School v. Sierra Sands Unified School District*, 130 Cal.App.4th 986 (2005). The court noted that in handling Proposition 39 facilities issues, a school district's actions "must comport with the evident purpose of the act to equalize the treatment of charter and district run-schools with respect to the allocation of space between them" and must "demonstrate a rational connection between those factors, the choice made, and the purposes of [Proposition 39]." In response to the school district's position in the *Ridgecrest* case that it did not have to disrupt its own programs to meet its Proposition 39 obligation, the court clearly responded that the school district was operating with a faulty premise and that the court had little doubt that accommodating the charter school would cause some, if not considerable, disruption and dislocation among the district students, staff, and programs.

The paradigm under which Proposition 39 operates is that the in-District students who choose to attend a charter school do not lose their right to be educated in reasonably equivalent contiguous school facilities. Here, the District has many school campuses with enough space to accommodate the Charter School in a single contiguous school site. Moreover, the District was recently able to thoroughly update, improve, and modernize its facilities with taxpayer money from Bond Measure A. This bond has provided the District with up to \$50.5 million dollars for, among other things, upgrading plumbing systems and restrooms, constructing additional classrooms and multipurpose rooms/cafeterias, repairing roofs, making health and safety improvements, and upgrading technology. All these improvements were paid for with the tax dollars of all residents of the District, not just the parents of students who attend District schools. All in-District students are entitled to enjoy the same degree of consideration, yet the District's Preliminary Offer does not treat Charter School students equally with District students. Instead, it places the Charter School over 9.7 miles from its current location and the residence of its parents and places the students in a non-contiguous site – no District student must go between two school sites during his or her school day – and in one of its most isolated and certainly the least upgraded schools in the District. The District's Preliminary Offer thus violates both the spirit and the express provisions of Education Code Section 47614 and the implementing regulations.

#### **THE DISTRICT HAS VIOLATED NUMEROUS PROVISIONS OF PROPOSITION 39 AND THE IMPLEMENTING REGULATIONS**

Proposition 39, as codified at Education Code Section 47164, requires that a school district must accommodate a charter school's in-district students in facilities "reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district." Facilities must also be contiguous, furnished, and equipped, and

Superintendent Rummer

Re: Ridgecrest Charter School

Response to District Preliminary Offer of Facilities

February 27, 2009

Page 7 of 23

the district must make reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate. Proposition 39 and its Implementing Regulations (Title 5, California Code of Regulations Sections 11969.1 through 11969.11) also set forth in detail the manner by which this standard must be achieved. Unfortunately, the District has violated numerous provisions of Proposition 39 and its Implementing Regulations in its Preliminary Offer of facilities to the Charter School.

### **THE DISTRICT HAS FAILED TO ALLOCATE A CONTIGUOUS FACILITY TO THE CHARTER SCHOOL**

The express provisions of Proposition 39 require that the District allocate facilities to the Charter School that are “contiguous, furnished, and equipped.” Education Code Section 47614(b).

Title 5 California Code of Regulations Section 11969.2(d) states as follows: “facilities are ‘contiguous’ if they are contained on the school site or immediately adjacent to the school site. If the in-district average daily classroom attendance of the charter school cannot be accommodated on any single school district school site, contiguous facilities also includes facilities located at more than one site, provided that the school district shall minimize the number of sites assigned and shall consider student safety.” 5 CCR Section 11969.2(d) also requires, if the District’s Preliminary Offer does not accommodate the Charter School at a single school site, the District Board of Trustees (“District Board”) to make a finding that the Charter School could not be accommodated at a single site and adopt a written statement of reasons explaining the finding.

In *Ridgecrest Charter School v. Sierra Sands School District* (130 Cal. App. 4th 986 (2005)), the court found that “accommodating a charter school might involve moving district-operated programs or changing attendance areas” and that “providing a contiguous school facility to a charter school might require disruption and dislocation among district students, staff and programs.” The Court of Appeals also stated that a district would have to demonstrate on the record why it would not be able to house the charter school in a single school site, that it attempted to minimize the number of sites allocated, and that it considered student safety. Lastly, the Court noted that “while detailed findings are not necessarily required, the explanation should be thorough enough, and factual enough, to permit effective review by the courts.”

Most importantly, and directly on point in this matter, and in response to many complaints that districts were denying charter schools contiguous school facilities based upon a misalignment with district-operated school sites, the State Board of Education specifically added the following provision to the Implementing Regulations: “If none of the district-operated schools has grade levels similar to the charter school, then a contiguous facility within the meaning of subdivision (d) of section 11969.2 shall be an existing facility that is most consistent with the needs of students in the grade levels served at the charter school.”<sup>1</sup>

---

<sup>1</sup> The regulation further provides that “the district is not obligated to pay for the modification of an existing school site to accommodate the charter school’s grade level configuration.”

*Superintendent Rummer*

*Re: Ridgecrest Charter School*

*Response to District Preliminary Offer of Facilities*

*February 27, 2009*

*Page 8 of 23*

In both its Notice of Proposed Rulemaking File, and its Final Statement of Reasons, the State Board of Education specifically reiterates that 5 CCR 11969.3(d) was amended to make it clear that “when no school of the district serves grade levels similar to the charter school’s, a contiguous facility is an existing facility that is most consistent with the charter school’s grade levels” in order to bring the Regulations in line with the *Ridgecrest* decision, Final Statement of Reasons, Page 20. The Initial Statement of Reasons further clarified that in looking at the issue of a school district making facilities available to a charter school at multiple locations (as discussed in the *Ridgecrest* decision), “it was clear that an addition to the regulations was necessary to formalize two requirements: 1) a school district is not permitted to treat a charter school’s in-district students with less consideration than students in the district-run schools, and 2) in allocating and providing access to facilities to a charter school, a school district must begin from the premise that the facilities are to be on a single school site.” Initial Statement of Reasons, Page 3.

Thus, the District must allocate a site to the Charter School that is consistent with its grade level configurations, without reference to the District’s grade level configuration.

The District has allocated ten classrooms to the Charter School at Inyokern Elementary School, and indicates in its Preliminary Offer that specialized classroom space for the Charter School’s grades 6-8 will be provided at Monroe Middle School. The District’s Preliminary Offer, as well as the Board action item regarding the Preliminary Offer, both refer to the District’s allocation as one for a “contiguous facilit[y].” Because specialized classroom space for the Charter School’s middle school students will be made available at a location other than Inyokern Elementary School, however, the District has allocated non-contiguous facilities to the Charter School. Yet the District’s Preliminary Offer does not include any findings regarding why the Charter School could not be accommodated at a single site, nor has any written statement of reasons been adopted by the District Board at its January 27, 2009 meeting or at any other time. The District’s Preliminary Offer also fails to consider or address the impact that a non-contiguous allocation of facilities has on student safety. Therefore, the District’s Preliminary Offer violates 5 CCR Section 11969.2(d).

Because, according to the District’s offer, Charter School 6-8 students will be required to travel to a different school for computer lab time, science lab time, gymnasium time, and music room time<sup>2</sup> this will require significant travel, on a daily basis and on the freeway. Inyokern and Monroe Middle School are more than **10 miles** apart. The District has not indicated how it expects the Charter School to transport its students to and from these sites to accommodate use of all these different facilities. Even if the Charter School were to transport its students by bus, this kind of non-contiguous facility would require several bus trips a day back and forth between the sites, which will have a significant impact on student health and safety – and which the District has clearly not considered in making its allocation. This is further indicated by an utter lack of explanation or support for the District’s decision to compromise the health and safety of Charter School students through its allocation of two school sites so far apart and so far from

---

<sup>2</sup> See discussion of specialized classroom space and non-classroom space below.

where most Charter School students live.

Lastly, no District school site is split between two campuses and no District students are required to be bused back and forth from two school sites to participate in their general education program and thus the District's offer does not provide for reasonably equivalent facilities. Moreover, by allocating a non-contiguous facility, the District has violated the express substantive provisions of the regulations (obligating them to provide a single contiguous school facility most consistent with the needs of the students in the grade levels served by the charter school) as well as the procedural requirements for providing noncontiguous space (making the required findings in considering student safety) and has seriously compromised student and staff safety and violated 5 CCR Section 11969.2(d).

**THE DISTRICT HAS FAILED TO ALLOCATE A REASONABLY EQUIVALENT FACILITY TO THE CHARTER SCHOOL**

**THE DISTRICT HAS FAILED TO PROPERLY IDENTIFY THE COMPARISON SCHOOLS**

The Implementing Regulations provide a five-step analysis by which a school district must determine whether a facility is reasonably equivalent to those in which the students would be accommodated if they were attending public schools of the school district. First, pursuant to 5 CCR Section 11969.3(a), the District must identify a comparison group of district-operated schools with similar grade levels to the Charter School.

5 CCR Section 11969.3(a) defines the process for identifying comparison schools when students do not attend high school based on attendance area as follows:

If none of the district-operated schools has grade levels similar to the charter school, then a contiguous facility within the meaning of subdivision (d) of section 11969.2 shall be an existing facility that is most consistent with the needs of students in the grade levels served at the charter school.

For school districts whose students do not attend high school based on attendance areas, the comparison group shall be three schools in the school district with similar grade levels that the largest number of students of the charter school would otherwise attend.

The District's students do not attend high school based on attendance area. The Charter School's Proposition 39 request stated that the largest number of its students would come from Faller Elementary School, Pierce Elementary School, Gateway Elementary School, Las Flores Elementary School, and Richmond Elementary Schools, and Monroe Middle School attendance areas. The District's Preliminary Offer identified Faller, Inyokern, Las Flores, Rand, and Monroe as comparison schools, excluding Gateway for reasons rebutted below. The Charter School's January 1, 2009 letter reduced the number of students that would otherwise attend District schools.

Superintendent Rummer

Re: Ridgecrest Charter School

Response to District Preliminary Offer of Facilities

February 27, 2009

Page 10 of 23

Please note that the law does not allow the District to exclude Gateway Elementary School as a comparison school because it is “not comparable to other District schools in that the average classroom at Gateway Elementary is less than 820 square feet, whereas the District average is 890 square feet.” In responding to an identical assertion by this same District several years ago, the court in *Ridgecrest* specifically rejected the logic of this argument, noting “We do not understand the equivalency requirement to demand such mathematical precision. Classroom size is only one of several criteria for determining equivalency (5 CCR, Section 11969.3, subd. c)), and classroom size *per student* would appear under the regulations to be the more important consideration.” Nothing in the Implementing Regulations requires the teaching stations to be exactly the same; as noted above, any interpretation that excludes school sites must be rejected.

Furthermore, if Gateway Elementary School is considered a comparison school pursuant to 5 CCR Section 11969.3, the District must include it in its calculations – and if it, as the District claims – have smaller classrooms, this will be factored in with the reasonably equivalent condition analysis of 5 CCR Section 11969.3(c). Lastly, Gateway’s 2007-2008 SARC states that the school was recently renovated and has large classrooms; therefore, the District’s assertion that Gateway has smaller classrooms is not supported by public information. The Charter School would request that the District support its assertion that Gateway should not be included in the calculations with documentary evidence.

Therefore, since the Charter School serves grades K-8, three comparison elementary schools for purposes of allocating Proposition 39 facilities are Faller Elementary School, Pierce Elementary School, Gateway Elementary School, and the comparison middle school is Monroe Middle School.<sup>3</sup>

### **THE DISTRICT IS SHORT-CHANGING THE CHARTER SCHOOL ON TEACHING STATIONS**

All California public school students are entitled to learn in classrooms that are safe, that are not crowded with too many students, and that are conducive to a supportive learning environment. In accordance with the implementing regulations, the second step is for the District to provide a facility to the Charter School with the same ratio of teaching stations to average daily attendance (“ADA”) as those provided to students in the comparison group of schools, as well as a proportionate share of specialized classroom space and non-teaching space. 5 CCR Section 11969.3(b)(1). There is no such thing as a fractional classroom for a single grade level of students and the allocation cannot be based upon the District’s “loading standard,” nor can it be based on an arbitrary and fabricated formula.

The District has offered ten (10) teaching stations at the Inyokern Site.

As stated above, Proposition 39 requires that “[f]acilities made available by a school district to a charter school shall be provided in the same ratio of teaching stations (classrooms) to ADA as those provided to students in the school district attending comparison group schools.” 5

---

<sup>3</sup> It appears the District use Faller, Inyokern, Las Flores, and Rand Elementary Schools, and Monroe Middle Schools as its comparison schools.

CCR Section 11969.3(b)(1). It also requires that “[e]ach 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” Education Code Section 47614 (emphasis added). The analysis requires the District to actually count the number of teaching stations (in use and those not in use) at each comparison school and divide that by the ADA at each school site and determine the number of teaching stations per ADA – please note that this is not the same as the District loading standard (i.e., the number of students the District places in each classroom) and will normally result in ADA to teaching stations ratios that are below the District’s loading standard.

