Envision Academy
Attn: Sele Nadel-Hayes
111 Myrtle Street, Suite 203
Oakland, CA 94607

By Email
sele@envisionschools.org

Dear Sele Nadel-Hayes:

The District would like to confirm Envision Academy's position regarding an offer of facilities for the 2017-2018 school year.

Please confirm in writing Envision Academy's interest in receipt of a Final Facilities Offer from the District. Please note that time is of the essence for receipt of a response as the space currently being held for Envision Academy could be otherwise utilized for the 2017-2018 school year, or potentially offered to another charter school.

If Envision Academy is no longer interested in receiving a Final Facilities Offer from the District, please confirm the withdrawal by signing the bottom of this letter.

Sele Nadel-Hayes		3/1/17
Printed Name	Signature	Date

March 1, 2017

Silke Bradford
Oakland Unified School District
Office of Charter Schools
1000 Broadway, Suite 639
Oakland, CA 94607

Re: Envision Academy
Response to District's Preliminary Proposal
Proposition 39 2017-2018

Dear Ms. Bradford:

Envision Academy ("EA") is in receipt of the Oakland Unified School District's ("District") February 1, 2017 letter ("Preliminary Proposal") regarding the EA's request for facilities under Proposition 39 for the 2017-2018 school year.

The District's Preliminary Proposal is for fifteen (15) teaching stations and two (2) standard classroom for use as specialized classroom space, spread across three District sites, Westlake Middle School (8), Alliance Academy (5) and Ralph Bunche High School (4) The Preliminary Proposal is based on a projected in-District classroom ADA of 352.27. The Preliminary Proposal also appears to allocate 31.1% of the administrative/office/conference space, MPR/Auditorium/Cafeteria/Gym, and Library space at Westlake, 13.3% of the same space at Alliance, and 49.6% of the same space at Ralph Bunche.

Section 11969.9(g) of the Proposition 39 Implementing Regulations (the "Implementing Regulations") requires EA to respond to the District's Preliminary Proposal, to express any concerns, address differences between the preliminary proposal and EA's facilities request as submitted pursuant to subdivision (b), and/or make counter proposals.

EA appreciates the efforts of District staff to identify an offer of space for EA. EA would like to express the following concerns regarding the Preliminary Proposal and the draft Facilities Use Agreement and request that the District's final offer of space be modified in accordance with Prop. 39 and its Implementing Regulations.

1. **Required Elements of the Preliminary Proposal**:

EA notes that the District's Preliminary Proposal does not comply with the specific requirements of Proposition 39 in several respects. There is minimal analysis of the capacity and condition of the comparison schools and an incorrect allocation of the teaching station to ADA ratio at the comparison school, as well as what appears to be a completely illegal manner of calculating the specialized classroom and non-teaching station space at the comparison schools, as well as the actual space allocated to EA.

2. Allocation of Non-Contiguous Space

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).)

Section 11969.2(d) goes on to state that "[i]f 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 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." (5 CCR Section 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." (5 CCR Section 11969.3(a) (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* (2010) 191 Cal. App. 4th 530, 548-549.) *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.)[1] In other words, the District may not reject a potential contiguous site 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.[2]

The District's Findings of Fact supporting its non-contiguous allocation of space to the Charter School claims that *Westchester Secondary Charter School v. Los Angeles Unified School District* (2015) 237 Cal.App.4th 1226 fully supports its failure to make any accommodations to locate charter schools on contiguous facilities. The District has fundamentally misread and misapplied *Westchester*, which was not about a non-contiguous allocation of space, but rather about making reasonable efforts to place a charter near where it wishes to be located. Even in its analysis about the reasonable efforts a district must make, the court acknowledged the importance of "balancing impacts," and of treating both District and charter school students fairly. Here, and in prior years, the District has never actually balanced the needs of both groups of students, but rather has only looked for where empty rooms exist at District sites, and shoe-horned charter schools into those sites, with allocations of space across up to seven different sites. While always closing District sites or moving District students around would not meet the intent of Prop. 39 to treat all students fairly, the District does not act in compliance with the law if it never does these things to make space. As *Ridgecrest* said, some displacement is required in order to minimize the harm to both District and charter school students. Here, the District favors only its own students and places charter school students in harm's way by forcing them to locate on multiple sites separated, in this case, by more than 12 miles.

