American Indian
Model Schools
A School at Work!

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May 1, 2018

By Email: leslie.jimenez@ousd.org

Leslie Jimenez
Office of Charter Schools
Oakland Unified School District
1000 Broadway, Suite 639
Oakland, CA 94607

Re: American Indian Public High School
Response to District's Final Offer
Proposition 39 2018-2019

Dear Ms. Jimenez:

American Indian Public High School ("AIPHS" or "Charter School") is in receipt of the Oakland Unified School District's ("District") April 1, 2018 letter ("Final Offer") regarding AIPHS 's request for facilities under Proposition 39 ("Prop. 39") for the 2018-2019 school year.

The District's Final Offer is for exclusive use of fifteen (15) teaching stations/specialized classrooms, and 9,185 square feet of exclusive use non-teaching station space at Lakeview, and exclusive use of four (4) teaching stations/specialized classrooms, as well as 1,048 square feet of exclusive use non-teaching station space (representing 15.87% of the interior building space and exterior space) at Westlake. The Final Offer is based on a projected in-District ADA of 368.50.

Section 11969.9(i) of the Prop. 39 Implementing Regulations (the "Implementing Regulations") requires AIPHS to notify the District whether or not AIPHS 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 Proposal, which is incorporated here by reference, AIPHS accepts and intends to occupy the offered space, without acknowledging the legal sufficiency of the Final Offer 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.

1. Condition Analysis

A district must determine whether a facility is reasonably equivalent by determining whether the condition of facilities provided to a charter school is reasonably equivalent to the condition of comparison group schools. Pursuant to 5 CCR Section 11969.3(c), the District must assess "such factors as age (from latest modernization), quality of materials, and state of maintenance." The District must also assess the following factors:

1. School site size
2. The condition of interior and exterior surfaces
3. The condition of mechanical, plumbing, electrical, and fire alarm systems, including conformity to applicable codes
4. The availability and condition of technology infrastructure
5. 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
6. The condition of the facility's furnishings and equipment
7. The condition of athletic fields and/or play area space

The District did not perform this complete analysis in the Final Offer or the exhibits attached thereto. The District claims that it has evaluated data on the condition of the facilities at the comparison schools based on the information available from the District's Asset Management and Facilities Master Plan, and that the sites offered to AIPHS are reasonably equivalent in every category. However, the District's Asset Management and Facilities Master Plan only addresses a small subset of the categories required to be analyzed by the District under 5 CCR Section 11969.3(c). In addition, these documents were prepared a number of years ago, and thus likely do not reflect an accurate assessment of the condition of the facilities.

The Final Offer does not assess the condition of the athletic fields, play areas, furnishings and equipment, technology infrastructure, mechanical, plumbing, electrical, and fire alarm systems, the suitability of lighting, or the size for intended use. Therefore, the District's Final Offer fails to perform the complete condition analysis required by the Implementing Regulations.

2. Allocation of Non-Contiguous Site

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).) This requirement exists irrespective of the grade level configuration of a charter school. (5 CCR Section 11969.3(a).) In its Request, specifically requested that the District place 's entire in-District enrollment on a single, contiguous site.

Section 11969.2(d) goes on to state that "[i]f the indistrict 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 addition,

"the district's governing board must first 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." "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." (Emphasis added.) This analysis is purely numerical; the Court in *Ridgecrest* noted that "all else being equal, a charter school should be housed at a single site if one exists with the capacity to handle all the school's students." (*Ridgecrest Charter School v. Sierra Sands Unified School Dist.*, (2005) 130 Cal. App. 4th 986, 1000, emphasis added.)

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 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.)

The Court of Appeal has also ruled that Proposition 39 requires that a school district "begin with the assumption that all charter school students will be assigned to a single site, and attempt from there to adjust the other factors to accommodate this goal." (*California School Bds. Assn. v. State Bd. of Education*, 191 Cal. App. 4th 530, 548-549 (Cal. App. 3d Dist. 2010).) *Ridgecrest* also specifically acknowledged that "we have little doubt that accommodating [Ridgecrest Charter School's] facilities request will cause some, if not considerable, disruption and dislocation among the District's students, staff, and programs. But section 47614 requires that the facilities "should be shared fairly among all public school pupils, including those in charter schools." (*Ridgecrest*, 130 Cal. App. 4th at 1006.) In other words, the District may not reject a potential contiguous site for just because it would potentially disrupt and dislocate District students.