While the Charter School has not been provided with any data to accurately calculate the teaching station to ADA ratio for the comparison schools, a very preliminary estimate for the comparison schools, using data contained in the school’s School Accountability Report Card (“SARC”) suggests that the Charter School is entitled to at least **thirteen (13) regular, non-specialized classrooms** for its projected enrollment of 231 students.

The 2007-2008 SARCs of the comparison schools list the following average class sizes<sup>4</sup>:

Grade	Gateway	Faller	Las Flores	Pierce	Average
K	19	19	18	17	18.25
1	19	18	20	16	18.25
2	19	20	20	17	19
3	20	18	19	15	18
4	32	27	24	21	26
5	32	22	29	32	28.75

Core Class	Monroe Middle School
English	23
History	29
Math	27
Science	29

### Ridgecrest Charter School

Grade	Estimated ADA	Classrooms required
K	30	2
1	30	2
2	35	2
3	25	2
4	25	1
5	20	1

<sup>4</sup> Defined as the enrollment of classes divided by the number of teaching stations.

Superintendent Rummer

Re: Ridgecrest Charter School

Response to District Preliminary Offer of Facilities

February 27, 2009

Page 12 of 23

6	21	1
7	21	1
8	24	1
<b>Total</b>	<b>231</b>	<b>13</b>

Average class size numbers tends to be higher than the ratio of teaching stations to ADA because all teaching stations are not used at all times, and the number of enrolled students is higher than the school's ADA. The Charter School would therefore estimate that it is entitled to **thirteen (13) regular, non-specialized teaching stations** in order to accommodate its 231 in-District students in reasonably equivalent facilities. Please note that this number of teaching stations may be higher once the Charter School is able to determine the number of actual teaching stations at the site from the information the District will provide in response to our upcoming Public Records Act request, and the Charter School reserves the right to update its calculations based on this information.

Additionally, any allocation of fewer teaching stations to serve the Charter School's in-District kindergarten through third grade students would deprive the Charter School of the opportunity for revenues from Morgan-Hart Class Size Reduction funding. The District does not have the authority to deprive the Charter School of this revenue opportunity or force it to overcrowd its classrooms when the Charter School's K-3 grade students could potentially be receiving a single classroom for every twenty students if they attended District schools.

In sum, the Charter School is entitled to receive an offer of standard classroom space comparable to what students at the two comparison schools enjoy. Consequently, the District's offer fails to provide sufficient standard classroom space to the Charter School and needs to be revised to provide a total allocation of **thirteen (13) regular teaching stations**.

**THE DISTRICT HAS FAILED TO PROPERLY ALLOCATE SUFFICIENT SPECIALIZED CLASSROOM SPACE TO THE CHARTER SCHOOL**

The third step requires that, if a school district includes specialized classroom space, such as science laboratories, in its classroom inventory, the Proposition 39 offer of facilities provided to a charter school shall include a share of the specialized classroom space. 5 CCR section 11969.3(b)(3) and Sections 11969.9(f) and (h)(1). The Preliminary Offer must include "a share of the specialized classroom space and/or a provision for access to reasonably equivalent specialized classroom space," and "the amount of specialized classroom space allocated and/or the access to specialized classroom space provided shall be determined based on three factors:

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

5 CCR Section 11969.3(b)(2) and Sections 11969.9(f) and (h)(1)

*Superintendent Rummer*

*Re: Ridgecrest Charter School*

*Response to District Preliminary Offer of Facilities*

*February 27, 2009*

*Page 13 of 23*

As such, the District must allocate specialized classroom space, such as science laboratories, art rooms, computer rooms, music rooms, wood/metal shop rooms, etc. commensurate with the in-District classroom ADA of the Charter School.

The District's Preliminary Offer notes that the District "has no obligation to provide facilities beyond what is required by Proposition 39 and the implementing regulations." The Charter School included in its request "performing arts room, music room, science lab, computer lab, auditorium, 13 classrooms, restrooms, offices for staff members that include Director, Dean of Students, Business Manager, records clerk, office clerk, resource specialist, reading specialist, and a paraprofessional." While the District is not required by law to provide facilities above and beyond those required by Proposition 39, each of the comparison schools provides some of the different spaces listed above and employs staff either at the school or at the District level that mirror the staff listed above. The District's offer also states that the Charter School will be provided shared access to the computer lab on the Inyokern site access to the computer lab, gymnasium, music room, and science lab on the Monroe campus for grades 6-8 commensurate with the in-district ADA of the Charter School in the relevant grades.

However, we are informed and believe that the comparison elementary schools and middle school have art and music space that the District has not properly allocated. Please ensure this space is properly allocated. In addition, Monroe may have some form of industrial arts space; if so, this space must also be shared with the Charter School, as well as any other specialized space that the Charter School may not be aware of.

Furthermore, the District states that access to the computer lab will be limited to space only and not use of the computers, and cites to 5 CCR Section 11969.2(e). However, the new and expanded definition of furnishings and equipment requires the District to share all furnishings and equipment "necessary to conduct classroom instruction and to provide for student services that directly support classroom instruction as found in the comparison group schools." According to the SARCs of the comparison schools, all of them provide computers in almost all of their classrooms for student use pursuant to classroom instruction. As a result, the District must not only allocate time in the computer lab, but must also allocate use of the computers in the lab for the Charter School students.

The Proposition 39 law and its Implementing Regulations state that Charter School students are entitled to a share of these facilities, commensurate with their in-District ADA. Charter School students are entitled to space in which they can express themselves artistically or musically, explore technology, have access to a resource center, or be given the opportunity to study the worlds of science through hands-on exploration.

In sum, the Charter School is entitled to receive an offer of specialized space comparable to what students at the comparison schools enjoy, yet allocation of some of these specialized teaching spaces to which the Charter School is entitled may be absent from the District's offer. If so, the District's Preliminary Offer violates 5 CCR Section 11969.3(b)(3) and Sections 11969.9(f) and (h)(1) and must be revised to provide for reasonably equivalent access to each

Superintendent Rummer

Re: Ridgecrest Charter School

Response to District Preliminary Offer of Facilities

February 27, 2009

Page 14 of 23

kind of specialized space discussed above, in the form of equal access or shared use.

THE DISTRICT HAS FAILED TO PROPERLY ALLOCATE SUFFICIENT NON-TEACHING SPACE TO THE CHARTER SCHOOL

In addition to teaching station and specialized classroom space, the fourth step requires the District to provide non-teaching station space commensurate with the in-District classroom ADA of the Charter School and the per-student amount of non-teaching station space in the comparison group schools. 5 CCR section 11969.3(b)(3) and Sections 11969.9(f) and (h)(1). Non-teaching space is all of the remainder of space at the comparison school that is not identified as teaching station space or specialized space and could include, but is not limited to, administrative space, a kitchen/cafeteria, a multi-purpose room, a library, a staff lounge, a copy room, storage space, bathrooms, a parent meeting room, special education space, RSP space, and play area/athletic space, including gymnasiums, athletic fields, locker rooms, and tennis courts. 5 CCR Section 11969.3(b)(3). An allocation of non-teaching station space can be accomplished through shared use or exclusive use.

The District's offer states that "library, custodial, cafeteria, multi-purpose room, and playground areas" on the elementary school site will be shared with the Charter School. Only the gymnasium has been allocated at Monroe. The District has also offered one classroom at the Inyokern Site to be used as administrative space.

However, Faller has a multi-purpose room, cafeteria, office suite to house the principal, secretary and office manager, RSP and special education space, physical education/outdoor play space, and records storage space. Pierce has a multi-purpose room, cafeteria, office suite to house the principal and secretary, RSP and special education space, physical education/outdoor play space, and records storage space. Gateway has a multi-purpose room, cafeteria, office suite to house the principal, secretary and office manager, RSP and special education space, physical education/outdoor play space, and records storage space. Las Flores has a multi-purpose room, office suite to house the principal and secretary, RSP and special education space, physical education/outdoor play space, and records storage space. Monroe has a multi-purpose room, cafeteria, office suite to house the principal and secretary, records storage space, counseling space, RSP and special education space, physical education/outdoor play space, and a nature area.

The Proposition 39 law and its Implementing Regulations state that Charter School students are entitled to a share of these kinds of facilities at its allocated site, commensurate with its in-District ADA. A reasonably equivalent facility would offer the Charter School students a place to enjoy a variety of physical activities, a place to study, with access to reference materials, a place to privately consult with counselors and strategize about how to get into a four-year college, and a place to receive specialized RSP services. A reasonably equivalent facility would also provide a quiet lounge area for teachers to grade papers and copy assignments, space for the Charter School to store its supplies and files out of the way, and a place for administrators to perform their assigned duties and meet privately with employees, parents, or students.

Superintendent Rummer

Re: Ridgecrest Charter School

Response to District Preliminary Offer of Facilities

February 27, 2009

Page 15 of 23

The District's offer fails to account for a proportion of this space, including RSP and special education space, record storage space, sufficient administrative space (only allocating one office where District administrative staff have proportionately more space<sup>5</sup>), and counseling space and nature area space on the Monroe campus. The District's Preliminary Offer is thus in violation of 5 CCR Section 11969.3(b)(3) and Sections 11969.9(f) and (h)(1), and the Charter School is entitled to a reasonably equivalent allocation of this space. In order to provide a proper allocation of specialized and non-teaching station space, the District should analyze the per square foot amounts of these types of space that are offered in-Districts students in the comparison schools and provide this allocation of space on a per-ADA basis to the Charter School.

**THE DISTRICT HAS NOT MADE A REASONABLE EFFORT TO LOCATE THE CHARTER SCHOOL WHERE IT REQUESTED TO BE LOCATED.**

Education Code Section 47614 requires that a district shall make reasonable efforts to provide a charter school with facilities near to where the charter school wishes to locate. "Reasonable efforts" is not defined in the law or Implementing Regulations. However, in *Ridgecrest* the Court noted that according to the California Department of Education, the Implementing Regulations "specifically do[] not provide any guidance" about what constitute such reasonable efforts, because "the statutory language provides a balance between favoring charter school students and favoring students in district-operated programs. In addition, referring to the requirement – in the regulation's definition of "contiguous" – that a district 'shall minimize the number of sites assigned' if it cannot accommodate a charter school at a single site, the Department explained it had rejected, as 'unnecessary and redundant,' a suggestion the regulation be drafted to require merely that a district make "'every effort to minimize'" the number of sites." However, the dictionary defines "reasonable" as "governed by or being in accordance with reason or sound thinking." Therefore, reasonable efforts would logically require the District to consider all facilities encompassed by the Charter School's requests, to analyze data to make a reliable determination, and to conduct a thorough investigation into the different requested and available options. In this matter it would require the District to consider placing the Charter School in a contiguous school facility on all elementary and middle school campuses of the District.

**THE DISTRICT HAS NOT MADE A REASONABLE EFFORT TO LOCATE THE CHARTER SCHOOL AT VIEWEG**

In its Proposition 39 request letter, dated October 31, 2008, the Charter School requested that it be placed at the former Vieweg Elementary School site ("Vieweg") or on the Faller campus. Education Code Section 47614 requires that the District make a reasonable effort to do so.

---

<sup>5</sup> All the comparison elementary schools had 2007-2008 enrollments ranging from 421 to 499, and at least one principal and one office staff, if not more. Monroe had a 2007-2008 enrollment of 543 and has office space for its principal, assistant principal, and secretary. The Charter School's projected enrollment is approximately half that of these comparison schools, and thus it is entitled to at least two administrative spaces.

*Superintendent Rummer*

*Re: Ridgecrest Charter School*

*Response to District Preliminary Offer of Facilities*

*February 27, 2009*

*Page 16 of 23*

The District has utterly failed to make any such effort. The District states that it cannot locate the Charter School at Vieweg because the school is “located on real estate owned by the Navy, which the District occupies in a District-owned building pursuant to a ground lease with the Navy. The District’s ground lease precludes it from sub-leasing the building to third parties without express authorization of the regional Navy command.” What the District fails to realize is that the statutes, regulations and case law clearly reflect the fact that when meeting its obligations under Proposition 39, the District is housing District students. The District does not enter into a lease agreement with the charter school to place a charter school at a school site. The District is merely placing in-District students at a school site. This arrangement would not need approval by the Navy.

Moreover, even assuming for sake of argument that the Navy’s permission was necessary, the District’s Preliminary Offer is noticeably absent of any effort by the District to discuss allocating space on the Vieweg site to the Charter School with the Navy. The District has known for a number of years now that the Charter School wished to occupy the Vieweg site and yet it made no effort to discuss with the Navy whether the Navy would object to placing the Charter School at the site (which would not change the purpose or use of the site and would still result in District students occupying the site). This demonstrates a lack of reasonable and good faith efforts to place the Charter School where it wishes to be located.

In addition, the District claims that Proposition 39 only requires it to consider facilities that are the “property of the school district,” and thus Vieweg may not be considered. However, the District’s Preliminary Offer specifically states that the Vieweg site is owned by the District, though it is located on land owned by the Navy, and is occupied by District programs – and ownership of the facility would not change if it was allocated to the Charter School. Therefore, the Vieweg site is a District-owned facility that must be allocated under Proposition 39, and the District’s contention that the Vieweg site is excluded from its Proposition 39 responsibilities is wholly unsupported by the law.