The District's Findings of Fact supporting its non-contiguous allocation of space to the Charter School also states as follows:

> Retaining students, families, and staff within the community to which they are accustomed and already a part of is a safety consideration that is taken into account. The District's offer of two sites within District 3 (Bunche and Westlake) takes into consideration the historical placement of Envision within District 3 and enables students to continue to be a part of a community with which they are

[1] The *Ridgecrest* court also stated that "In discussing the timeframe within which a new charter school must submit a facilities request (Regs., § 11969.9, subd. (a)), the Department explained: 'This section is intended to ensure that a charter school is or has a reasonable chance of becoming a viable concern before requiring the school district to plan modifications to its programs to accommodate the charter school. *For example, accommodating a charter school might involve moving district-operated programs or changing attendance areas.*' (Italics added.) Plainly then, the regulations contemplate that some disruption and dislocation of the students and programs in a district may be necessary to fairly accommodate a charter school's request for facilities." (*Ridgecrest*, 130 Cal. App. 4th at 1000 (emphasis added).)

[2] Therefore, as an example if the District has any restricted monies it could put additional portables on one of its school sites to meet this obligation.

> familiar. The District was mindful of keeping campus occupancy and traffic at a level that would not subject students or personnel to increased physical safety risks. The safety concern of managing student safety would be disproportionately exacerbated if total in-District classroom ADA was located at any one site.

This finding is inadequate and insufficient. It does not address the fact that one of its site allocations is located more than 12 miles away from the other two sites, which will require families to drive students between campuses, adding traffic and driving danger for these families, as they must travel far from their community. In addition, any claim that the District was attempting to keep campus occupancy and traffic lower is fallacious; the District is instead choosing to prioritize the safety of District students over those of charter school students. Many District campuses are underutilized; were the District to actually consolidate its programs to ensure the best use of all of its sites, it would not need to allocate charter schools space at multiple sites. The District's findings contain also no analysis of the safety issues facing the Charter School's students if they are placed on District campuses with different grade levels and a hostile school community/located far from where they wish to be located/other reason the site is unacceptable.

3. Allocation of Teaching Stations

All California public school students are entitled to learn in a classroom that is safe, that is not crowded with too many students, and that is conducive to a supportive learning environment. In accordance with the implementing regulations, the District must 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, and are to be allocated at each grade level consistent with the ratios provided by the District to its students. (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.

In responding to a charter school's request for classroom space, a school district must follow a three-step process, as explained by the California Supreme Court in *California Charter Schools Association v. Los Angeles Unified School District* (2015) 60 Cal. 4th 1221):

> "First, the district must identify comparison group schools as section 11969.3(a) prescribes. Second, the district must count the number of classrooms in the comparison group schools using the section 1859.31 inventory and then adjust those classrooms 'provided to' students in the comparison group schools. Third, the district must use the resulting number as the denominator in the ADA/classroom ratio for allocating classrooms to charter schools based on their projected ADA." (*Id.*, p. 1241.)

In calculating the number of classrooms that the District will make available to the Charter School, the District must count the number of classrooms in the comparison group schools and cannot use districtwide norming ratios. (*Id.*, p. 1236.)

Under 5 CCR Section 11969.3(b)(1), "[t]he 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." Classroom 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." (*Id.*)

In the *CCSA v. LAUSD* case, the Court explained further that classrooms used for preschool or adult education, or by other charter schools are not counted as classrooms provided to the District's non-charter K-12 public school students. (*CCSA v. LAUSD, supra*, p. 1240.) However, the Court held that "counting classrooms 'provided to' district students for the purposes of section 11969.3(b)(1) is not the same as counting only those rooms a district elects to staff with a teacher." (*Id.*, p. 1241.) The Court reasoned that "[c]ounting only those classrooms staffed by an assigned teacher would effectively impute to charter schools the same staffing decisions made by the District. But there is no reason to think a charter school would necessarily use classrooms in the same way that the District does." (*Id.*)

On a practical level, even if certain rooms are not used for classroom instruction, students nonetheless benefit from these additional rooms, either in the form of having additional space to use for break out instruction or storage, or in having less crowded classrooms. Thus, **the District is required by the Supreme Court's ruling count all of the classrooms provided to students in the District for K-12 classroom instruction regardless of whether the classrooms are staffed by teachers or not, and use the resulting number as the denominator in the ADA/classroom ratio for allocating classrooms to charter schools based on their projected ADA.** Despite the clear language of *CCSA v. LAUSD*, however, the District's Preliminary excludes "unassigned" or "out of service" classrooms. These classrooms are not accounted for anywhere else in the District's Preliminary Offer; the District's Preliminary Offer, therefore, is in violation of the ruling in *CCSA v. LAUSD.*

The District has identified Life Academy and Fremont High School as the comparison schools, and has identified a teaching station to ADA ratio of 23.67.

