

April 30, 2019

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

*Re: Envision Academy of Arts and Technology
Response to District's Final Offer - Proposition 39 2019-2020*

Dear Ms. Murarka:

Envision Academy of Arts and Technology ("Envision" or "Charter School") is in receipt of the Oakland Unified School District's ("District") March 29, 2019 letter ("Final Offer") regarding Envision'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 six (6) teaching stations and two (2) specialized classrooms at Lowell, as well as 30% shared use of the non-teaching station space at Lowell. The Final Offer is based on a projected in-District ADA of 97.15.

Section 11969.9(g) of the Proposition 39 Implementing Regulations (the "Implementing Regulations") requires Envision to notify the District whether or not Envision intends to occupy the offered space. Accordingly, Envision 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.

The Final Offer is based on an alternative agreement between the District and Envision for Envision to accept fewer classrooms than the number to which it is legally entitled. Further, the Final Offer fails to calculate the pro rata share in compliance with law. Nonetheless, as Envision notes and the District's offer confirms, Envision is willing to accept an allocation of six (6) classrooms and two (2) exclusive use non-classroom spaces at Lowell.

As the District is aware, recently members of the West Oakland Middle School community have expressed concerns regarding Envision's co-location on the Lowell campus. While Envision understands the challenges of Prop. 39 and co-locations, it is also confident there is enough space on the Lowell campus to ensure students at both schools thrive. Envision is committed to ensuring a positive and collaborative co-location on the Lowell campus, and to working with the site leadership to ensure that both programs are able to operate on the site with as little disruption to students as possible.

Non-Teaching Station Space Allocation

As set forth in its response to the Preliminary Proposal, Envision does not believe that the District's allocation of non-teaching space complies with Prop 39. The Final Offer includes rooms 201

and 207 as exclusive use non-classroom spaces in its allocation. Because room 202 will be used by OUSD's Technology Services department as a training lab and the girls' bathroom will be shared, it is unlikely that the entire corridor (room 201) and the stairwells will be accessed only by Envision. Additionally, because custodial services are shared with the entire Lowell campus, it is inappropriate to assume that room 207 will be exclusively used by Envision. Envision proposes moving the square footage for a portion of 201, room 207, and the stairwells to the Shared Non-Classroom Space Allocation section.

Pro Rata Charge Worksheet

As a preliminary matter, Envision notes that the District has indicated that Envision'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 Envision an additional amount for custodial services above what is included in the pro-rata share, this is not permitted by the Implementing Regulations. Further, the Final Offer assigns 30% of the custodial costs for the campus to Envision. While Envision anticipates using 30% of shared spaces in Buildings C and D, the exclusive use spaces assigned to Envision in Building F do not represent 30% of the total non-shared spaces on the campus in Buildings A, B, E, F, and H. The assignment of custodial costs should be based on the square footage assigned to Envision for exclusive and shared uses proportional to the total spaces on the campus.

In addition, while the Final Offer allocates 30% of the shared space in Buildings C and D on the Lowell campus, the parties still need to negotiate a shared use schedule for the site. During these discussions, Envision 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 Envision's actual usage on the site. At this time, it seems improbable that shared use of the boys' and girls' locker room facilities in the gym is operationally possible. Therefore, Envision requests that the shared spaces in Building C be adjusted to include only 30% of rooms 132, 137, 146, 147, 150, and 152 instead of rooms 132-152 inclusive.

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.

Improper Costs Included in Pro Rata Share Calculation

a. **RRMA Transfer:** The District has included \$17,254,784 in facilities costs identified as "RRMA transfer from UR to resource 8150." Typically this transfer represents 3% of the District's annual total general fund budgeted expenditures. Last year the District claimed a transfer of \$13,048,405; in other words, the District's calculation suggests that this year it has increased its transfer amount by more than \$4 million. Envision requests additional information to document that this is the correct transfer amount, as the District's current budget situation, in which the District has made and is making significant cuts, makes it seem less likely that its RRMA transfer amount would have increased between 2017-18 and 2018-19.

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Re: *Envision Academy of Arts and Technology*
Response to District's Preliminary Proposal
Proposition 39 2019-2020

April 30, 2019

Page 3

b. **Insurance:** Envision 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 Envision for a cost it is already paying for, it is requiring Envision 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:** Envision does not believe the District may separately charge it for custodial services or utilities for the Lowell site, and even if, for purposes of argument, it does agree to separate charges, the cost should be based on the actual amount of space occupied by Envision on the site. Instead, the District's total custodial costs should be included in the pro rata share calculation (not charged separately on an FTE basis) and any fair sharing of costs should be based on the percentage of square footage assigned to each school on the site.

d. **Utilities:** The District may not charge a separate "Utility Fee" for the same reason it cannot charge a separate custodial fee.

e. **Emergency Debt Service Costs:** 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 Envision 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 Envision 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 Envision'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."

Draft Facilities Use Agreement

We are reviewing the draft Facilities Use Agreement; attached please find a non-exhaustive list of proposed changes.

1. **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 Envision's

Sonali Murarka
Office of Charter Schools
Re: *Envision Academy of Arts and Technology*
Response to District's Preliminary Proposal
Proposition 39 2019-2020
April 30, 2019
Page 4

summer school, if any, and programs procured by Envision through third party entities, e.g. after-school program providers.

2. **Section 3.1:** The Charter School does not agree to the District's calculated pro rata share for the reasons set forth above.

3. **Section 3.3:** The FUA proposes monthly payments, yet the Final Offer proposes quarterly payments. Please clarify which is correct.

4. **Section 8:** The District carves out a limitation on Envision 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 Envision's access to the Site, Envision cannot agree to this provision.

5. **Section 9:** The District is required to provide Envision 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.

6. **Section 10:** The District should also make temporary facilities available to the Charter School for any of its program that is displaced while the District makes repairs. The Charter School would also prefer to see a higher dollar value than \$250,000 before the District can terminate the Agreement, such as \$400,000.

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

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.

Envision looks forward to the opportunity to discuss and negotiate these matters with the District moving forward.



Sele Nadel-Hayes
Chief Operating Officer

Cc: Sarah Kollman, Young, Minney & Corr, LLP
Envision Board Members