Furthermore, the District is also taking an absurdly narrow interpretation of Proposition 39. The law is intended to provide facilities to charter schools and should be liberally construed (see Section 10 of Proposition 39). Clearly the reference to the facilities remaining the property of the school district was intended to indicate that charter schools do not gain ownership rights to facilities allocated under Proposition 39 – and was not intended to say that leased facilities by a district must be excluded from potential allocation. Indeed, the District’s interpretation is inconsistent with the overall language of Proposition 39 which allows school districts to issue a Proposition 39 bond to “**lease real property for school facilities**” – if a school district can issue a bond to lease school facilities (by definition facilities they do not own) a school district can therefore use leased facilities to meet its obligations to charter schools under Proposition 39. Any construction of Proposition 39 eliminates school sites from consideration must be rejected.

Furthermore, allocation of space by a school district to a charter school under Proposition 39 is not a lease; it is an allocation of facilities, as evidenced by the use of facilities use agreements instead of lease agreements to govern occupancy of the site. Leasing of school

*Superintendent Rummer*

*Re: Ridgecrest Charter School*

*Response to District Preliminary Offer of Facilities*

*February 27, 2009*

*Page 17 of 23*

district property is generally handled in accordance with Education Code Sections regarding surplus real property (e.g., Education Code Section 17455). Proposition 39 establishes a different entitlement to facilities that is not a lease, and thus allocating space on the Vieweg site to the Charter School would likely not trigger this provision in the agreement between the District and Navy.

Lastly, while Proposition 39 provides that the District is not required to use general fund monies to meet its obligations under the initiative the District is required to use restricted sources of monies (e.g., bond monies, parcel taxes etc.). There is no evidence that the District has reviewed meeting its obligations under the law by using these additional sources of funds.

Therefore, the District's failure to explore the option of placing the Charter School in a contiguous facility on the Vieweg site is a violation of Education Code Section 47614.

EVERY OTHER SCHOOL SITE IN THE DISTRICT IS CLOSER TO THE CHARTER SCHOOL'S CURRENT LOCATION THAN INYOKERN

The District has also failed to make reasonable efforts to place the Charter School where it wishes to be located because the site proposed by the District is in the farthest quarter of the District and, in fact, every other school in the District is located closer to the Charter School's current location and its student population than Inyokern. Furthermore, of all the elementary schools in the District, only 13 Charter School students would otherwise attend Inyokern, making it the District school that the fewest number of Charter School students would otherwise attend. In other words, the District has allocated a facility that is located as far as possible from where almost all Charter School students live and Charter School parents would be forced to transport their children great distances to attend the school of their choice, further compromising their safety.

As set forth in greater detail above, while the District ascribed its failure to properly identify comparison school on the Charter School's revision to its enrollment projections, the District has at all times been aware of the Charter School's current location, its historic enrollment trends and where its students were and are typically located. Therefore, the District was quite able to and should have considered other, closer school sites in the District rather than making an offer of facilities in the District facility located as far as possible from the Charter School's historical attendance area. This demonstrates the District has not made a reasonable effort to locate the Charter School where it wishes to be located.

In addition, the District Board's report states that "Inyokern Elementary School has the greatest capacity for growth." In fact, the Vieweg site has the greatest capacity for growth, given that no school is currently located on the site and it is currently being used as a purely transitional facility. Vieweg was also modernized in the 1980's and its condition is at least reasonably equivalent to other comparison schools, especially since many of those schools are only in the process of being renovated or modernized, and have not yet completed their updates.

Furthermore, we believe District schools do have the capacity to accommodate the

Charter School, including with the placement of portable classrooms on the school site. While the District does not have to expend general fund monies to rent, buy, or lease facilities to meet this obligation, the law implicitly recognizes that a district must use all resources including any restricted monies (parcel taxes, bond monies etc.) to meet this obligation – including placing portables on District sites, a common practice of the District.

Faller Elementary School, located 1.7 miles from the Charter School’s current site, had an enrollment of 421 students in 2007-2008 and 490 in its 2008-2010 CBEDS.

In addition, Las Flores Elementary School, located 1 mile from the Charter School’s current site, had an enrollment of 458 students in 2007-2008 and 477 in its 2008-2009 CBEDS.

Furthermore, Gateway Elementary School, located 2.2 miles from the Charter School’s current site, had an enrollment of 499 students in 2007-2008.

Lastly, Pierce Elementary School, located 2.3 miles from the Charter School’s current site, had an enrollment of 499 students in 2007-2008.

Attached as **Exhibit D**, please find a map showing the location of these schools in context, and the distance of Inyokern from the Charter School’s current site and the location of other District schools.

Since many of these school sites have space to potentially accommodate the Charter School in a reasonably equivalent contiguous school site, the Charter School would note that, in this context, the District may be required to reorganize its current class configurations and program offerings to accommodate the needs of the Charter School: in the *Ridgecrest Charter School v. Sierra Sands School District* decision (130 Cal. App. 4th 986 (2005)), the court noted that “accommodating a charter school might involve moving district-operated programs or changing attendance areas” and that “providing a contiguous school facility to a charter school might require disruption and dislocation among district students, staff and programs.” The District argues that given its geographic boundaries, it cannot transform walking schools into bussing schools. The law does not allow for the District to discount particular facilities or options simply because it does not want to consider reconfiguring its transportation program. Instead, the law requires the District to properly allocate reasonably equivalent and contiguous facilities, even if it means disruption and dislocation, and to consider student safety. Furthermore, a review of the locations of the various District schools reveals that many of the comparison elementary schools are approximately 2-3 miles apart,<sup>6</sup> and thus a revision to attendance areas or assigned schools would not create sufficient hardship to District students to justify its refusal to consider this option.

The District’s Preliminary Offer does not comply with the law because it fails to demonstrate that the District made any effort to locate the Charter School where it wishes to be

---

<sup>6</sup> For example, Pierce is 1.1 miles from Gateway and 2 miles from Las Flores, and Faller is 1.4 miles from Las Flores and 2.8 miles from Gateway.

*Superintendent Rummer*

*Re: Ridgecrest Charter School*

*Response to District Preliminary Offer of Facilities*

*February 27, 2009*

*Page 19 of 23*

located. In fact, the Preliminary Offer places the Charter School in a location that the District knows would make it extremely difficult for Charter School parents to transport their children to school. Therefore, the District must place the Charter School at a closer site, with a reasonably equivalent allocation of teaching stations, specialized teaching space, and non-classroom space – for example Vieweg, Faller, Las Flores or Gateway.

### **THE DISTRICT HAS INCORRECTLY CALCULATED THE PRO RATA SHARE**

The District's Preliminary Offer states that "the District's pro rata calculation amounts to \$6.51 per square foot." The Preliminary Offer also states that the shared space in the amount of 3,920 square feet is charged at 50% of the pro rata share, or \$3.26.

As the District is aware, the Proposition 39 Implementing Regulations set forth the detailed methodology for calculating the pro rata share, which is defined as "a per-square-foot amount equal to those school district facilities costs that the school district pays for with unrestricted revenues from the district's general fund, as defined in sections 11969.2(f) and (g) and hereinafter referred to as "unrestricted general fund revenues," divided by the total space of the school district times (2) the amount of space allocated by the school district to the charter school." 5 CCR Section 11969.7.

5 CCR Section 11969.7 also states "facilities costs includes: (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. Facilities costs "do not include any costs that are paid by the charter school, including, but not limited to, costs associated with ongoing operations and maintenance and the costs of any tangible items adjusted in keeping with a customary depreciation schedule for each item." Moreover, the regulations provide that the charter school shall be responsible for the routine repair and maintenance of the facility allocated and that the school district retains the obligation to provide the deferred maintenance on the school facility. (5 CCR Section 11969.4). Consequently, the pro rata share must not include any costs for the routine repair and maintenance of the facility – as these costs are costs assumed by the charter school.

The pro rata share is then calculated by dividing actual facilities costs in the year preceding the fiscal year in which facilities are provided and the largest amount of total space of the school district at any time during the year preceding the fiscal year in which facilities are provided.

The District's quoted pro rata share is far above that of most school districts in the state, which see a range of approximately \$.18 to \$3.20 and was likely incorrectly calculated. However, the methodology cited in the District's Preliminary Offer does not allow the Charter

*Superintendent Rummer*

*Re: Ridgecrest Charter School*

*Response to District Preliminary Offer of Facilities*

*February 27, 2009*

*Page 20 of 23*

School to confirm that the District has properly calculated its pro rata share. Therefore, the Charter School will submit a Public Records Act request to the District in order to receive the records required to properly calculate the pro rata share, and reserves its right to object to the calculation until after it receives this information and has had a chance to review it. Subsequently, the Charter School will provide the District with an analysis of the correct pro rata share.

**THE TERMS OF THE FACILITIES USE AGREEMENT PROVIDED BY THE DISTRICT ARE NOT COMPLIANT WITH PROPOSITION 39**

While the Agreement is a draft, and therefore to be further negotiated by the parties pursuant to 5 CCR Section 11969.9(k) (“The school district and the charter school shall negotiate an agreement regarding use of and payment for the space. The agreement shall contain at a minimum, the information included in the notification provided by the school district to the charter school.”), in order to expedite this process, the Charter School will take this opportunity to identify some of the terms therein that the Charter School objects to as contrary to law or unreasonable. This list, however, is not necessarily exhaustive and the Charter School reserves the right to negotiate a mutually acceptable Facilities Use Agreement with the District.

**CIVIC CENTER ACT**

The Agreement currently states that “the Charter School shall have primary use of the space allocated to the Charter School for the operation of its educational program during its regular school hours; provided, however, that after 5 pm during the week and all day on weekends and holidays,” the Site and Facilities shall be subject to use under the Civic Center Act. This provision is not only likely contrary to the District’s Board Policy and Administrative Regulation on the use of school facilities pursuant to the Civic Center Act, but it has the potential to seriously interfere with the operation of the Charter School. Therefore, the Agreement will need to be revised to either assign the responsibility of responding to Civic Center Act requests for the allocated facilities to the Charter School in compliance with the District’s Board Policy and Administrative Regulation, or to provide that any Civic Center Act requests will always be secondary to the use of the facilities, scheduled or unscheduled, by the Charter School to conduct educational programs and/or activities of the student body.

**FURNISHINGS AND EQUIPMENT**

On the subject of furnishings and equipment in Section 4, please be reminded that the new Proposition 39 regulations further expand the meaning of “furnishing and equipment.” “Furnishings” is now defined as “furnishings necessary to conduct classroom instruction and to provide for student services that directly support classroom instruction as found in the comparison group schools established under section 11969.3(a)” and “Equipment” is now defined as “property that does not lose its identity when removed from its location and is not changed materially or consumed immediately (e.g., within one year) by use. Equipment has relatively permanent value, and its purchase increases the total value of a Local Educational Agency's (LEA's) physical properties. Examples include furniture, vehicles, machinery, motion

*Superintendent Rummer*

*Re: Ridgecrest Charter School*

*Response to District Preliminary Offer of Facilities*

*February 27, 2009*

*Page 21 of 23*

picture film, videotape, furnishings that are not an integral part of the building or building system, and certain intangible assets, such as major software programs. Furnishings and equipment acquired for a school site with non-district resources are excluded when determining reasonable equivalence.” District classrooms are furnished with more than student desks, chairs, and white/blackboards. Specifically, District classrooms have bookshelves, a teacher desk and chair, file cabinet, and some classrooms have Smartboards or other technology to support classroom instruction and pursuant to Proposition 39 the Charter School is entitled to a pro rata allocation of these furnishings and equipment.

#### MAINTENANCE AND OPERATIONS

Pursuant to Education Code Section 47614 and 5 CCR Section 11969.4(a), the Charter School is responsible for maintenance and operation of the allocated facilities, and the District is responsible for major maintenance and deferred maintenance. Section 11 does not currently reflect this division of responsibilities and will need to be revised.

#### PROPOSITION 39 DOES NOT PROVIDE FOR THE DISTRICT TO LEVY EXCESSIVE FINES

In Section 12, the \$1,000 per day penalty for modifications made to the Site in violation of the Agreement is excessive and will need to be removed. Proposition 39 does not allow for a District to levy fines, and if the District is concerned that the Charter School will make unauthorized modifications to the site, the provision requiring it to restore the site to its original state fully protects the District.

#### COMPLIANCE WITH APPLICABLE LAWS

Section 13 places responsibility for compliance with all applicable law, regulations, rules and orders with respect to its “use and occupancy” of the site on the Charter School. Whatever Site is allocated will remain the property of the District. As a result, while the Charter School will be responsible for compliance as a result of its modification or alteration of the Site, the District has agreed to allocate a facility to the Charter School that is suitable for use as an instructional school site, and thus must remain responsible for compliance based on the Charter School’s occupancy of the Site.