In addition, 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.

The District's Findings of Fact in support of its non-contiguous allocation of space to provides the following explanation of how the District determined that could not be accommodated at a single site: "American Indian Public High School is eligible for eighteen (18) classrooms; therefore, the charter school's entire in-District ADA could not be accommodated at

a single site." Based on the foregoing explanation and the District's list of "Potential District School Sites with Projected Capacity" that precedes the foregoing explanation in the District's Findings, it is clear that the District only considered whether 's entire in-District enrollment could be accommodated in the *extra space* that exists at any one District site. This practice of only considering whether a charter school may be accommodated in the extra space that exists at District sites rather than determining whether any District site is large enough to accommodate a charter school's in-District enrollment is most consistent with Assembly Bill 544, which added a provision to the Act giving charter schools the right to use district facilities that are "not currently being used ... for instructional or administrative purposes." (Former § 47614.) Under that provision, a charter school was entitled to use district facilities only if that would not interfere with the district's use of them. However, "[t]his restriction was effectively eliminated by Proposition 39." (*Ridgecrest, supra*, at p. 999.) As stated above, the District may not reject a potential contiguous site for just because it would potentially disrupt and dislocate District students. As stated in *Ridgecrest*, the District "must at least *begin* with the assumption that all charter school students will be assigned to a single site, and attempt from there to adjust the other factors to accommodate this goal." (*Ridgecrest, supra*, at p. 1002.) There is absolutely no evidence that the District has done so here. Rather, after looking at the extra space available at its District sites, the District decided to locate across two separate sites. Since none of the District schools are spread across two sites, the District's placement of at two separate sites fails to provide with reasonably equivalent facilities and relegates 's students to second class status.

In addition, the District's Findings do not indicate the District considered redrawing District attendance boundaries, increasing class sizes or the negative impact on the safety of 's students that would occur if they are required to travel between two separate school sites. Instead, the District's Findings focus primarily on the impact to District students – with no analysis of the safety issues facing 's students.

For all the foregoing reasons, the District's failure to offer a contiguous site violates Prop. 39 and its Implementing Regulations.

3. The Final Offer Does Not Allocate Sufficient Specialized Classroom and Non-Teaching Station Space to AIPHS

AIPHS is also entitled to reasonable allocations of specialized and non-teaching station space. Section 11969.3(b)(2) 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 must include a share of the specialized classroom space. The Final Offer must include "a share of the specialized classroom space and/or a provision for access to reasonably equivalent specialized classroom space." (5 CCR § 11969.3(b)(2).) 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.[1]

As such, the District must allocate specialized classroom space, such as science laboratories, art rooms, computer labs, music rooms, weight rooms, etc., commensurate with the in-District classroom ADA of AIPHS. The allocated site must include all of the specialized classroom space included across all of the different grade levels.

In addition, the District must provide non-teaching station space commensurate with the in-District classroom ADA of AIPHS and the per-student amount of non-teaching station space in the comparison group schools. (5 CCR § 11969.3(b)(3).) Non-teaching space is all of the space at the comparison school that is not identified as teaching station space or specialized space and includes, 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, nurse's office, RSP space, and play area/athletic space, including gymnasiums, athletic fields, locker rooms, and pools or tennis courts. (*Ibid.*)

The allocation of specialized teaching space and non-teaching space is based on an analysis of the square footage of each category of space available to students at the comparison schools (i.e., "the per-student amount of specialized classroom/non-teaching space in the comparison group schools"). (5 CCR § 11969.3(b)(2)-(3).) Moreover, just because one kind of specialized classroom or non-teaching station space is not available at all the comparison schools, the District may not fail to provide an allocation of that kind of space. Instead:

> [W]hile a Proposition 39 analysis does not necessarily compel a school district to allocate and provide to a charter school each and every particular room or other facility available to the comparison group schools, it must at least account for the comparison schools' facilities in its proposal. A determination of reasonable equivalence can be made only if facilities made available to the students attending the comparison schools are listed and considered. And while mathematical exactitude is not required (cf. *Sequoia, supra, 112 Cal.App.4th at p. 196* [charter school need not provide enrollment projections with "arithmetical precision"]), a Proposition 39 facilities offer must present a good faith attempt to identify and quantify the facilities available to the schools in the comparison group--and in particular the three categories of facilities specified in *regulation 11969.3, subdivision (b)* (i.e., teaching stations, specialized classroom space, and non-

[1] Id.; see also *Bullis Charter School v. Los Altos School Dist.* (2011) 200 Cal.App.4th 296 and *California School Bds. Assn. v. State Bd. of Education* (2010) 191 Cal.App.4th 530 (CSBA).