Very simply, Prop. 39 requires the District to count the number of regular teaching stations at the comparison schools, and divide the ADA at the comparison school by the number of regular teaching stations. The spreadsheet forming Exhibit B to the Preliminary Offer, which the District cites as the source of its calculation, is a list of each of the classes at Life Academy and Fremont High School and, we assume, the number of students enrolled in each class. The District then averages the number of students enrolled in every class at Life Academy and Fremont High School to arrive at its "teaching station to ADA ratio" calculation.

Not only does the District's calculation fail to count the number of regular teaching stations at Life Academy and Fremont High School, or divide the ADA of the school by that number (the required formula), but it also uses enrollment, rather than ADA, to determine its class size average – and enrollment, because it is a larger number than actual ADA, will result in an artificially higher "ratio." This manner of calculation is illegal and in direct contravention to the formula set forth in the regulations and applicable case law.

The District also has previously claimed that its list of classrooms at the comparison school that are staffed with District teachers is "far superior" to the District's own Facilities Master Plan that specifically identifies the number of classrooms on a site. However, the number of classrooms that may be staffed with a teacher is not necessarily equivalent to the number of classrooms provided to District students for instruction. As noted above, in the *CCSA v. LAUSD* case, the Court held that "counting classrooms 'provided to' district students for the purposes of section 11969.3(b)(1) is not the same as counting only those rooms a district elects to staff with a teacher." (*Id.*, p. 1241.) Unless the District accounts for all of the specific uses of each classroom at the Life Academy and Fremont High School sites, EA has no way to verify that the information provided by the District is accurate.

A review of the publicly available information for the District comparison school's teaching stations, enrollment, and attendance rates, specifically CDE data regarding enrollment in 2015-16, the 2015-16 OUSD "Fast Facts" regarding the average District attendance rate, and the 2012 OUSD Facilities Master Plan suggests that EA is entitled to an allocation of at least **nineteen (19) teaching stations.**

School Name	Enrollment at school site	ADA[3]	Teaching Stations[4]	Teaching Station to ADA Ratio
Fremont High School	773	737.75	43	17.16
LIFE Academy	473	451.43	23	19.63
AVERAGE				**18.39**

Therefore, EA is entitled to nineteen (19) teaching stations.

4. Allocation Specialized Classroom Space and Non-Teaching Station Space

[3] EA used the District's average 2015-16 attendance rate of 95.44%. In addition, it used the 2015-16 enrollment at Fremont and Alliance.

[4] Per the OUSD Master Plan site profile for Fremont High School, Fremont has 77 classroom-sized rooms. A review of the District's Exhibit B and Fremont High school website shows that the District uses 43 of its teaching stations for general education, with 34 used for specialized classroom and non-teaching space (such as a parent center, band/music, special education, science labs, computer lab space, home economics, or an art room). For LIFE Academy, there are 47 classrooms on the campus that it shares with United for Success Academy. A review of public information shows that the Life Academy program uses 23 rooms for general education, with the rest used for specialized and non-teaching uses.

EA is also entitled to reasonable allocations of specialized and non-teaching station space pursuant to 5 CCR Section 11969.3. 5 CCR 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 shall include a share of the specialized classroom space. The Preliminary Proposal 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 Section 11969.9(f). *(See also Bullis Charter School v. Los Altos School Dist.*, 200 Cal. App. 4th 296 (Cal. App. 6th Dist. 2011) and *California School Bds. Assn. v. State Bd. of Education*, 191 Cal. App. 4th 530 (Cal. App. 3d Dist. 2010).)

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 EA. 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 EA and the per-student amount of non-teaching station space in the comparison group schools. (5 CCR Section 11969.3(b)(3).) 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 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. (5 CCR Section 11969.3(b)(3).) An allocation of non-teaching station space can be accomplished through shared use or exclusive use. (5 CCR Section 11969.3(b)(3); *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.)