In addition, Section 13 places responsibility for California Environmental Quality Act (“CEQA”) on the Charter School “in the event that allocation of the Site and Facilities” triggers CEQA compliance. Again, while the Charter School will be responsible for compliance as a result of its modification or alteration of the Site, the Site remains the property of the District and it is not appropriate for the Charter School to be responsible for CEQA compliance caused simply by the District’s allocation of the Site.

#### RECIPROCAL INDEMNIFICATION

5 CCR Section 11969.9(i) requires a reciprocal/hold harmless indemnification clause in the Agreement. Section 17 of the draft Agreement currently is not fully reciprocal, and will need

*Superintendent Rummer*  
*Re: Ridgecrest Charter School*  
*Response to District Preliminary Offer of Facilities*  
*February 27, 2009*  
*Page 22 of 23*

to be revised to provide that the indemnity provisions for both the District and Charter School shall exclude actions arising out of the willful negligence or intentional acts, errors, or omissions of the other party.

DISPUTE RESOLUTION

The Agreement does not contain a Dispute Resolution provision as provided by 5 CCR Section 11969.10 and should be revised to do so.

CONDITIONAL ACCEPTANCE

The draft Agreement contains a waiver of the Charter School's rights to challenge the District's compliance with Proposition 39 for the 2009-2010 school year. Going forward, please note that Proposition 39 and the Implementing Regulations do not allow the District to require the Charter School to waive its rights to challenge the District's full compliance with Proposition 39 as a condition to accepting the offer of facilities. In fact, this type of contingent approval was specifically rejected by the Santa Clara Superior Court (Case No.: 1-04CV027980)

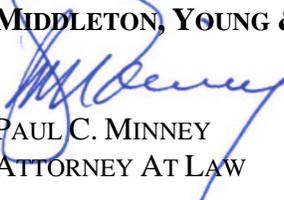
The Charter School also disagrees with other provisions of the draft Facilities Use Agreement; however, these provisions can be negotiated after receipt of the Final Offer.

\* \* \*

On a final note, the Charter School sincerely hopes that going forward the District and Charter School can work together collegially to come to a positive and mutually beneficial resolution of the issues surrounding the Proposition 39 allocation. The Charter School therefore respectfully requests that the District comply with its obligations under the Proposition 39 law and implementing regulations by allocating the Charter School the thirteen classrooms at the Vieweg, Faller, Gateway, or Las Flores campus, as well as reasonably equivalent access to the specialized and non-teaching space.

Please do not hesitate to contact me should you have any questions. I look forward to working with the District to resolve these issues.

Sincerely,  
**LAW OFFICES OF SPECTOR,  
MIDDLETON, YOUNG & MINNEY, LLP**

  
PAUL C. MINNEY  
ATTORNEY AT LAW

*Superintendent Rummer*

*Re: Ridgecrest Charter School*

*Response to District Preliminary Offer of Facilities*

*February 27, 2009*

*Page 23 of 23*

CC: TINA ELLINGSWORTH AND DON BAKER, RIDGECREST CHARTER SCHOOL



**SIERRA SANDS**  
**UNIFIED SCHOOL DISTRICT**

**Joanna Rummer**  
**Superintendent**

113 W. Felspar Avenue • Ridgecrest, CA • 93555 • 760 375-3363 •  
Website: [www.ssusd.org](http://www.ssusd.org)

March 20, 2009

Craig Bradley  
Board Member  
Ridgecrest Charter School  
325 South Downs  
Ridgecrest, CA 93555

RE: Extension of Proposition 39 Timeline and Suspension of Public Records Act  
Determination

Dear Mr. Bradley:

Thank you for meeting with me today. During that meeting, we discussed suspending the Proposition 39 facilities offer process and extending the deadline for the Sierra Sands Unified School District ("District") to make a final offer of facilities to Ridgecrest Charter School ("RCS"), pursuant Proposition 39, as well as extending the timeline for RCS to accept that offer, in order to allow the parties time to negotiate a mutually agreeable alternative to a facilities offer pursuant to Proposition 39. We would also like RCS to suspend its California Public Records Act ("PRA") request dated March 10, 2009 for the same period of time.

If the parties are unable to come to an agreement by April 15, 2009, we propose the following new deadlines:

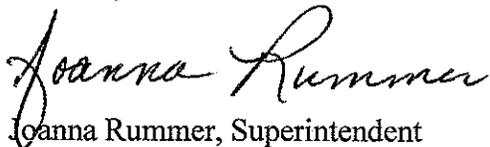
April 20, 2009: District will make final offer of facilities pursuant to Proposition 39 and will issue determination notifying RCS as to whether PRA request dated March 10, 2009 seeks copies of disclosable public records in the District's possession.

May 20, 2009: RCS will inform District whether it accepts the District's offer of facilities pursuant to Proposition 39.

Craig Bradley  
March 20, 2009  
Page 2

Please sign and return this letter to me no later than Monday, March 23, 2009, acknowledging RCS' agreement to the above terms. I will follow up with you regarding substantive negotiations after receiving this signed acknowledgement on Monday.

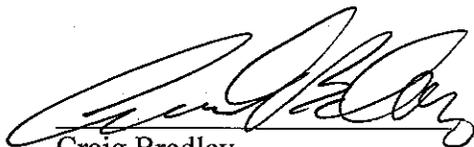
Sincerely,



Joanna Rummer, Superintendent  
Sierra Sands Unified School District

cc. Sue Ann Evans, Miller Brown & Dannis

I, Craig Bradley, have the authority to agree to the terms outlined in this letter on behalf of Ridgecrest Charter School, and to bind the Ridgecrest Charter School to the terms stated herein, and do on behalf of Ridgecrest Charter School agree to the extensions outlined above.



Craig Bradley,  
Board Member, Ridgecrest Charter School

May 12, 2009

Craig Bradley  
Board Member  
Ridgecrest Charter School  
325 South Downs  
Ridgecrest, CA 93555

RE: Extension of Proposition 39 Timeline and Suspension of Public Records Act  
Determination

Dear Mr. Bradley:

The Sierra Sands Unified School District ("District") and Ridgecrest Charter School ("RCS") have agreed to extend the deadline for the District to make a final offer of facilities to RCS, pursuant Proposition 39, and to suspend its California Public Records Act ("PRA") request in order to allow additional time to negotiate a mutually agreeable alternative to a facilities offer pursuant to Proposition 39 as follows:

May 22, 2009: District will make final offer of facilities pursuant to Proposition 39 and will issue determination notifying RCS as to whether PRA request dated March 10, 2009 seeks copies of disclosable public records in the District's possession.

May 30, 2009: RCS will inform District whether it accepts the District's offer of facilities pursuant to Proposition 39.

August 31, 2009: Should RCS accept the District's offer pursuant to Proposition 39, the District's deadline for making the space available to RCS will be extended from August 4, 2009 to August 31, 2009.

Craig Bradley  
May 12, 2009  
Page 2

Please sign and return this letter acknowledging RCS' agreement to the above terms. I look forward to receiving the initial proposal from RCS regarding a mutually agreeable alternative to a Proposition 39 facilities offer.

Sincerely,



Joanna Rummer, Superintendent  
Sierra Sands Unified School District

cc. Sue Ann Evans, Miller Brown & Dannis

I, Craig Bradley, have the authority to agree to the terms outlined in this letter on behalf of Ridgecrest Charter School, and to bind the Ridgecrest Charter School to the terms stated herein, and do on behalf of Ridgecrest Charter School agree to the extensions outlined above.



Craig Bradley,  
Board Member, Ridgecrest Charter School



**SIERRA SANDS**  
**UNIFIED SCHOOL DISTRICT**

**Joanna Rummer**  
Superintendent

113 W. Felspar Avenue • Ridgecrest, CA • 93555 • 760 375-3363 •  
Website: [www.ssusd.org](http://www.ssusd.org)

November 25, 2008

Tina Ellingsworth  
Ridgecrest Charter School  
325 South Downs  
Ridgecrest, California 93555

Re: Sierra Sands Unified School District,  
2009–10 Proposition 39 Application;  
Ridgecrest Charter School

Dear Ms. Ellingsworth:

Sierra Sands Unified School District (“District”) is in receipt of your letter dated October 31, 2008, regarding a facilities request by Ridgecrest Charter School (“RCS”) under Proposition 39 (“Request”) for the 2009-10 school year. As you are aware, the allocation of facilities to charter schools is governed by Education Code section 47614, the implementing regulations found at title 5 of the California Code of Regulations sections 11969 et seq. (“Regulations”),<sup>1</sup> as well as case law interpreting the statute and regulations. These authorities provide for allocation of school district facilities to charter schools that have the requisite number of in-district average daily attendance (“ADA”) and meet the requirements of the law in applying for such facilities.

As held in the case of *Environmental Charter High School v. Centinela Valley Union High School District* (2004) 122 Cal.App.4<sup>th</sup> 139, both Education Code section 47614 and California Code of Regulations, title 5, section 11969.9(c), mandate inclusion of foundational documentation with the facilities request. RCS has projected a substantial increase of in-district ADA within the meaning of section 11969.9(c)(1)(C). As discussed more fully below, documents are required to support the projections. Education Code section 47614 and the implementing Regulations require that a charter

---

<sup>1</sup> The District is aware that the revised regulations (Cal. Code Regs., tit. 5, §§ 11969.1 et seq.) have been challenged in the case of *California School Boards Association, et al. v. California State Board of Education, et al.*, Sacramento Superior Court Case No. 34-2008-00061957-CU-WM-GDS and the District reserves all rights and remedies related to any ruling related thereto.

**Board of Education**

Amy Covert • Judy Dietrichson • Pam Lochhead • Tom Martin • Tom Pearl • Kurt Rockwell • Michael Scott

Tina Ellingsworth  
Ridgecrest Charter School  
November 25, 2008  
Page 2

school submit the following information by November 1, 2008 to be eligible for allocation of district facilities:

- 1) Reasonable projections of in-district and total ADA and in-district and total classroom ADA broken down by grade level and school that the student would attend if not attending the charter school;
- 2) A description of the methodology for the projections;
- 3) Documentation of the number of in-district students meaningfully interested in attending the charter school that is sufficient for the district to determine the reasonableness of the projection;
- 4) The charter school operational calendar;
- 5) Information regarding the general geographic area in which the charter school wishes to locate; and,
- 6) Information regarding the school's education program to the extent it is relevant to the assignment of facilities.

(Cal. Code Regs., tit. 5, § 11969.9, subd. (c)(1-2).)

In accordance with the recently adopted revised Regulations implementing section 47614, the District has reviewed RCS' projections of in-district and total ADA and in-district and total classroom ADA. The District expresses the following objections to the projections submitted by RCS and sets forth the projections the District considers reasonable. (Cal. Code Regs., tit. 5, § 11969.9(d).) Additionally, the District takes this opportunity to address certain comments made in the Request.

## **RCS' Projections<sup>2</sup>**

Based upon the information provided by RCS as well as the District's review of information regarding RCS' enrollment, ADA and admissions policy and practices, the District objects to RCS' in-district ADA projection for the 2009-2010 year as follows:

### Enrollment vs. ADA

RCS has shown that its reported ADA has widely fluctuated every year relative to its total enrollment numbers. Additionally, yearly enrollment data supplied by RCS is inaccurate when compared with California Basic Education Data System ("CBEDS") records kept by the California Department of Education. CBEDS records indicate that RCS reported an enrollment of 252 students in 2004-05, with a reported ADA of 233.63. This calculates to an ADA that is 92.7% of total enrollment for that year. CBEDS records indicate that RCS reported an enrollment of 248 students in 2005-06, with a reported ADA of 224.97. This calculates to an ADA that is 90.7% of total enrollment for that year. CBEDS records indicate that RCS reported an enrollment of 212 students in 2006-07, with a reported ADA of 204.12. This calculates to an ADA that is 96.3% of total enrollment. The District has reviewed several reports related to RCS' enrollment and ADA figures for 2007-08, and has determined that enrollment records supply several different figures. Data supplied by RCS suggests a range of enrollment figures between 179 and 224 students, and is thus unreliable in determining the ADA-to-enrollment ratio for 2007-08.

The average percentage of ADA relative to enrollment during the three year period from 2004 – 2007 is 93.23%. Therefore, a reasonable ADA projection for the 2009-10 school year is 94%.

RCS has projected in its Request a present year enrollment of 193 students<sup>3</sup>. However, the CBEDS report reflects an enrollment of 181, not 193. RCS has provided no

---

<sup>2</sup> It should be noted that RCS has stated in its Request that it does not have any out of district students, and therefore the Total ADA, Total In-District ADA and Total Classroom ADA figures from past years and request year projections are all equal to the Total In-District Classroom ADA outlined in Table 1 of the Request. For the purposes of objecting to RCS' ADA projections by grade level herein, the District reserves its right to contest the statement that RCS has no out of district students as well as to contest the designated number of students that would attend each of the District's schools. RCS has provided inadequate documentation to support this assertion.