> teaching station space)--in order to determine the "reasonably equivalent" facilities that must be offered and provided to a charter school. (*Bullis, supra,* 200 Cal.App.4th 296, 336.)

Here, the District has failed to appropriately count specialized classroom and non-teaching station space at the comparison schools, or has failed to account for those spaces in its offer, or has offered the Charter School classrooms instead of the specialized classroom space the Charter School is entitled to. The District has also failed to identify how the Charter School will share certain non-teaching station spaces on the Westlake campus, and what non-teaching station spaces have actually been offered. Especially as Westlake is a former middle school and does not have many of the spaces available on a comprehensive high school campus, this failure to properly allocate these kinds of spaces to AIPHS is not legally compliant.

Furthermore, while the Charter School appreciates the access to the significant additional data provided by the Jacobs report, as the District acknowledges, the Jacobs data is "approximate" and not as precise as the MKThink data. There also appears to be material differences in the square footage information provided by the Jacobs report and the MKThink reports from several years prior. The District has relied on the older MKThink information for the entire non-teaching station space analysis; even a comparison between Exhibits D, E, and F of the square footage of specific rooms and specific campuses demonstrates many differences in square footage for individual spaces. This makes it difficult for the Charter School to understand, verify and corroborate the square footage calculations performed by the District.

a. Allocation of Specialized Classroom Space to AIPHS

The Final Offer allocates specialized classroom space to AIPHS in the form of "three additional teaching space classrooms", with no allocation for special education (claiming that AIPHS only will receive special education space if "if it can demonstrate its Oakland resident student population includes students with severe disabilities that require this type of classroom."

The Final Offer asserts AIPHS is entitled to 5,751 total specialized classroom square footage, or 4,023 square feet of additional specialized classroom space beyond its allocated space, according to the Jacobs data in Exhibit E.

As noted above, Prop. 39 makes clear that the allocation of specialized classroom space must be based on the amount of specialized classroom space at the comparison schools: "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." (5 CCR Section 11969.3(b)(2); emphasis added.) This space must be allocated to the Charter School either as "a share of the specialized classroom space and/or a provision for access to reasonably equivalent

specialized classroom space." (*Id.*) *Bullis Charter School v. Los Altos School Dist.* ((2011) 200 Cal.App.4th 296, 336) is also clear that a school district must count all of the specialized classrooms spaces on the comparison school campuses, and ensure that a charter school receives a reasonably equivalent allocation of all of these spaces.

Yet here, the District instead claims beyond the three additional classrooms, "This additional specialized teaching space [1,542 square feet] will be allocated in the form of shared specialized teaching space." However, as set forth in the response to the Preliminary Proposal, AIPHS is entitled to an allocation of at least eighteen (18) total teaching stations plus 5,571 square feet of specialized classroom space. Therefore, at a minimum, AIPHS should be receiving an allocation of at least five additional teaching stations, as well as shared use of all specialized spaces and/or additional space to create other specialized spaces that don't exist on campus.

Further, nothing in the law authorizes the District to average all the various types and amounts of specialized classroom spaces across all the comparison schools as it has done in the Final Offer. AIPHS is entitled to a reasonably equivalent allocation of or access to all of these types of specialized classroom spaces since they exist at the comparison schools, and the District may not combine different types and sizes of specialized classroom space and then allocate non-specialized classrooms to AIPHS. If there are science labs, computer labs, music rooms, weight rooms, art rooms, and the like available at the comparison schools, then the District must allocate reasonably equivalent, fully furnished and equipped kinds of these spaces space and/or access to AIPHS. A standard classroom does not have, for example, the risers in a choral classroom, the gas and water stations in a science classroom, or the computers in a computer classroom, nor can all these different kinds of uses (and the attendant furnishings and equipment) happen in just one classroom.