Bullis provided even more detailed analysis of how a school district must perform the analysis of the specialized classroom space and non-teaching station space at the comparison schools, noting that a school district has an "obligation to account for all space" when performing its calculations and allocating space:

> While 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-teaching station space)--in order to determine the "reasonably equivalent" facilities that must be offered and provided to a charter school.
>
> (*Bullis Charter School v. Los Altos School Dist.* (2011) 200 Cal. App. 4th 296)

In sum, according to the Implementing Regulations, the allocation of specialized classroom space and non-teaching station space is based on an analysis of the square footage of these types of space available to students at the comparison schools (specifically, "the per-student amount of specialized classroom space in the comparison group schools." (5 CCR Section 11969.3(b)(2) and (3).) The District has not performed this analysis in its preliminary offer, either for specialized classroom space or non-teaching station space.

Instead, in a completely confusing and illegal process, the District has allocated specialized classroom space "as a fraction of general education classrooms depending on grade levels as follows: Elementary, 1/6; Middle, 1/8; High, 1/10." This formula is completely irrelevant, illegal and illogical, and guarantees EA will not receive sufficient specialized classroom space. Prop. 39 requires the District to document every kind of specialized classroom space at the comparison schools, identify the number of square feet of each kind of space is provided per ADA, and then apply that square footage to EA's ADA. A review of the maps and websites for Fremont High School suggests that there is well over 15,000 square feet of specialized classroom space at Fremont High School and at least 10,000 square feet at LIFE Academy. Even assuming this likely-undercounted amount of specialized classroom space, EA would be entitled to at least three classrooms of additional space to create specialized classroom space.

Moreover, the District is not permitted to use its bizarre formula to arrive at an allocation of specialized classroom space, and then allocate non-specialized classrooms to EA. A review of the comparison school Facility Plans, School Accountability Report Cards, LCAP reports, and websites reveal that these schools have science labs, computer labs, music and art rooms, architecture rooms, media, graphic design and photography space, etc.. As a result, the District must allocate exclusive or shared use of reasonably equivalent, fully furnished and

equipped kinds of these spaces space and/or access to EA. 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 a single space. EA also notes that by allocating **one classroom for all these uses**, thus essentially forcing EA to create its own fully furnished and equipped specialized classroom space in a single standard teaching station space, the District is relegating EA students to second-class status, given that District students enjoy access to these separate and furnished and equipped spaces. EA high school students, for example, will not have access to the science lab space available at the comparison high schools.

Furthermore, the District's calculation of non-teaching station space makes no sense, nor is it consistent with the Implementing Regulations. What the District has done is looked at the Facility Plans for the comparison schools, and added together the square footage in those documents identified as "Admin/Office/Conference," "MPR/Auditorium/Cafeteria/Gym," and "Library" for each school. It has then applied an arbitrary "Site Utilization" percentage to this square footage, and divided it by the school's ADA, to arrive at a random Sq Ft/ADA number. There are so many problems with this formula.

First, the square footage used excludes significant categories, and almost certainly amounts, of non-teaching station space. This includes special education space, kitchen space, teacher workrooms, nurse's space, storage and custodial space, bathroom space, locker rooms, and Title I, afterschool program, and other special use rooms.

Second, even using the broad categories of space in the District's Master Facilities Plan document, the District has seriously underallocated even those categories of non-teaching station space on the Lakeview site. Even the District's own Preliminary Offer acknowledges the failure to allocated reasonably equivalent amounts of these non-teaching station spaces – noting that while it has allocated 38.75 square feet of these spaces per ADA to EA, EA is actually entitled to 47.80 square feet per ADA of these spaces.

Third, the use of the Site Utilization percentage assumes that even if the District program is not using the site to capacity, that its students are not provided full access to these non-teaching station spaces. It seems extraordinarily unlikely that if a site is only at 75% capacity, then only 75% of the gym or cafeteria will be used, or that the existing program will not use these spaces all of the time. Moreover, Prop. 39 requires the District to count all space that is "provided to" District students – and all of these specialized spaces are provided to District students for their use for the entire school day, any time they want, whether or not their facility is at full capacity.

Fourth, this calculation does not include any of the outdoor space on the campus, even though all three sites have outdoor blacktop space, football field and soccer field space. EA must be allocated reasonably equivalent access to this space.