<sup>3</sup> Although RCS has stated a present year enrollment of 193 students, the current roster provided by RCS as Attachment 4 of its Request lists only 192 students.

documentation to support a projected enrollment of 193 for the current year. Applying 94% to the 181 students presently enrolled, it is reasonable to project that RCS will report a present year ADA of 170.14 for all grades. Based upon a present year roster provided by RCS in its Request, it is also reasonable to project ADA by grade levels. Although RCS has supplied a current year roster showing 192 students, the District can reasonably rely upon the most recent CBEDS report from October 2008, which indicates a student population by grade level as follows:

Kindergarten	(25 enrolled) X (94%) = 23.50 ADA
Grades 1 – 3	(83 enrolled) X (94%) = 78.02 ADA
Grades 4 – 6	(42 enrolled) X (94%) = 39.48 ADA
Grades 7 – 8	(31 enrolled) X (94%) = 29.14 ADA

#### Kindergarten

RCS has projected a Kindergarten ADA of 40 new students for the request year. In 2005-06 RCS reported P2 Kindergarten ADA of 26.57. This ADA increased in 2006-07 to 31.07. This ADA increased again in 2007-08 to 35.83. However, it is likely that RCS' Kindergarten ADA will decline to 23.50 for the present year. Given the projected sharp decline in Kindergarten ADA for the present year, it is reasonable to question how RCS intends to recruit and enroll approximately 43 – 45 incoming Kindergarten students in order to meet a projected ADA of 40 for the request year. This is particularly questionable in light of RCS' overall declining enrollment, and the fact that RCS will likely experience a decline of approximately 34.4% in Kindergarten ADA from the previous year.

As discussed more thoroughly below, supporting documentation is relevant and necessary here, since RCS does not have a Pre-Kindergarten program and cannot therefore demonstrate any matriculating, presently enrolled students into the Kindergarten level. All of RCS' projected Kindergarten students for the request year must come from new applications. The Intent to Re/Enroll Forms provided as Attachment 2 to the Request do not support any Kindergarten projections for the request year. Indeed, fewer than five (5) of the forms indicate a potential Kindergarten student is meaningfully interested in enrolling for the request year. RCS also states on page 3 of the Request that it has received requests for applications from parents relocating to a new housing complex adjacent to RCS' present location, but RCS has not indicated how many requests it has received, has not provided documentation evidencing these requests, nor indicated how many requests are from parents of prospective Kindergarten level students. Beyond RCS' assertion that it anticipates a "substantial increase" in in-District ADA for the request year, it has not provided the relevant required documentation to support any projections for a number of Kindergarten students beyond the handful of students included in the Intent to Re/Enroll forms. RCS' documentation

cannot support an ADA projection of 40 as stated in the Request. This is particularly true in light of the sharp decline in Kindergarten enrollment and projected ADA for the current year.

As discussed more thoroughly below, RCS' documentation does not support its Kindergarten ADA projections. From 2005 through the present, RCS has demonstrated an average yearly Kindergarten ADA of 29.78, fluctuating within a range of 25.65 to 35.83. Further, it is projected that the present year Kindergarten ADA will decline sharply from the previous year. Therefore, a reasonable projection of in-district Kindergarten students for the 2009-10 school year is 25, rather than 40.

#### Grades 1 – 3

RCS has projected a Grades 1 – 3 ADA of 108 students for the request year. In 2005-06 RCS' P2 for Grades 1 – 3 ADA was 91.17. This ADA decreased in 2006-07 to 77.61. This ADA increased in 2007-08 to 85.62. However, it is likely that RCS' Grades 1 – 3 ADA will decline to 78.02 for the present year. Given the projected decline in Grades 1 – 3 ADA for the present year, it is reasonable to question how RCS intends to increase its Grades 1 – 3 ADA to 108, which would be an approximate increase of 37%. This is particularly questionable in light of RCS' overall declining enrollment, and the fact that in the present year RCS will likely experience a decline of approximately 8.9% in Grades 1 – 3 ADA from the previous year.

As discussed more thoroughly below, RCS' documentation does not support its Grades 1 – 3 ADA projections. From 2005 to the present, RCS has demonstrated an average yearly Grades 1 – 3 ADA of 83.31, fluctuating within a range of 77.61 – 91.17. Further, it is projected that the present year Grades 1 – 3 ADA will decline from the previous year. Therefore, a reasonable projection of in-district Grades 1 – 3 students for the 2009-10 school year is 85, rather than 108.

#### Grades 4 – 6

RCS has projected a Grades 4 – 6 ADA of 75 students for the request year. In 2005-06 RCS' P2 for Grades 4 – 6 ADA was 71.33. This ADA decreased in 2006-07 to 61.53. This ADA increased slightly in 2007-08 to 66.34. However, it is likely that RCS' Grades 4 – 6 ADA will significantly decline to 39.48 for the present year. Given the projected decline in Grades 4 – 6 ADA for the present year, it is reasonable to question how RCS intends to increase its Grades 4 – 6 ADA to 75, which would be an approximate increase of 75%. This is particularly questionable in light of RCS' overall declining enrollment, and the fact that in the present year RCS will likely experience a decline of approximately 40.5% in Grades 4 – 6 ADA from the previous year.

As discussed more thoroughly below, RCS' documentation does not support its Grades 4 – 6 ADA projections. From 2005 to the present, RCS has demonstrated an average yearly Grades 4 – 6 ADA of 49.80, fluctuating within a range of 39.48 (estimated for the present year) to 71.33. Further, it is projected that the present year Grades 4 – 6 ADA will decline sharply from the previous year. Therefore, a reasonable projection of in-district Grades 1 – 3 students for the 2009-10 school year is 45, rather than 75.

#### Grades 7 – 8

RCS has projected a Grades 7 – 8 ADA of 50 students for the request year. In 2005-06 RCS' P2 for Grades 7 – 8 ADA was 35.90. This ADA decreased in 2006-07 to 33.91. This ADA significantly decreased again in 2007-08 to 20.75. However, it is likely that RCS' Grades 7 – 8 ADA will increase to 29.14 for the present year. Although RCS has shown an increase in the present year by enrolling more Grades 7 – 8 students, there has been considerable fluctuation in these numbers over the past four school years.

As discussed more thoroughly below, RCS' documentation does not support its Grades 7 – 8 ADA projections. From 2005 to the present, RCS has demonstrated an average yearly Grades 7 – 8 ADA of 31.43, fluctuating within a range of 20.75 – 35.90. Considering that ADA reporting for Grades 7 – 8 will likely increase in the present year, and since RCS has demonstrated relative consistency in supporting a Grades 7 – 8 ADA of 33-36, a reasonable projection of in-district Grades 7 – 8 students for the 2009-10 school year is 35, rather than 50.

#### Total Projected ADA

Based upon the District's analysis, the projected in-district ADA total for the request year is reduced from 273 to 190. The District notes that this figure also comports with RCS' 2008 Charter Renewal Petition, wherein RCS has budgeted and projected an ADA of 190 for the request year.

A charter school's facilities request must, if relevant, provide supporting documentation of the number of in-district students meaningfully interested in attending the charter school. Documentation is relevant where, as here, the charter school projects a substantial increase in enrollment. Education Code section 47614 and California Code of Regulations, title 5, section 11969.9(c)(1)(C) mandate inclusion of such foundational documentation along with the facilities request. RCS was required to submit all relevant documentation to the District by November 1, 2008, which the District will analyze to determine whether RCS' ADA projections are reasonable. The documentation provided by RCS to support its Request is wholly insufficient to support a projected enrollment increase for the request year. To begin with, RCS has provided

contradictory figures in its projection tables, and has omitted key pieces of information related to enrollment and ADA projections.

Table 1 of the Request shows a projected total present year ADA to be 252. However, another table provided by RCS shows present year enrollment to be 193, with "N/A" provided for the estimated ADA. Further, the present year roster provided as Attachment 4 lists only 192 students. Moreover, RCS CBEDS submitted in October 2008 reports enrollment of 181, not 193. RCS has not provided any explanation for how it expects to achieve a present year ADA of 252, while the actual number of enrolled students is approximately 181. Table 1 also shows that RCS had an ADA of 208.78<sup>4</sup> for the 2007-08 academic year, yet the CBEDS data attached to the Request as Attachment 6 demonstrates an enrollment of 179 for that year. There are also noticeable discrepancies between RCS' reported enrollment numbers for the previous years. For instance, RCS states it enrolled 232 for the 2005-06 year, while the CBEDS data shows 248 enrolled, and RCS states it enrolled 215 for the 2006-07 year, while the CBEDS data shows 212 enrolled. The District accordingly objects to the declaration offered in support of the projections as to the accuracy of the data supplied by RCS.<sup>5</sup>

Finally, the District notes that although CBEDS data for the present year is currently available, and was available as of the date of RCS' October 31, 2008 Request, this documentation was not included with the Request. The documentation provided by RCS indicates a present year enrollment of approximately 193 students, which does not support the present year ADA of 252 projected by RCS.

The District also notes what appears to be a trend towards an overall declining enrollment at RCS, which undermines RCS' projected increase in enrollment. Based upon the CBEDS data provided by RCS, enrollment numbers at RCS declined from 252 students in 2004-05 to 248 students in 2005-06, to 212 students in 2006-07, and declining further to 211 students in 2007-08. CBEDS reports of enrollment data indicate that enrollment has declined once again to 181 students for the present year. This trend towards a generally declining enrollment demonstrates an inability by RCS to support enrollment above 200 students for the request year.

---

<sup>4</sup> RCS' ADA report for 2007-08, included as Attachment 7 to the Request, indicates a P2 ADA of 208.54

<sup>5</sup> The District is aware that RCS recently submitted a petition for renewal of its charter. The District reserves its right to object to RCS' facilities request to the extent that ADA projections in the Request conflict with those projections included in RCS' petition for renewal. The District further reserves its right to reject RCS' facilities request if the RCS charter is not renewed.

Moreover, the Intent to Re/Enroll Forms provided as Attachment 2 of the Request do not sufficiently support enrollment projections beyond approximately 170 students for the request year. It appears that most or all of the forms were filled out by the students themselves, which does not support the notion that each parent is meaningfully interested in enrolling their child at RCS. There are 154 forms filled out, some with multiple students on them, but several of those 154 forms also contain duplicative student information. This means that the Intent to Re/Enroll Forms only support a maximum student enrollment for the request year of approximately 170 different students. In addition, approximately 10 of those forms, representing 10 to 13 different students, are not signed or dated by anyone, so there is no parent signature showing that the particular student is meaningfully interested in enrolling or re-enrolling.

RCS describes a new housing complex called the Larkspur Village apartments located adjacent to its present facility, and indicates that RCS expects to see an ADA increase of 40-80 for the request year based upon the enrollment of students from families living at the new complex. RCS estimates 50% of the 81 units, with 1-2 children in each unit, which translates to 40-80 students enrolling at the school. RCS has concluded that an increased ADA of 21 is a conservative estimate. However, estimates and speculation are insufficient documentary evidence to support increased enrollment projections.

RCS has provided no documentation to support any such numbers. Indeed, all of the housing population numbers related to Larkspur Village apartments themselves are speculative and largely irrelevant absent any direct indication of interest. RCS states that it has received requests for applications from some of the families in that complex, but has not included copies of those requests. There is no evidence suggesting that any in-district students will be meaningfully interested in attending RCS, and RCS has offered no explanation why any students in the complex would attend RCS rather than another District school, other than RCS' proximity to the complex. Convenience of access to the school is insufficient justification for expected enrollment numbers of any kind, absent documentary evidence of parent and student interest. Also, RCS has requested a District facility for the request year. Providing the request is granted, RCS would no longer be located adjacent to the new housing complex, and therefore proximity cannot be used as a basis for an expected increase in enrollment.

Assuming for the sake of argument that RCS is able to successfully enroll and retain 21 students from the new complex, the figures provided still do not support an ADA above 190. As stated before, RCS presently has 181 enrolled students, and has provided Intent to Re/Enroll Forms evidencing a maximum of 170 students returning to RCS. Included in those 170 forms is documentation suggesting enrollment of approximately five Kindergarten level students. Even assuming RCS enrolled these 21 new students from

the adjacent housing complex, it would still project an ADA for the request year below 200.

### **Additional Concerns**

The District also takes this opportunity to clarify and correct a statement in the Request that the “District is required to allocate school facilities to the Charter School for the following school year based upon projections of average daily classroom attendance provided by the Charter School.” In fact, the allocation of space to a charter school is based upon reasonable projections, not necessarily those presented by the charter school. The District will base any allocation upon reasonable projections of in-district ADA, and not necessarily the projections submitted by RCS.

The operational calendar provided in the Request shows August 18, 2009 as the first day of instruction for the 2009-10 academic year. Further, the Request seeks access to the District facility on or before July 1, 2009, in order to prepare for instruction. However, as the Request also acknowledges, the District’s obligation under section 11969.9(j) provides that the space allocated to the charter school must be made available no less than ten (10) working days prior to the first day of instruction at the charter school. For good cause, the period is subject to reduction by the school district, but to no fewer than seven working days. Based upon this provision, the District currently plans to provide RCS with access to a suitable facility by August 4, 2009, which is ten working days prior to RCS’ first day of instruction on August 18, 2009.

