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Model Schools
A School at Work!

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March 1, 2018

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

Re: American Indian Public Charter School
Response to District's Preliminary Proposal
Proposition 39 2018-2019

Dear Ms. Jimenez:

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

The District's Preliminary Proposal is for a total of five (5) teaching stations and one (1) "specialized" classroom at Brookfield, as well as 33.27% shared use of the non-teaching station space at Brookfield. The Preliminary Proposal is based on a projected in-District ADA of 127.4.

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

The Preliminary Proposal fails to meet the legal requirements of Prop. 39, in part, because the Preliminary Proposal fails to provide sufficient information regarding the allocation of teaching station, non-teaching space and specialized classroom space to AIPCS and fails to provide AIPCS with a reasonably equivalent allocation of space as required by law. In addition, the District allocated AIPCS space at a site that is 7 miles away from the area where the school requested to be located. As a result of these deficiencies, the space allocated to AIPCS at Brookfield is unworkable for AIPCS and AIPCS does not intend to occupy the allocated space at Brookfield.

We remind you that the District must give the same degree of consideration to the needs of charter school students as it does to the students in District-run schools and 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.

1. Condition Analysis

A district must also 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 Preliminary Proposal 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 site offered to AIPCS is 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 Preliminary Proposal 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 Preliminary Proposal fails to perform the complete condition analysis required by the Implementing Regulations.

2. Teaching Station to ADA Analysis

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."

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 specifically 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.*

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 schools by the number of regular teaching stations. The spreadsheet forming Exhibit C to the Preliminary Offer, which the District cites as the source of its calculation, is a list of each of the classes at each comparison 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 the schools 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 the comparison schools 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 schools 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 comparison schools, AIPCS 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 schools' teaching stations, enrollment, and attendance rates, specifically CDE data regarding enrollment in 2016-17, the 18-19 projected ADA provided by the District, and the 2012 OUSD Facilities

Master Plan, the Blueprint documents, and the Facilities Utilization Baseline Estimator suggests that AIPCS is entitled to an allocation of at least **six (6) teaching stations.**

School Name	ADA at school site	District Claimed TS/ADA Ratio	Corrected Teaching Stations[1]	Corrected Teaching Station to ADA Ratio
Hillcrest	378.76	26.94	15	25.25
Claremont	464.40	29.60	17	27.32
Westlake	303.16	25.76	25	12.13
Average				**21.56**

Therefore, based on its reasonable in-District ADA projection of 127.4, AIPCS is entitled to at least **six (6) teaching stations, which is one more teaching station than the District allocated to AIPCS**.

3. The Preliminary Proposal Does Not Allocate Sufficient Specialized Classroom and Non-Teaching Station Space to AIPCS

AIPCS is 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 Preliminary 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.[2]

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[1] These numbers are developed from reviewing the OUSD Master Plan site profile and Blueprint document for the comparison schools to determine the number of classrooms, as well as a review of the District's Exhibit C and the comparison school websites to determine the actual number of regular classrooms used by the District for regular teaching stations (which includes Newcomer and A-G classrooms as these rooms are used for general education), excluding rooms 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).

[2] 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).

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 AIPCS. 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 AIPCS 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 schools 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, 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 space in the comparison group schools"). (5 CCR § 11969.3(b)(2)(C).) 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 (especially here, where the District averaged the specialized classroom and non-teaching station space over all the comparison schools). 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-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 count wide swaths of specialized classroom and non-teaching station space at the comparison schools, or has entirely failed to account for those spaces in its offer.

a. Allocation of Specialized Classroom Space to AIPCS

The Preliminary Proposal allocates a total of one (1) exclusive use "specialized" classroom to AIPCS. However, the Preliminary Proposal does not indicate whether the classroom allocated contains any specialized furnishings or equipment or are appropriate for specialized instruction.

In addition, in an approach that ignores the literal language of Section 11969.3(b)(2), the District asserted that "At the elementary level, specialized rooms are estimated as 1 for every 8 of general education classrooms. At the middle school level, specialized rooms are estimated as 1 for every 6 of general education classrooms. At the high school level, specialized rooms are estimated as 1 for every 10 of general education classrooms." The District then allocated specialized classroom space "based on the number of general education teaching stations" at the comparison schools. The District's allocation of specialized classroom space does not comply with the Implementing Regulations in several respects.

The District is not permitted to base its determination of the amount of specialized classroom space at the comparison schools on the number of general education teaching stations at those schools. Nothing in the law authorizes the District to average all the various types and amounts of specialized classroom spaces across all the comparison schools in this manner. According to the Implementing Regulations, the allocation of specialized teaching space and non-teaching 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).) Further, the 2017-18 Facility Utilization Baseline Estimator on which the District relies to support its calculation of specialized classroom space makes it clear that the estimations of specialized classroom contained therein are not based on "actual use" and "[i]t is assumed that the actual use is <u>likely much higher</u> than the estimate."

The District's calculation completely fails to account for the "the per-student amount of specialized classroom space in the comparison group schools." <u>The Preliminary Proposal is completely void of any discussion of the different amounts (square footage) and types of specialized classroom space that exist at the comparison schools including: computer lab, band/music room, science lab, science demonstration lab, art room, and multi-purpose demonstration lab.</u>

AIPCS is entitled to a reasonably equivalent allocation of or access to <u>all</u> of these types of specialized classroom spaces since they exist at the comparison schools, and *Bullis* requires the District to make "a good faith attempt to identify and quantify" the specialized classrooms spaces that exist at the comparison schools. Therefore, the District's methodology for determining the specialized classroom allocation to AIPCS and its failure to identify and quantify all the various types of specialized classroom space at the comparison schools violates Prop. 39 and its Implementing Regulations.