Lastly, the District's Preliminary Proposal for the Westlake, Alliance and Bunche sites is not consistent with Prop. 39 because it indicates that EA's allocation of access to specialized and non-teaching station space will be based on the percentage of square footage that EA occupies on the school sites that it has been allocated; for a charter school allocated space on a large District campus, for example, this will artificially reduce the amount of space to which the charter school is actually entitled (beyond the fact, as described above, that this is not the formula for allocation in the Implementing Regulations).

EA is entitled to reasonably equivalent allocations of these spaces, and of furnishings and equipment, and that it anticipates receiving its full complement of the specialized and non-teaching space at the school sites through agreements with the Site Principals. EA anticipates that, should the negotiations with the District Principals not provide EA with the full complement of spaces including in the Preliminary Proposal, that the District will work with both parties to ensure a satisfactory schedule is reached.

Special Education Space

Special education space is necessary for compliance with state and federal special education laws, which require privacy for implementation of certain special education services. The District's Preliminary Proposal does not include an allocation of any private space to be used for special education services. EA is entitled to special education space under Proposition 39 based on factors including, but not limited to, EA's ADA, the comparison schools, and the needs of EA's special education students under each special educations student's individualized education plan or Section 504 plan. Also, EA is entitled to special education space under Proposition 39 regardless of whether or not it provides the District with documentation of or information regarding its special education needs. Further, EA also is not, at this early date, able to state with any certainty what all of its special education needs will be six months from now. EA will be enrolling an entirely new class of 9th graders, and may enroll other new students as space becomes available in other grade levels; these new students may have special education needs that EA is not currently able to determine. In addition, one or more of its current students may become eligible for special education services during the school year. Currently the school serves 10% special education students, and it requires sufficient reasonably equivalent space to serve them.

As such, EA requires at least one (1) more room for providing special education services.

5. **Preliminary Proposal's Facility Fees and Allocation at the Westlake, Alliance and Bunche site:**

The District is mandating that the Charter School use its custodial services, which is in direct contravention of the Implementing Regulations. The Implementing Regulations provide that ongoing operations and maintenance of facilities ("M&O"), which includes custodial costs, are the responsibility of the Charter School (5 CCR Section 11969.4(b)) and that any costs assumed by the Charter School cannot be included in the pro rata share calculation. The Preliminary Offer and the draft facilities use agreement seek to mandate that the District

perform custodial services without the authorization or consent of the Charter School, for which the Charter School must then pay the District's high costs. The Charter School 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 Final Offer will need to be revised to provide for this revision.

6. **Pro Rata Charge Worksheet:**

a. **Police Services**: The District may not include police costs in its pro rata share calculation because EA has been told by the District's Police Services, when EA has called for help, 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 EA uses. Because EA does not use the District's police service, the inclusion of these costs in the pro rata share calculation is not appropriate.

b. **Insurance**: EA will provide and pay for the full spectrum of its insurance benefits, as required by its charter and the Facilities Use Agreement; it appears 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 EA for a cost it is already paying for, it is requiring EA 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.

c. **Custodial Services:** The District is indicating that EA must use its custodial services, which is in direct contravention of the Implementing Regulations. The Implementing Regulations provide that ongoing operations and maintenance of facilities, which includes custodial costs, are the responsibility of EA (5 CCR Section 11969.4(b)) and that any costs assumed by EA cannot be included in the pro rata share calculation. EA 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 Final Offer will need to be revised to provide for this revision. If the parties are able to reach some separate agreement, however, that EA will accept District custodial services at the three sites, the cost to EA for these services will need to be adjusted to accurately reflect EA's fair share of these costs.

d. The District has included $13,548,405 in facilities costs identified as "RRMA transfer from UR to resource 8150." However, Prop. 39 provides that the ongoing operations and routine maintenance of the facilities is the responsibility of EA. As such, and pursuant to 5 CCR Section 11969.7, the District may not include in its facilities costs "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." Therefore, please provide EA with the necessary documentation to show that the District has removed all facilities costs related to ongoing operations and maintenance from its RRMA transfer amounts that are EA's responsibility, including custodial services.

e. Third, 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 EA 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 EA 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 EA'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."

We have attempted in this letter to enumerate all of our concerns with the District's Preliminary Proposal; however, we note that our failure to mention a concern in this letter should not be interpreted as acceptance of that term.

For these reasons, we are unable to accept the preliminary offer as written.

Sincerely,

Sele Nadel-Hayes
Director, Operations & Finance

Cc: Sarah Kollman, Esq., Young, Minney & Corr