The Request identifies the former Vieweg Elementary School (“Vieweg”) as a site where the charter school wishes to locate. Without addressing the status of Vieweg and/or reasonable equivalence of the site, the District notes that the RCS charter cites its present location at 325 South Downs as the school’s facility. The California Department of Education has taken the position with regard to Proposition 39 that a charter school is bound to the site identified in its charter. Additionally, in regard to RCS’ Request, RCS has identified Larkspur Village apartments, a new housing complex directly adjacent to RCS’ present location at a private facility at 325 South Downs, as a source of projected increased enrollment for the request year. The Vieweg site is not adjacent to the new housing complex. RCS touts its proximity to this housing complex as a reason for projecting an increase of 21 in ADA for the request year. As the sole identifiable source projected by the Request to increase enrollment at RCS, moving locations to a non-adjacent facility would further diminish RCS’ enrollment projections.

The District also notes that the Request seeks an excessive number of classrooms and facilities for the projected ADA. Pursuant to the Regulations, in-district students will

Tina Ellingsworth  
Ridgecrest Charter School  
November 25, 2008  
Page 10

be allocated classroom space and/or access to specialized classroom space commensurate with that provided to students attending District schools.

The District understands the obligations of Proposition 39 and the implementing regulations and is fully prepared to comply. We note that to the degree you suggest that the *Ridgecrest Charter School v. Sierra Sands Unified School District* (2005) 130 Cal.App.4<sup>th</sup> 986, case requires the District to prepare a statement of reasons to address an allocation of space under Proposition 39, you are incorrect. The *Ridgecrest* opinion, now purportedly reflected in section 11969.2(d), only requires a finding and a written statement of reasons if a school district's offer does not accommodate a charter school at a *single school site*. Although RCS presently operates on one contiguous school site, RCS has provided no support for the assertion that "the Charter School's educational program requires a single contiguous school site in which to operate." The District is prepared to fully comply with the law in handling the Request.

Sincerely,



Joanna Rummer  
Superintendent  
Sierra Sands Unified School District



## **RIDGECREST CHARTER SCHOOL**

Home of the Eagles

Joanne Rummer, Superintendent  
Sierra Sands Unified School District  
113 W. Felspar Ave.  
Ridgecrest, CA 93555

Sent Via Facsimile and US Mail  
Fax: 760-375-3338

***Re: Ridgecrest Charter School Proposition 39 Request for the 2009/2010 School Year***

Dear Superintendent Rummer:

We are in receipt of the District's letter dated November 25, 2008 expressing the District's concerns regarding Ridgecrest Charter School's ("RCS" or "Charter School") Average Daily Attendance ("ADA") projections in the RCS Proposition 39 request for the 2009/2010 school year. We have a number of concerns regarding your letter that we have outlined below.

First, your citations to the Proposition 39 implementing regulations on page 2 of your letter are incorrect. You have cited the old and outdated regulations. This has led to multiple misstatements of the law through out your letter. Specifically, the new regulations provide as follows:

"The written facilities request consists of:

- (A) Reasonable projections of in-district and total ADA and in-district and total classroom ADA, based on ADA claim for apportionment, if any, in the fiscal year prior to the fiscal year in which the facilities request is made, adjusted for expected changes in enrollment in the forthcoming fiscal year;
- (B) A description of the methodology for the projections;
- (C) If relevant (i.e., when a charter school is not yet open or to the extent an operating charter school projects a substantial increase in in-district ADA), documentation of the number of in district students meaningfully interested in attending the charter school that is sufficient for the district to determine the reasonableness of the projection, but that need not be verifiable for precise arithmetical accuracy;
- (D) The charter school's operational calendar;

- (E) Information regarding the district school site and/or general geographic area in which the charter school wishes to locate; and
- (F) Information on the charter schools educational program, if any, that is relevant to assignment of facilities.”

Contrary to your assertions, the regulations do not define a “substantial increase” in ADA that would trigger the obligation of a charter school to provide supporting documentation; rather, you measure whether a charter school is projecting a “substantial increase” by comparing the projected ADA to the P-2 ADA in the prior year (here, 2007-2008) (5 CCR 11969.9(c)(1)(A) and (C)). A 10% increase in ADA is not a substantial increase. In the absence of a substantial increase in ADA, a charter school need not provide any supporting documentation.

As described more fully below, RCS is revising its projected ADA as a result of recent information received about the opening date of the Larkspur Village apartment complex. Because the complex opening date was delayed after RCS submitted its Proposition 39 request to the District, RCS is adjusting its projected ADA for 2009/2010 to **231 ADA**.

As noted, RCS is projecting an increase in ADA of 21 students, from 209.52 ADA at P-2 of the 2007/2008 school year to 231 ADA for the 2009/2010 school year. This increase of 21 ADA is only a 10% increase. Supporting documentation is only required for a substantial increase in in-District ADA, and a 10% increase is not substantial enough to justify the need for supporting documentation. However, as noted in RCS’ original request letter, RCS has provided documentation supporting the retention of its current enrollment, and has described to the District the Larkspur Village apartment complex that will be opening across the street from its current location. It is not unreasonable that parents will choose to send their child(ren) to such a proximate and academically strong school. Of course, because the apartment complex is not open yet, RCS has estimated a conservative increase of 21 ADA from the new population, which the District could have investigated to justify any objections it might have to the projection – yet the District chose not to do so. As a result, RCS had provided the District with sufficient documentation to support its reasonable projection of an increase of 21 ADA, to 231 ADA for the 2009/2010 school year.

Second, your letter begins with a footnote indicating that the current Proposition 39 implementing regulations established by the State Board of Education have been the subject of a lawsuit in Sacramento. As you are also no doubt aware, the trial court has since issued a ruling in this matter which upheld 95% of the State Board of Education’s revised implementing regulations, including upholding the provisions upon which the District appears to be basing its objections. Therefore, the small portion of the implementing regulations overturned by the trial court do not affect the allocation of facilities to RCS. Moreover, there will undoubtedly be cross appeals of this decision which will stay the implementation of any judgment. As a result, the revised regulations are valid and govern this District’s allocation of facilities to RCS for the 2009/2010 school year.

Third, your letter seems to imply, based upon the ruling of the *Environmental Charter High School v. Centinela Valley Union High School District*, 122 Cal.App.4<sup>th</sup> 139 (2004), that RCS may not submit additional documentation to substantiate the reasonableness of its projections after November 1, 2008. Here again, the District's assertion is inaccurate. The *Environmental Charter School* decision was predicated upon the State Board of Education implementing regulations in place prior to the most recent amendments, in which a charter school was not given the opportunity to formally respond to a district's objections to its ADA projections as part of the formal Proposition 39 process. In the recent court challenge to the new regulations, the trial court in Sacramento recognized that the State Board of Education specifically revised the regulations regarding the application process for an allocation of Proposition 39 facilities. This newly revised and iterative process clearly allows RCS to respond to any objections raised by the District to RCS' projections and reaffirm or modify its prior projections with arguments and/or additional supporting documentation. As a result, the prior *Environmental* case is no longer controlling regarding this aspect of the process and RCS may respond to the District's objections with additional supporting documentation.

Fourth, the District attempts to establish RCS' attendance rate and ADA by looking at RCS' CBEDS (calculated in October of each school year) and attendance data that is calculated at varying times during the year. From this the District claims the average ADA rate for the School is 94%. While the District claims that data supplied by RCS is unreliable, the District must be aware that ADA can only be calculated by looking at enrollment data and attendance data from the same period of time. A calculation such as the District's, using data from different periods of time, would be unreliable and invalid because public school enrollment and attendance fluctuate over the year (including in the District's school). Therefore, the District cannot calculate the actual ADA rate for RCS using the enrollment data and attendance data found on the CDE website because the data is not calculated at the same time period; rather, it must use both the enrollment data and RCS' ADA at P-2 each year.

Given the unreliability of the District's calculations, the District has not provided any evidence that the projected ADA of 95% in RCS' request letter is inaccurate and the Charter School's enrollment rate should stand. However, in order to assuage any concerns the District may have about the Charter School's ADA rate, we have provided further calculations that fully substantiate the ADA rate claimed by RCS. Specifically, we have provided the ADA for each of the past three years at P-2, as well as the enrollment number for those same years on the same date that P-2 was submitted.

<b>Year</b>	<b>Enrollment at P-2</b>	<b>ADA at P-2</b>	<b>Attendance Rate</b>
2005-2006	232	224.97	97%
2006-2007	215	204.12	95%
2007-2008	220	209.52	95%

As the table demonstrates, RCS had an average attendance rate of 96% and thus the District's use of a 94% attendance rate was inaccurate and RCS' use of 95% was conservative and supported by the data.

Fifth, the District attempts to reduce RCS's projected ADA for the 2009/2010 school year by looking at the RCS CBEDS data for the current school year (taken in the month of October, 2008). In addition, the District claims RCS failed to submit supporting documentation for this projected increase in ADA. The District makes a number of errors in its assertions. The Charter School only needs to make a "reasonable projection" of ADA for the request year.

The reasonableness of the projection is based upon the RCS P-2 ADA in the prior years and NOT at the CBEDS data for the current year. Because the P-2 ADA for the 2007/2008 school year was 209.52 and the Charter School only projects a small increase to 231 ADA next year, the Charter School has not projected a substantial increase in ADA and therefore its projection is "reasonable" AND need not be supported by documentation (please note that despite no obligation to do so, the Charter School supported its request with the names of 192 current students of the Charter School). In addition, because RCS has reassessed its projected ADA for this year and next year based upon the delayed opening of the Larkspur Village Apartments (and projects ADA of 231 for the 2009/2010 school year) the Charter School is projecting a small increase in ADA for the next school year.

Further, the District misinterprets enrollment data submitted by RCS. It is common knowledge that charter school ADA actually increases during the year as parents move their children from traditional public schools into charter schools; the result is that charter school enrollment increases from CBEDS to P-1 and to P-2. Yet the District attempts to claim that because RCS's current enrollment at CBEDS is lower than that projected at P-2, RCS's data is inaccurate. In fact, the data submitted by RCS and the data cited by the District both demonstrate that RCS's enrollment and ADA will increase substantially over the course of the school year. As noted by the District, for example, while RCS's CBEDS enrollment (submitted the prior October) was 179ADA, RCS' ADA at P-2 (submitted at the end of the school year, in May) was 209.52, an increase of 20 ADA. Furthermore, in 2005-2006 the District noted that CBEDS enrollment in October was 232, and ADA at P-2 was 249, an increase of 15 ADA. Therefore, RCS has substantial proof that its P-2 ADA is higher than its CBEDS data each year, consistent with its projections for this year and next year.

As further proof, RCS had an enrollment of 192 at the time it submitted its Proposition 39 request for 2009/2010 school year (November 1, 2008). It will have an enrollment of 200 upon reopening in January, and expects its enrollment to continue to increase. Therefore, the Charter School's projections have at all times been reasonable and reflect the Charter School's increased enrollment over the course of the school year, and the District's objections are unsupported and contrary to the data.

However, while its original projections were reasonable and supportable, since the submission of its Proposition 39 request, RCS has been informed that the opening of the Larkspur Village apartments has been delayed until March of 2009. As a result, RCS has determined that a reasonable projection for 2008/2009 will be 220 ADA and 2009/2010 will be 231 ADA. Given that its current enrollment is 200, and will likely be 220 during the next semester, and given that RCS has historically seen an increase in its enrollment over the course of a school year, this projection should be accepted by the District and is a "reasonable projection" as required by the implementing regulations.

Consequently, RCS's projection of 231 ADA is "reasonable" and fully satisfies Proposition 39 and the implementing regulations. The reasonableness of the Charter School's projections is further supported by the fact that the Charter School would not be subject to the over-allocation fees of the Proposition 39 implementing regulations unless its projections exceed its ADA measured at P-2 (May2010) by more than 10% or 25 ADA, whichever is greater. (5 CCR 11969.8).

Sixth, the District objects to RCS's projected Kindergarten enrollment even though it specifically states and recognizes that RCS has increased its Kindergarten enrollment each of the prior years. In fact, without any evidence or justification the District claims that Kindergarten enrollment will decline almost a third in the current year. As noted above RCS need not provide documentation to support its Proposition 39 request unless it is projecting a substantial increase in enrollment in its overall program – this is not measured at each grade level; a charter school need NOT provide any supporting documentation if it is not projecting a substantial increase. A charter school need not provide supporting documentation for Kindergarten when not projecting a substantial increase in Kindergarten – and the reasonableness of RCS's projections is certainly supported by the its historical growth trends in Kindergarten and the increase in student population surrounding the School's current location.