Furthermore, allocation of regular classrooms is not an acceptable manner to allocate specialized classrooms; often these spaces have unique furnishings, equipment or other design elements that cannot be replicated in a standard classroom. AIPHS notes that by refusing to allocate AIPHS any specialized classroom space, the District is relegating AIPHS students to second-class status, given that District students enjoy access to these separate, furnished and equipped spaces. The District cannot force AIPHS to create its own fully furnished and equipped specialized classroom space in a standard teaching station space. "[A] school district does not have the discretion to employ practices that are contrary to the very intent of Proposition 39 that school district facilities be "shared fairly among all public school pupils, including those in charter schools." (*Bullis Charter School v. Los Altos School Dist.* (2011) 200 Cal.App.4th 296, 336.)

AIPHS is entitled to reasonably equivalent allocations of specialized spaces, and of furnishings and equipment that accompany those spaces in the comparison schools, and it anticipates receiving its full complement of the specialized space and the reasonably equivalent furnishings and equipment therein at the school sites.

b. Allocation of Non-Teaching Station Space to AIPHS

The Final Offer does not properly allocate non-teaching space to AIPHS. The Final Offer allocates a total of 7,396 (1,048 having been already allocated through teaching station space) square feet of interior non-teaching space and 30,002 square feet of exterior non-teaching station space at Westlake, and 12,215 square feet of interior non-teaching space and 73,760 square feet of exterior non-teaching station space to AIPHS at Westlake.

The District's allocation of non-teaching space to AIPHS in the Final Offer does not comply with Prop. 39 or its Implementing Regulations in several respects, including its failure to identify the specific type of non-teaching station space to be allocated to AIPHS (except large categories of space) and its allocation of non-teaching station space based on the percentage of AIPHS's enrollment on the sites, as determined by the District rather than an actual square footage analysis. Moreover, the District's calculations of the space to be allocated to AIPHS are opaque, unverifiable, and based on mysterious formulas. This makes it almost impossible for the school to understand both how the District arrived at its allocation of space, and make a determination whether that allocation is legally compliant.

First, there is a considerable amount of non-teaching station space at the comparison schools that is not referenced in the District's Exhibit F or its calculation or allocation to AIPHS. The Final Offer does not appear to include any of the following types of spaces in its calculation of non-teaching space at the comparison schools or its allocation to AIPHS even though such spaces are available at the comparison schools: kitchen/servery, nurse/health clinic space, special day class/resource,[2] and parent centers/community use rooms.

Similarly, the Final Offer does not address the various types of outdoor areas that exist at the comparison schools such as gardens, basketball courts, play fields, and play structure space but rather lumps all the different types of exterior spaces together when calculating exterior non-teaching station space. The District is required to provide AIPHS with a reasonably equivalent allocation of all these types of spaces based on the "per-student amount of non-teaching station space in the comparison group schools," and AIPHS requires an allocation of all these types of spaces in order to operate its educational program. Each of these types of spaces has a specific use and furnishings and equipment and/or design that are appropriate for such use, and the District's allocation method does not ensure AIPHS will receive a reasonably equivalent allocation of each type of non-teaching station space that exists at the comparison schools. As stated in *Bullis*, *supra*, "a school district, in determining the amount of nonteaching station space it must allocate to the

[2] The Final Offer asserts the District will provide special education space upon AIPCHS providing evidence of serving in-District special education students. Prop. 39 and the Implementing Regulations do not require charter schools to provide evidence of serving special education students to receive the same ratio of special education/resource space per unit of ADA that exists at the comparison schools. **The information included in the District's Exhibit E indicates AIPCHS is entitled to at least three classrooms of special education and resource space.**

charter school, must take an objective look at all of such space available at the schools in the comparison group." (*Bullis, supra*, at p. 1047, emphasis added.) The District is not permitted to average all of the unique types of non-teaching station spaces that exist at the comparison schools and then allocate AIPHS a percentage of unspecified non-teaching station spaces that exists at the allocated sites, which are not comparison schools.