In addition, the District may not combine different types and sizes of specialized classroom space and then allocate non-specialized classrooms to AIPCS. If there are science labs, computer labs, music 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 AIPCS. 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 (along with administrative, office and library space). AIPCS also notes that by allocating one classroom for all these uses, the District is relegating AIPCS students to second-class status, given that District students enjoy access to these separate, furnished and equipped spaces. The District cannot force AIPCS 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.)

AIPCS 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.

b. Allocation of Non-Teaching Station Space to AIPCS

The Preliminary Proposal does not properly allocate non-teaching space to AIPCS. The Preliminary Proposal allocates lumped-together categories of non-teaching station space (admin/office/conference, MPR/auditorium/cafeteria/Gym, and library) as well as a catch-all "other interior" without any further specification. The offer provides for a total allocation of 12,216 square feet of interior non-teaching station space and 116,276 sq. ft. total outdoor space to AIPCS spread across two sites.

The District's allocation of non-teaching space to AIPCS in the Preliminary Proposal does not comply with Prop. 39 or its Implementing Regulations in several respects, including its failure to identify the specific non-teaching station space to be allocated to AIPCS and its allocation of non-teaching station space based on the percentage of AIPCS's enrollment on the site, as determined by the District. Moreover, the District's calculations of the space to be allocated to AIPCS are opaque, unverifiable, and based on mysterious formulas that have not been provided to AIPCS. 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 calculation or allocation to AIPCS. The Preliminary Proposal does not appear to include any of the following types of spaces in its calculation of non-

teaching space at the comparison school or its allocation to AIPCS even though such spaces are available at the comparison school: kitchen/servery, nurse/health clinic space, psychiatric/OT/RSP/special education/ESL/Title I/speech rooms, parent centers/community use rooms, restorative justice rooms, and professional development rooms.

Similarly, the Preliminary Proposal does not address the various types of outdoor areas that exist at the comparison school such as gardens and fields, but rather lumps all the different types of exterior spaces together when calculating exterior non-teaching station space. The District is required to provide AIPCS 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 AIPCS 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 AIPCS 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 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 AIPCS a percentage of unspecified non-teaching station spaces that exists at the allocated site, which is not a comparison school.

Second, the Preliminary Proposal contains no listing or description of all the types of shared non-teaching spaces to which AIPCS will be provided access at the offered site beyond large categories of space, or any proposed schedule for AIPCS's use. The District's failure to provide this basic information to AIPCS precludes AIPCS from engaging in timely and efficient negotiations with the site principal regarding a shared use schedule and prevents AIPCS from assessing whether the Preliminary Proposal provides AIPCS with access to all of the different types of non-teaching station space to which AIPCS 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.) As such, AIPCS expects that the District's final offer will specifically identify all the non-teaching station space to be allocated to AIPCS.

Third, the District may not base its non-teaching station space allocation to AIPCS 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 AIPCS. The District claims a "charter school's allocation is considered to fall within reasonable equivalence standards if it falls within the minimum/maximum Sqft/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, we assume, 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 teaching station allocation, as this is also based only on the number of 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.

For all these reasons, the District's allocation of specialized and non-teaching station space included in the Preliminary Proposal fails to comply with Prop. 39 and its Implementing Regulations. AIPCS 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.

4. Pro Rata Charge Worksheet

As a preliminary matter, AIPCS notes that the District has indicated that AIPCS'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 AIPCS 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 AIPCS, 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 AIPCS to shoulder higher burdens of utilities costs than the amounts AIPCS actually uses. If the District receives billing from the utilities companies for each of its individual school sites, AIPCS is willing to

[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.

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

c. **Insurance**: AIPCS 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 AIPCS for a cost it is already paying for, it is requiring AIPCS 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 AIPCS (5 CCR Section 11969.4(b)) and that any costs assumed by AIPCS cannot be included in the pro rata share calculation. AIPCS 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.

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 AIPCS (5 CCR Section 11969.4(b)) Therefore, please provide AIPCS 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 AIPCS's responsibility, including custodial services.

f. 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 AIPCS 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 AIPCS 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 AIPCS'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 AIPCS's summer school, and programs procured by AIPCS through third party entities, e.g. after-school program providers.

    b. **Section 1.4**: Prop. 39 only requires AIPCS 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 AIPCS if AIPCS 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 AIPCS 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. In fact, should it accept the Markham allocation, AIPCS would request that the District work with it to ensure access to the site during the summer for the school's office use.

e. **Section 3**: This section also needs to reflect that if AIPCS constructs or installs recreational improvements or other school facilities, AIPCS and the District will agree to negotiate a reduction in the facilities use fees. AIPCS's other concerns regarding the Pro Rata Share Charge outlined above are incorporated herein. Again, any costs assumed by AIPCS cannot be included in the pro rata share calculation, including custodial and maintenance costs. AIPCS objects to the late charge listed in Section 3.5. The Implementing Regulations do not contemplate late fees to be charged to AIPCS.

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

g. **Section 10**: For the same reason, the District may not require AIPCS 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 AIPCS 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.

h. **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 AIPCS's program. The District must provide relevant scheduling information and reasonable notice to AIPCS if it will be coming onto the facility to perform maintenance. In addition, AIPCS 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.

i. **Section 14**: While AIPCS 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).)

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

k. **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. AIPCS does not agree to provide written verification of compliance with the fingerprinting and criminal background investigation requirements to District prior to AIPCS taking possession of the Premises and prior to conducting its educational program on the Premises.

l. **Section 18.1.7**: AIPCS 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.

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

n. **Section 20**: If AIPCS 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.

o. **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 AIPCS.

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.

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

Respectfully,

Maya Woods-Cadiz

Superintendent Maya Woods-Cadiz
American Indian Model School

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