The District also bases its reduction in projected ADA on RCS' enrollment projections in its charter renewal petition. Not only is the enrollment data contained in the charter petition irrelevant to a Proposition 39 request, but it was also submitted prior to RCS becoming aware of information that changed its enrollment projections. Specifically, at the time RCS submitted its charter renewal petition on October 1, 2008, the Charter School budgeted for 190 ADA because it was not aware of the status of the Larkspur Village Apartments complex, to be situated close to the Charter School. However, in late October, shortly, before RCS submitted its Proposition 39 request to the District, RCS was made aware that the apartment complex had received a confirmed opening date of December, 2008. When RCS had a confirmed open date it increased its projected ADA based on the anticipated 81 family-sized units at Larkspur Village. As a result, RCS' enrollment projections increase from the time it submitted its renewal petition to the time it submitted its Proposition 39 request, and the District's reduction is without merit.

Seventh, the District makes several allegations that the Intent to Re/Enroll forms submitted with the request are faulty because of some missing information or because the form was allegedly "filled out by students." Again, all of these allegations are without merit and not supported by the implementing regulations. There is no definition in the implementing regulations that outlines the requirement of the supporting documentation to be submitted with a request, nor does the District have any actual proof that the forms were filled out inappropriately. If the District has any concerns regarding the legitimacy of the interest of the families on the Intent to Re/Enroll form, it should have called these families prior to the December 1 deadline to test their meaningful interest at the time the forms were completed. The time for that challenge has passed.

Eighth, the District claims the California Department of Education ("CDE") has taken the position that the Charter School must locate in the facility outlined in its

charter. This is patently false. The CDE has noted on numerous occasions that a charter school may apply for Proposition 39 facilities and if the charter school and its authorizing district arrive at an agreement through the Proposition 39 process, the charter may be amended to reflect the new facility location. Thus, the current location or notation in the charter is not an impediment to the relocation of the Charter School.

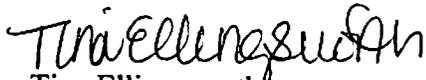
For all the reasons stated above the Charter School's projections of ADA in the Proposition 39 request are reasonable and fully supported by the documentation provided and the historical ADA of the Charter School. Thus the District must allocate the Charter School facilities based upon ADA of 231 for the 2009/2010 school year.

Should you have any questions or comments regarding the Charter School's response please do not hesitate to contact me. I appreciate your time and consideration of the RCS request.

Cc: Paul C. Minney, Spector, Middleton, Young & Minney, LLP

---

Sincerely,

  
Tina Ellingsworth  
Ridgecrest Charter School

---

Received at the District on December 31, 2008, at 11:25 a.m./p.m.

  
Signature

Jane B. Brooks  
Print Name / Title

Asst. to Supt.

RCS COPY

**FACILITIES USE AGREEMENT  
BY AND BETWEEN  
SIERRA SANDS UNIFIED SCHOOL DISTRICT AND  
RIDGECREST CHARTER SCHOOL**

THIS AGREEMENT (“Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the Sierra Sands Unified School District, a public school district organized and existing under the laws of the State of California (“District”) and Ridgecrest Charter School, a California public charter school (“Charter School”). The District and the Charter School are collectively referred to as “the parties.”

**R E C I T A L S**

**WHEREAS**, the Charter School is a charter school approved by the State Board of Education and operates pursuant to its Charter and any Memorandum of Understanding (“MOU”); and

**WHEREAS**, pursuant to the requirements of California Education Code section 47614 and its implementing regulations (“Proposition 39”), on October 31, 2008, the Charter School submitted to the District a written request for facilities for the 2009/10 school year, projecting 273 in-district ADA (“Request”). A true and correct copy of the request is attached as **Exhibit A** and incorporated herein by reference; and

**WHEREAS**, pursuant to Cal. Code Regs., tit. 5, section 11969.9(d), the District timely reviewed the Charter School’s projections of in-district and total ADA and in-district and total classroom ADA and, on or before December 1, expressed objections in writing and stated the reduced projection of 190 in-district ADA that the District considers reasonable; and,

**WHEREAS**, the Charter School responded to the District’s objections by letter dated December 31, 2008, reducing its projection from 273 to 231 in-district ADA; although the District’s evaluation is that the information does not support an increase in ADA from the Charter School’s 2007/08 P-2 ADA of 208.54, the District has agreed to use the revised projection of 231 ADA without waiver of its objections; and,

**WHEREAS**, the District provided to Charter’s School by letter dated January 29, 2009, its Preliminary Offer to Charter School for facilities for the 2009/10 school year, and,

**WHEREAS**, the Charter School responded to the District’s Preliminary Offer of facilities for the 2009/10 school year by letter dated February 27, 2009, raising objections to the District’s Preliminary Offer, and,

**WHEREAS**, pursuant to a letter agreement of the parties dated April 2, 2009, it was agreed that the District's final offer would be provided on or before May 15, 2009 and the Charter School would respond thereto by May 30, 2009, a true and correct copy of which is attached as **Exhibit B** and hereby incorporated by this reference;

**WHEREAS**, pursuant to a letter agreement of the parties dated May 12, 2009, it was agreed that the District's final offer would be provided on or before May 22, 2009 and the Charter School would respond thereto by May 30, 2009 and it was further agreed that to the degree the District's offer was accepted the facility would be made available August 31, 2009, a true and correct copy of which is attached hereto as Exhibit C and incorporated herein by this reference;

**WHEREAS**, in conformity with the requirements of Proposition 39 and its implementing regulations, on May 22, 2009, the District Board of Education having evaluated the Request, the Charter School's projections, the Charter's Schools objections, the District's facilities options, the needs of the Charter School students as well as the needs of the students attending District programs, and a variety of additional factors as required by law, made a written final offer to provide the Charter School with facilities for its in-District students, a true and correct copy of which is attached as **Exhibit D** and hereby incorporated by reference; and

**WHEREAS**, the Charter School accepted the District's facilities offer in a letter dated \_\_\_\_\_, 2009, a copy of which is attached as **Exhibit E** and herein incorporated by reference; and

**WHEREAS**, the parties desire to set forth the terms and conditions pursuant to which the Charter School will occupy classrooms and use facilities, including recreation, play space, and furniture and equipment installed therein by the District (collectively "Facilities") at the Inyokern Elementary School, 6601 Locust Avenue, Ridgecrest, California ("Site") for the 2009/10 school year. A description of the Site and Facilities is attached hereto as **Exhibit F**.

**NOW THEREFORE**, in consideration of the covenants and agreements hereinafter set forth, the parties agree as follows:

**Section 1. Use of Site and Facilities.** District agrees to allow Charter School exclusive use of the classrooms allocated to the Charter School, for the sole purpose of operating the Charter School and its related educational programs in accordance with the Charter School's charter and any MOU with the State Board of Education. The Site and Facilities and Monroe Middle School will be shared with a District program and the terms related to Charter School's shared use shall be described and outlined in **Exhibit F** to this Agreement, which terms and conditions are incorporated into this Agreement by reference.

The Charter School acknowledges that the District is in the process of and will be modernizing the Site, including the Facilities, during the term of this Agreement

("Modernization Project"). In order to facilitate the Modernization Project, the Charter School further acknowledges and agrees that the Facilities, as described in **Exhibit F** hereto, shall be subject to modification for a portion of the 2009/2010 school year ("Modified Facilities"). Modification of the Facilities will not require the Charter School to move off of the Site, but will require it to move to other classrooms on the Site during construction activities on and around the Facilities. The District shall give the Charter School shall not less than fifteen (15) days notice of the modification to ensure the Charter School's smooth transition to other classroom space. To the extent the Charter School does not agree with the proposed Modified Facilities, the parties agree to meet and confer to resolve the Charter School's concern. Notwithstanding the parties' duty to meet and confer, the District retains the sole right to identify the Modified Facilities during the course of construction, which Modified Facilities shall be reasonably equivalent to the Facilities set for in **Exhibit F**.

Upon the termination of this Agreement pursuant to Section [8] hereof, the right to use and occupation of the Site and Facilities and Monroe Middle School shall revert to the District. As titleholder to the Site and Facilities and Monroe Middle School (with the exception of those Charter School furnishings and equipment referenced in Section [4] below), the District reserves the right at the termination of this Agreement to recoup the full rights and benefits of such ownership, including but not limited to use of such Site and Facilities and Monroe Middle School for District programs and services.

Subject to the terms of **Exhibit D**, Charter School shall have full and exclusive use of the classroom space allocated to the Charter School. Although Charter School shall have full and exclusive use of the classrooms allocated, Charter School is bound by the terms of the Civic Center Act (Education Code section 38131 *et seq.*) and/or any joint use or recreational program use established by the District.

Pursuant to the requirements of Proposition 39, the allocation of space as set forth in this Section is based upon an assumption of 231 in-district ADA for the 2009/2010 school year. Future requests for facilities or furnishings and equipment based on ADA increases may be made in the manner specified in Section 11969.9 of the Proposition 39 regulations (Cal. Code Regs., tit. 5, § 11969.9.)

**Section 2. Allocation of Space.** Pursuant to the requirements of Proposition 39, the allocation of classrooms and shared space on the Site and Facilities is based upon an assumption of 231 in-District ADA for the 2009/10 school year. The allocation of space to the Charter School is made by the District with the express understanding and on the assumption that the total space provided pursuant to this Agreement is based upon square footage believed sufficient for the housing of in-District ADA only. The Charter School is not authorized to make any physical changes to the space. Charter School will have shared use of common spaces at the Site and Facilities and Charter School in-district students in middle school grades shall have access on a pro rata shared basis to specialized classroom space at the Monroe Middle School including the computer lab, gymnasium, music room, and science lab as described more fully in **Exhibit D**.

**Section 3. Civic Center Act Compliance.** The Charter School shall have primary use of the space allocated to the Charter School for the operation of its educational program during its regular school hours; provided, however, that after 5 pm during the week and all day on weekends and holidays, the Site and Facilities shall be subject to use by the public pursuant to the Civic Center Act and/or any joint use or recreational program use that has been established by the District. Civic Center Act use requests for use of the Site and/or Facilities by users other than Charter School shall be evaluated and handled by the District, but coordinated with the Charter School. Civic Center requests for use should be directed to the District Administration:

Joanna Rummer, Superintendent  
113 Felspar Ridgecrest, CA 93555-3589  
(760) 375-3363

**Section 4. Furnishings and Equipment.** The District shall provide furniture and equipment necessary for Charter School to conduct basic classroom instruction (specifically, student desks, chairs and white boards) reasonably equivalent with that provided for classrooms used in District programs and additional front office furnishings and equipment on a shared basis as further described in **Exhibit D** hereto. Charter School shall not sell or otherwise dispose of furniture or equipment and the District will not replace furnishings and equipment disposed of by the Charter School. Furniture and equipment will be provided from existing District inventory, and will remain the property of the District. The Charter School shall return all District-owned furniture and equipment to the District at the end of the Term, or upon vacating the Site and Facilities and Monroe Middle School, in the same condition as received, with the exception of reasonable wear and tear. To the degree Charter School is authorized to utilize furniture and equipment on a shared basis with the District's program at the Site and at the Monroe Middle School, it will be responsible for any damage caused by its use. The parties shall develop a mutually agreeable inventory of the furnishings and equipment that will be located at the Site and Facilities and Monroe Middle School.

No later than November 1, 2009, the District shall provide a complete inventory of all furnishings and equipment provided by the District for use by the Charter School. Charter School shall have until December 1, 2009 to execute and return the inventory list. Charter School shall maintain an inventory of all personal property of the Charter School. The Charter School inventory shall be updated as the Charter School purchases new furnishings and equipment and/or surpluses and sells its own furnishings and equipment.

**Section 5. Telecommunications.** The facilities are wired for telephone and computer data connectivity, including servers, routers and switches. The responsibility to provide all communications equipment, including telephones, computer and related hardware, software, and all required services, shall be the responsibility of the Charter School.

**Section 6. Reimbursement:** In the event that the space allocated to the Charter School has been "over allocated" in accordance with Cal. Code Regs., tit. 5, § 11969.8, the Charter School shall reimburse the District accordingly. For purposes of

monitoring compliance with these regulations, Charter School shall provide the District with its actual ADA count and the number of in-District students of Charter School at the time of the filing of the P-1 state attendance report and at the time of the filing of the P-2 state attendance report. Upon written request of the District, the Charter School shall additionally provide to the District on the foregoing dates the names and addresses of in-District students, along with proof of residency for each in-District student, which proof may include a current utility bill for the stated address of residency or an executed and current property lease or any other form of proof approved by the District. The District shall only use the names and addresses for the purpose of verifying residency, and will not use the information to contact such students except upon the consent of the Charter School. The District will invoice the Charter School in the event of over-allocation.

**Section 7. Term.** The term of this Agreement shall commence on August 1, 2009 and end on June 30, 2010; however, the Site and Facilities or use of Monroe Middle School shall not be delivered to the Charter School until August 31, 2009. Should the Charter School require facilities for the subsequent school year, Charter School shall submit a request for facilities pursuant to Education Code section 47614 and the implementing regulations (Cal. Code Regs., tit. 5, §§ 11969.1 et seq.) The District makes no guarantee or representation that the Site and Facilities will be available for any additional term beyond the current term and/or that a Site shall not be required to be shared with other programs or District charter schools in future years. The District retains all rights including the right to move the Charter School in the future in conformity with law.