Second, the Final Offer contains no listing or description of the types of shared non-teaching spaces to which AIPHS will be provided access at the offered sites beyond large categories of space, or any proposed schedule for AIPHS's use (5 CCR Section 11969.9(h)(2) requires the Final Offer to include "arrangements for sharing" the shared space.) The District's failure to provide this basic information to AIPHS precludes AIPHS from engaging in timely and efficient negotiations with site principals regarding shared use schedules and prevents AIPHS from assessing whether the Final Offer provides AIPHS with access to all of the different types of non-teaching station space to which AIPHS is entitled. 5 CCR section 11969.9(h) requires that the school district, in its final facilities proposal, specifically identify the nonteaching station space offered to the charter school. (*Bullis, supra,* at p. 1046.)

Third, the District may not base its non-teaching station space allocation to AIPHS on the "minimum" amount of non-teaching space that exists at any one of the comparison group schools, which results in a significantly and artificially reduced allocation to AIPHS. The District claims a "charter school's allocation is considered to fall within reasonable equivalence standards if it falls within the minimum/maximum Sq. ft./ADA ratios at the comparison group schools." However, the District has not and cannot provide any legal authority to support this claim, and such a position directly conflicts with the basic premise of Prop. 39 – that public school facilities must be shared fairly between all public school students, including those in charter schools.

Fourth, Tables 7a and 7b add even more opacity to the District's analysis. The District is using these tables to calculate how much total non-teaching station space exists at the comparison schools (including indoor and outdoor space) per unit of ADA. Furthermore, the District has ensured that its calculation misstates the actual per ADA amount of non-teaching station space by deducting the total "classroom space"[3] from the "total site area".[4] By using this formula, the District has assumed that all classrooms larger than 600 square feet are accounted for in its teaching station to ADA ratio – but by its own admission, the District's teaching station to ADA ratio calculation only includes rooms staffed by a teacher – not empty rooms, not classrooms used for storage or counseling or restorative justice or any other purposes. This space is also not necessarily captured by the specialized classroom allocation, as this is also based only on the number of

[3] Defined as the square footage of all classrooms that are equal to or larger than 600 square feet "and any attached classroom storage space included in the Prop. 39 preliminary offers."
[4] The total square feet of outdoor and building square feet on the campus, including non-ground level building square footage.

classrooms larger than 600 square feet on the site, but does not actually determine the use of each space, or whether the proportion actually captures usage at each comparison school site.

As noted in the response to the Preliminary Proposal, even based on the District's square footage figures for the comparison schools located within the Oakland High School attendance boundary (including middle schools), which evidently exclude a considerable amount of non-teaching station space, AIPHS is still entitled to an allocation of at least 31,117.09 sq. ft. sq. ft. of interior non-teaching station space (i.e., 13,483.09 more sq. ft. than the District allocated to AIPHS).

For all these reasons, the District's allocation of specialized and non-teaching station space included in the Final Offer fails to comply with Prop. 39 and its Implementing Regulations. AIPHS is entitled to reasonably equivalent allocations of specialized and non-teaching spaces, and of furnishings and equipment that accompany those spaces in the comparison schools, and it anticipates receiving its full complement of the specialized and non-teaching space at the offered school sites.

4. Pro Rata Charge Worksheet

As a preliminary matter, AIPHS notes that the District has indicated that AIPHS's "share of the custodial costs may be subject to reconciliation in the event that the District is required to increase staffing as a result of the Charter School's use and occupation of the District's site." To the extent that the District is indicating its intent to charge AIPHS an additional amount for custodial services above what is included in the pro-rata share, this is not permitted by the Implementing Regulations.

a. **Utilities:** The District indicates that utilities may be included in the pro rata share if applicable under the Use Agreement. These amounts should be separately metered and billed to AIPHS, as it is not appropriate nor provided for in the law to include these costs in the pro rata share calculation, especially since some schools in the District (for example, comprehensive highs schools that have pools and large gymnasiums) have substantially higher utilities costs, thereby requiring AIPHS to shoulder higher burdens of utilities costs than the amounts AIPHS actually uses. If the District receives billing from the utilities companies for each of its individual school sites, AIPHS is willing to pay the actual utilities costs for the site based on the same calculation used to determine the pro rata share costs for the shared use space, with the exception that any costs assumed by AIPHS cannot be included in the pro rata share calculation.

