Education *for* Change Public Schools

April 29, 2019

Sonali Murarka
Office of Charter Schools
Oakland Unified School District
1000 Broadway, Suite 639
Oakland, CA 94607

Re: ***Cox Academy***
Response to District's Final Offer
Proposition 39 2019-2020

Dear Ms. Murarka:

Cox Academy ("Cox Academy" or "Charter School") is in receipt of the Oakland Unified School District's ("District") April 1, 2019 letter ("Final Offer") regarding Cox Academy's request for facilities under Proposition 39 ("Prop. 39") for the 2019-2020 school year.

The District's Final Offer is for a total of thirty-two (32) teaching stations, which includes three (3) specialized classrooms, at E. Morris Cox, as well as 60.4% shared use of the non-teaching station space at E. Morris Cox. The Final Offer is based on a projected in-District ADA of 546.74.

Section 11969.9(i) of the Prop. 39 Implementing Regulations (the "Implementing Regulations") requires the Charter School to notify the District whether or not the Charter School intends to occupy the offered space. Accordingly, despite the deficiencies in the Final Offer (which are identified herein to the extent practicable, with all rights reserved) and as set forth in the response to the Preliminary Offer ("Response"), which is incorporated here by reference, the Charter School accepts and intends to occupy the offered space, without acknowledging its sufficiency under applicable local, state, or federal law and without waiving any of its legal rights under applicable local, state, or federal law, including Proposition 39 rights and remedies.

For all the reasons enumerated in the Response, Cox Academy does not believe the District may separately charge it for custodial services or utilities for the site, and even if for purposes of argument it does agree to separate charges, it is not appropriate for these costs to based on a proportion of ADA at the site. Instead, it should be based on the actual amount of

space occupied by Cox Academy on the site, as this more accurately reflects the amount of utilities consumed by each program. Instead, if Cox Academy agrees to use the District's custodial services at its discretion, the District's total custodial costs should be included in the pro rata share calculation (not charged separately on an FTE basis).

In addition, while the Final Offer allocates 60.4% of the shared space on campus, the parties still need to negotiate a shared use schedule for the site. During these discussions, Cox Academy may end up using less than its allocated amount of shared space. If this occurs, the pro rata share calculation will need to be revised to reflect Cox Academy's actual usage on the site.

Prop. 39 requires the pro rata share to be based on "actual facilities costs in the year preceding the fiscal year in which facilities are provided" (5 CCR Section 11969.7(d)); as the current pro rata share is based on 18-19 "working budget," please confirm it will be updated once the 18-19 budget is final.

Lastly, while the majority of the Facilities Use Agreement is acceptable to Cox Academy, there are a few small items that needs to be addressed:

1. **Section 1.7**: This section is a new addition to the FUA and has never existed in a District FUA before, and Cox Academy does not agree to this language (nor does it agree to the language placing a grade range restriction on Cox Academy outside the grade ranges served by the school). Once the space has been allocated, Cox Academy can use it for whichever students, and in whatever grade configuration it deems necessary for its program. Prop. 39 does not allow the District to take space away from the Charter School once that space has been offered by the District and accepted. This section is also not consistent with the definition of overallocation in the Prop. 39 regulations, which is based on the school's total in-District ADA at P-2, not the in-District ADA accommodated on the site.

2. **Section 3**: The FUA proposes monthly payments, yet the Final Offer proposes quarterly payments. Please clarify which is correct.

3. **Section 8**: The District carves out a limitation on Cox Academy using the Site related to joint use agreements that were "entered into between the District and a third party prior to January 1 of the school year to the Term." The District has provided no other information as to whether such a Joint Use Agreement exists at the Site. Without knowing this information, and how this will affect Cox Academy's access to the Site, Cox Academy cannot agree to this provision.

4. **Section 10**: Given how this section has been changed, the District needs to provide some assurance or warranty in the FUA that the Site can be used as a public school facility.

5. **Section 18**: This section should also apply to the District.

6. **Section 22**: this section currently states that Cox Academy can only install "an onsite sign" on the campus. As in the past and currently, Cox Academy has been able to install more than one sign on the campus, given the size of the campus, and as later in the section there is a reference to "signs" (plural), Cox Academy assumes that it was not the District's intent to limit its signage ability to a single sign on campus.

Cox Academy looks forward to the opportunity to finalize these matters with the District moving forward.

Hae-Sin Thomas, CEO

Cc: Sarah Kollman, Young, Minney & Corr, LLP
Education for Change Board Members