**Section 8. Termination.** This Agreement will automatically terminate upon the effective date of any termination, non-renewal, or revocation of Charter School's charter or the cessation of Charter School's operations for any reason or upon the commission of a default or breach of its obligations 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:

- (a) The failure by Charter School to make timely payment of any fees due under this Agreement where such failure shall continue for a period of thirty (30) days after receipt of written notice thereof by District to Charter School.
- (b) The failure by Charter School to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by Charter School (including shared use terms, if applicable) where such failure shall continue for a period of thirty (30) days after receipt of written notice thereof by District to Charter School;
- (c) Revocation or non-renewal of Charter School's charter by the District or cessation of the Charter School's program for any reason;

- (d) The failure by Charter School to utilize the Site or Facility or the shared space at Monroe Middle School for the sole purpose of operating a charter school as authorized by this Agreement and the Charter School's charter and any MOU.
- (e) The failure of Charter School to limit its use of the Site and Facility to the space allocated to Charter School pursuant to this Agreement and in conformity with the District's policies and practices for use of District facilities.

**Section 9. Costs.** The pro-rata charge for the Charter School's use of the Site and Facility and Monroe Middle School shall be \$\_\_\_\_\_ per square foot as calculated in conformity with Cal. Code Regs., tit. 5, § 11969.7. The Charter School has been allocated \_\_\_\_square feet of space for a total pro-rata charge of \$\_\_\_\_\_. Payment for the pro-rata share will be payable in 10 monthly payments. The first payment shall be due no later than August 1, 2009 and each additional payment will be due on or before the first day of each month thereafter.

**Section 10. Utilities.** Charter School shall be solely responsible for the cost of utilities used or consumed by the Charter School on the Site and Facility, including, if applicable, the cost of internet access services.

**Section 11. Maintenance of Site and Facilities.** The District shall provide routine maintenance and repair of the Site and Facilities, which includes existing irrigation systems but excludes landscape and grounds maintenance and all custodial service. If Charter School desires, it may request that District provide landscape and grounds maintenance or custodial service, which shall be at an additional cost to be determined by the District. If Charter School elects to provide its own landscape and grounds maintenance or custodial services, Charter School shall comply with all District's policies and practices for maintenance of its facilities and grounds. Notwithstanding the foregoing, however, Charter School shall be solely responsible for providing all supplies necessary for maintenance, for custodial services as well as all restroom supplies. District shall be responsible for repair of vandalism not caused by the Charter School or its students, employees, agents, representatives or invitees, and consistent with District policy for District schools. Charter School shall be responsible for repairs or corrections required as the result of damage caused by Charter School, its students, employees, agents, representatives or invitees.

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 customary practices. The District shall be responsible for the major maintenance of the Site and Facilities. For purposes of this section, "major maintenance" includes the major repair or replacement of plumbing, heating, ventilation, air conditioning, communication wiring, electrical, roofing, and floor systems, exterior and interior painting, and any other items considered deferred maintenance under

Education Code section 17582. All other kinds of maintenance shall be the Charter School's responsibility. District shall have access to the Site and Facilities to perform maintenance and inspections and will coordinate such work with the Charter School administration.

Contact Information:

Emergency:

District: School Police:

Charter Site Administrator: \_\_\_\_\_

Charter Lead Operations: \_\_\_\_\_

Major Maintenance Request:

District:

Minor Maintenance Request for Service:

District:

**Section 12. Installation of Improvements.** No structures, improvements, fixtures (as defined in Civil Code 660), alterations (including painting of any interior or exterior surfaces), or facilities, shall be constructed, erected, altered, added, or made on or within the Site or Facility or Monroe Middle School without the prior written consent of District and subject to terms agreeable to District, and, if required, the Division of State Architect. In the event Charter School makes any modification to the Site or Facility or Monroe Middle School in violation of this provision it shall be required to restore the Site and Facility and Monroe Middle School to its original condition at Charter School's sole expense within 15 days of notice of the violation. "Original condition" as used in this provision shall refer to the condition in which the Site and Facilities and Monroe Middle School existed upon the walk through as referenced in Section 13.

**Section 13. Condition of Property.** The District agrees to provide a facility suitable for use as an instructional school site. The Charter School shall have an opportunity to "walk-through" the facilities with District Personnel to inspect and notate the condition of the facilities at the time of turnover. The Charter School, at its sole cost and expense, shall comply with all applicable laws, regulations, rules and orders with respect to its use and occupancy of the Site. District is responsible for appropriate modifications to existing facilities that may be necessary to comply with new laws or regulations consistent with the support provided to other District school sites.

The Charter School shall not be responsible for any and all legal compliance or environmental conditions that existed prior to the Charter School's occupancy of the Site on August 31, 2009. The District shall remain responsible for all legal compliance with, for example, the ADA, environmental laws, and other applicable building code standards, for any existing compliance issue prior to the date of the Charter School's occupancy of the Site on August 31, 2009 and continuing through the Term of this Agreement. The Charter School shall assume responsibility for legal compliance to the extent that such

compliance is triggered by any activities or conduct of the Charter School or by any modifications or improvements made by the Charter School.

In the event that use or modification of the Site and Facilities and/or Monroe Middle School by the Charter School triggers the application of and/or compliance with the California Environmental Quality Act (“CEQA”) or compliance with any existing environmental mitigation measures related to ongoing use of the Site or Facility or Monroe Middle School, Charter School shall comply with same. Should Charter School engage in any activity on the Site or Facility or Monroe Middle School that constitutes a “project” under CEQA, the cost of CEQA compliance shall be borne in full by the Charter School, but District shall act as the lead agency for the purposes of such CEQA compliance. Should Charter School fail to inform District of activities that may require CEQA compliance in advance of engaging in such activities, Charter School shall assume all liability for legal claims arising out of said failure.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Site or Facility or upon or from the Monroe Middle School in whole or in part as a result of the Charter School’s use and occupancy thereof, the Charter School, at its expense, shall be obligated to clean all the property affected, to the satisfaction of the District and any governmental agencies having jurisdiction over the Site. Where the resulting discharge, leakage, spillage, emission, or pollution results from a facilities system failure, the District will assume responsibility for required clean up of the affected property.

**Section 14. Title to Property.** The parties acknowledge that title to the Site and Facilities and Monroe Middle School is held by the District and shall remain in the District at all times. In the event Charter School fails to limit its use of the Site and Facility and Monroe Middle School to the space allocated to Charter School pursuant to this Agreement it shall be in breach of the Agreement as set forth in Section 8(e), and shall be further subject to a fee at the rate of \$10 per square foot per day for any such space used or partially used by Charter School.

**Section 15. Fingerprinting.** Charter School shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1. The District shall be responsible for complying with all criminal background check laws for all employees or vendors that it directs to the Site for any work to be performed at its direction.

**Section 16. Insurance.** The Charter School shall, at its sole costs and expense, commencing as of the date of this Agreement, and during the entire Term hereof, procure, pay for and keep in full force and effect the following insurance:

- (a) **General Liability Insurance.** The Charter School shall maintain throughout the Term of this contract, at its own expense, general liability insurance with limits of liability of \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If any form with a general

aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limit. This insurance shall include products and completed operations of the same limits as the policy limits. This insurance shall be endorsed to include the following: (i) the District, its officers, officials, employees, agents and volunteers as additional insureds; (ii) a waiver of any right to contributions from any other coverage purchased by, or on behalf of, the District; and (iii) a written notice to be mailed to the District 30 days prior to the effective date of a cancellation or non-renewal of such insurance.

- (b) **Automobile Liability.** The Charter School shall maintain throughout the Term of this Agreement at its own expense, automobile liability insurance with limits of liability of \$2,000,000 per occurrence, for owned, non-owned or hired vehicles. If any form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limit. Such insurance shall apply to any automobile, Symbol 1 of the ISO Form. Such insurance shall be endorsed to include the following: (i) the District, its officers, officials, employees, agents and volunteers as additional insureds; (ii) a waiver of any right to contributions from any other coverage purchased by, or on behalf of, the District; and (iii) a written notice to be mailed to the District 30 days prior to the effective date of a cancellation or non-renewal of such insurance.
- (c) **Property Insurance.** The District will continue to maintain its current levels of first party insurance on the structures on the Site. The Charter School shall secure and maintain property insurance that addresses business interruption and casualty needs, including flood and fire, and other hazards with replacement costs coverage for all assets listed in the Charter School's property inventory and consumables. The Charter School shall secure property coverage with a minimum policy limit of 80% of the fair market value of the Charter School's contents.
- (d) **Workers' Compensation insurance** as required by the State of California and Employer's Liability insurance (for lessees with employees). This insurance shall be endorsed to include the following: (i) a waiver of any right to contributions from any other coverage purchased by, or on behalf of, the District; and (ii) a written notice to be mailed to the District 30 days prior to the effective date of a cancellation or non-renewal of such insurance.

Any and all deductibles or self-insured retentions applicable to the above required insurance shall be specifically approved by the District prior to its application, except the Property Insurance required above may include a deductible of not more than \$10,000 without prior approval.

The insurances required above shall be provided by a company or insurance joint powers authority with the consent of the District prior to commencement of such insurance.

The Charter School shall provide proof of such insurance prior to taking possession of the Site and Facilities, including copies of the endorsements specifically required above. The Charter School shall provide proof of renewal of any insurance required above, including any endorsements required, at least 15 days prior to the expiration of such insurance.

**Section 17. Indemnification.** The Charter School shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the District, its officers, directors, and employees, attorneys, agents, representatives, volunteers, successors and assigns (collectively hereinafter District and District Personnel) from and against any and all actions, suits, claims, demands, losses, costs, penalties, obligations, errors, omissions, or liabilities, including legal costs, attorney's fees, and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered against District and/or District Personnel, that may be asserted or claimed by any person, firm or entity arising out of the Charter School's use of the Site or Facility or Monroe Middle School or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by Charter School in or about the Site or Facility or Monroe Middle School after District delivers possession and/or use of the Site or Facility or Monroe Middle School to the Charter School. This indemnity and hold harmless provision shall exclude actions brought by third persons against the District arising out of the willful negligence or intentional acts, errors or omissions of the District and/or District Personnel.

District shall indemnify, hold harmless, and defend Charter School, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Site or Facility or Monroe Middle School after District delivers possession or use of the Site or Facility or Monroe Middle School to the Charter School, arising from the District's prior or current use or maintenance of the Site or Facility or Monroe Middle School or from prior or current conduct of its business or from any activity, work, or other things done by the District its trustees, officers, employees and agents in or about the Site or Facility or Monroe Middle School; provided, however, that District shall not have any obligation to indemnify, hold harmless or defend the Charter School, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Site or Facility or Monroe Middle School after District delivers possession and/or use of the Site or Facility or Monroe Middle School to the Charter School, resulting from or arising out of the negligence or willful malfeasance of the Charter School, its trustees, officers, employees and agents or any person or entity not subject to the District's control and supervision.

**Section 18. Full Satisfaction of Proposition 39/Release of Claims.** Charter School agrees that by accepting the Site and Facilities, the District has fully and completely satisfied the District's obligation to provide facilities to the Charter School under Education Code section 47614 and the Proposition 39 regulations for the 2009/10 school year and Charter School waives any claims under section 47614 and the Proposition 39 regulations.

**Section 19. Access.** Charter School shall permit District, its agents, representatives or employees, to enter upon the Site or Facility for the purpose of inspecting same or to make repairs, alterations, or additions to any portion of the Site or Facility required by this Agreement. District shall attempt to give reasonable notice where practicable but shall not be obligated to do so in the event of emergency or imminent threat to health or safety of occupants.

**Section 20. Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

If to the District:       Attn: Joanna Rummer, Superintendent  
                                  113 Felspar Ridgecrest, CA 93555-3589  
                                  (760) 375-3363

If to the School:        [Charter School]  
  
                                  Attn: Principal

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

**Section 21. Subcontract and Assignment.** Neither party shall assign its rights, duties or privileges under this Agreement, nor shall a party attempt to confer any of its rights, duties or privileges under this Agreement (including that of sublease) on any third party, without the written consent of the other party. Charter School shall not sublease, pledge, encumber, mortgage or otherwise transfer or assign to any party whatsoever any interest in the Site or Facilities or Monroe Middle School.

**Section 22. Independent Status.** 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, or association.

**Section 23. Entire Agreement of Parties.** This Agreement, and all its incorporated documents, constitute the entire agreement between the parties and supersede all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by the parties expressly indicating an intent to modify or amend this Agreement.

**Section 24. California Law.** This Agreement shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Kern County, California.

**Section 25. Waiver.** The waiver by any party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

**Section 26. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns.

**Section 27. Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

**Section 28. Captions.** The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the parties hereto.

**Section 29. Severability.** Should any provision of this Agreement be legally determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.

**Section 30. Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

**SIERRA SANDS UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**RIDGECREST CHARTER SCHOOL**

By: \_\_\_\_\_

Title: \_\_\_\_\_