



April 29, 2019

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

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

Dear Ms. Murarka:

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

The District's Final Offer is for EBIA's grades 6 through 8 (with the Final Offer for EBIA's high school grades to be provided by May 13, 2019), for a total of thirteen (13) teaching stations, which includes five (5) specialized classrooms, at Marshall Elementary, as well as 100% use of the non-teaching station space at Marshall Elementary. The Final Offer is based on a projected grades 6-8 in-District ADA of 312.52.

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, EBIA does not believe the District may separately charge it for custodial services or utilities for the site. Instead, if EBIA 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). This is likely not going to be

an issue for EBIA as it currently provides its own custodial, and pays directly for the utilities, on the Marshall Campus but EBIA notes it here only for reference purposes.

Lastly, while the majority of the Facilities Use Agreement is acceptable to EBIA, 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 EBIA does not agree to this language (nor does it agree to the language placing a grade range restriction on EBIA outside the grade ranges served by the school). Once the space has been allocated, EBIA 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 is especially critical for EBIA given its enrollment plans related to growth and building out its lower grades until its upper grades are fully enrolled. 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 8:** The District carves out a limitation on EBIA 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 effect EBIA's access to the Site, EBIA cannot agree to this provision.
3. **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.
4. **Section 18:** This section should also apply to the District.
5. **Section 22:** this section currently states that EBIA can only install "an onsite sign" on the campus. As in the past and currently, EBIA 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), EBIA assumes that it was not the District's intent to limit its signage ability to a single sign on campus.
6. **Exhibit G:** The ADA listed is the school's total ADA, not just grades 6-8. While this is related to the utilities fee, and EBIA understands it is responsible for all utilities costs related to the site, this should be clarified.

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



Michelle Cho

Michelle Cho
COO/CFO

Cc: Sarah Kollman, Young, Minney & Corr, LLP
EBIA Head of School and Board Members