b. **Police Services**: The District may not include police costs in its pro rata share calculation because AIPHS provides its own security and alarm services, and also has been told by the District's Police Services that Police Services does not provide services to charter schools in the District. Pro rata share amounts are intended to reflect a charter

school's portion of the District's facilities costs that AIPHS uses. Because AIPHS does not use the District's police service, the inclusion of these costs in the pro rata share calculation is not appropriate.

c. **Insurance**: AIPHS will provide and pay for the full spectrum of its insurance benefits, as required by its charter and the Facilities Use Agreement; the District has included the cost of its own property insurance on the facility. Including the District's insurance costs in the calculations not only double bills AIPHS for a cost it is already paying for, it is requiring AIPHS to pay for a cost that is actually the District's responsibility. Moreover, insurance is not contemplated under the Prop. 39 regulations as an acceptable "facilities cost," and Education Code Section 47614 specifically states that a charter school may not be charged for use of district facilities beyond the pro rata share.

d. **Custodial Services:** The District indicates that custodial services may be included in the pro rata share if applicable under the Use Agreement. The Implementing Regulations provide that ongoing operations and maintenance of facilities, which includes custodial costs, are the responsibility of AIPHS (5 CCR Section 11969.4(b)) and that any costs assumed by AIPHS cannot be included in the pro rata share calculation. AIPHS wishes to perform its own custodial services in large part because it is not financially able to absorb the cost of District services; therefore, the FUA will need to provide for this revision.

e. The District has included $13,048,405 in facilities costs identified as "RRMA transfer from UR to resource 8150." However, the Implementing Regulations provide that ongoing operations and maintenance of facilities, which includes custodial costs, are the responsibility of AIPHS (5 CCR Section 11969.4(b)) Therefore, please provide AIPHS with the necessary documentation to show that the District has removed all facilities costs related to ongoing operations and maintenance from its RRMA transfer account that are AIPHS's responsibility, including custodial services.

f. The District has included its emergency debt service costs in the pro rata share calculation. 5 CCR Section 11969.7 states that only unrestricted General Fund **facilities costs** that are not costs otherwise assumed by AIPHS are included in the methodology. Under the Implementing Regulations, items that are not specifically included in the pro rata share calculations because they are either obligations of AIPHS or facilities-related general fund expenses may not be included in the calculation of facilities costs. "Debt servicing" is typically not a cost charged to the unrestricted general fund (e.g., bond repayment obligations are excluded). Further, even if repayment of the District's emergency loan constitutes debt service that is charged to the unrestricted general fund, the pro rata share is intended to reimburse the District for a charter school's proportion of the District's facilities costs in exchange for AIPHS's

use of District facilities. The Emergency Apportionment state loans are clearly not facility-related debt service costs, and thus may not be included in the calculation. Again, only those facilities costs charged to the unrestricted general fund can be included in the pro rata share calculation. (5 CCR Section 11969.7.) If it is the District's position that the repayments of the emergency state loan are debt service for "facilities costs" then we request that the District provide some documentation demonstrating that the emergency loan monies were spent on "facilities costs."

5. **Draft Facilities Use Agreement:** We are reviewing the draft Facilities Use Agreement and look forward to negotiating the terms of that or an in-lieu agreement over the next several weeks, as required by the Implementing Regulations. (5 CCR Section 11969.9(k).)

    a. **Section 1:** This section states "District agrees to allow use of the Premises at the School(s) by Charter School for the sole purpose of operating Charter School's educational program in accordance with all applicable federal, state and local regulations relating to the Premises and to the operation of Charter School's educational program." This section will need to be revised to include AIPHS's summer school, if any, and programs procured by AIPHS through third party entities, e.g. after-school program providers.

    b. **Section 1.4**: Prop. 39 only requires AIPHS to comply with the District's policies and procedures related to operations and maintenance, and not where actual school district practice substantially differs from official policies. (5 CCR Section 11969.4(b).

    c. **Section 1.6:** Fees charged under the Civic Center Act are intended to reimburse school districts for the costs they incur to process permits and to clean up after community use of their facilities. The portion of the Civic Center Act fees related to custodial and maintenance costs must be paid to AIPHS if AIPHS is responsible for cleaning up its site after each community use.

    d. **Section 2:** The Site must be furnished, equipped and available for occupancy by AIPHS for a period of at least ten (10) working days prior to the first day of instruction. However, we are willing to consider taking possession earlier if mutually agreed upon between the parties.

    e. **Section 3**: This section also needs to reflect that if AIPHS constructs or installs recreational improvements or other school facilities, AIPHS and the District will agree to negotiate a reduction in the facilities use fees. AIPHS's other concerns regarding the Pro Rata Share Charge outlined above are incorporated herein. Again, any costs assumed by AIPHS cannot be included in the pro rata share calculation, including custodial and maintenance costs. AIPHS objects to the late

charge listed in Section 3.5. The Implementing Regulations do not contemplate late fees to be charged to AIPHS.

f. **Section 6:** This number will need to be adjusted to reflect the number of AIPHS students on the sites.

g. **Section 9**: This section states that the District "shall not be liable for any personal injury suffered by Charter School or Charter School's visitors, invitees, and guests, or for any damage to or destruction or loss of any of Charter School or Charter School's visitors, invitees or guests' personal property located or stored in the parking lots, street parking or the School Site, except where such damage is caused by the District's negligence or misconduct." This section will need to be changed to reflect that the District may not avoid liability for injuries or damage caused by its failure to maintain the parking spaces on the site. The District is required to provide AIPHS with a facility that complies with the California Building Code, and to maintain the facility in compliance with the California Building Code. (5 CCR Section 11969.9(k).) It may not provide the parking lot in an "as-is" condition.

h. **Section 10**: For the same reason, the District may not require AIPHS to take the facility in "as is" condition. Furthermore, it is not acceptable for the District to terminate the FUA if the cost to make repairs exceeds $150,000. The District is required to make the facility available to AIPHS for its entire school year (5 CCR Section 11969.5) and to maintain the facility in compliance with the California Building Code. (5 CCR Section 11969.9(k).) As a result, if the facility is damaged, the District must repair it, or, if it is destroyed, the District must provide alternative facilities.

i. **Section 12.3 and 12.4**: The District must make reasonable efforts to keep their materials, tools, supplies and equipment on the Premises in such a way as to minimize disruption to AIPHS's program. The District must provide relevant scheduling information and reasonable notice to AIPHS if it will be coming onto the facility to perform maintenance. In addition, AIPHS wishes to perform its own custodial services, and as a result, does not agree to allow the District to enter the Premises to perform custodial services.

j. **Section 14**: While AIPHS is willing to pay any taxes or assessments on its personal property, or modifications or improvements it performs on the facility, it may not otherwise be obligated to pay any costs to occupy the facility beyond the pro rata share. (Education Code Section 47614(b)(1).)

k. **Section 15**: AIPHS wishes to perform its own cleaning and custodial services. Therefore, the Final Offer will need to be revised to provide for this revision.

l. **Section 17**: If the comparison schools have a security system, then in order to provide a reasonably equivalent facility, the District must also provide the Premises with a security system. AIPHS does not agree to provide written verification of compliance with the fingerprinting and criminal background investigation requirements to District prior to AIPHS taking possession of the Premises and prior to conducting its educational program on the Premises.

m. **Section 18.1.7**: AIPHS does not agree that should it default under the FUA, it must pay the District its unpaid pro rata share. The District is obligated to attempt to first find an alternative occupant for the site.

n. **Section 18.2**: This section must provide for AIPHS to perform any District obligation if the District is in default, and to recover its reasonable costs in so doing from the District.

o. **Section 20**: If AIPHS chooses to seek its insurance through a joint powers authority such as CharterSAFE, JPAs do not receive an A.M. Best insurance rating. This section will need to be revised to provide that insurance through a JPA will satisfy the terms of the FUA.

p. **Section 28**: This section must be revised to provide that the District is responsible for maintaining the Premises in compliance with applicable law, except to the extent that compliance arises as a result of modifications or improvements performed by AIPHS.

We have attempted in this letter to enumerate all of our concerns with the District's Final Offer; however, we note that our failure to mention a concern in this letter should not be interpreted as acceptance of that term. AIPHS looks forward to the opportunity to discuss and negotiate the Facilities Use Agreement with the District, along with AIPHS's other above-referenced concerns, moving forward.

Respectfully,

Maya Woods-Cadiz

Superintendent Maya Woods-Cadiz
American Indian Model School

Cc: Sarah Kollman, Young, Minney & Corr, LLP
AIPHS's Board Members