YPI CHARTER SCHOOLS

June 26, 2023

TO: YPI Charter Schools
Board of Directors

FROM: Yvette King-Berg
Executive Director

SUBJECT: Recommendation to approve the Employer Retention Tax Credit retainer agreement at 8% contingency fee with CFOMW Tax, LLC.

BACKGROUND

The Employee Retention Credit (ERC) is a refundable tax credit for businesses that continued to pay employees while shut down due to the COVID-19 pandemic or had significant declines in gross receipts from March 13, 2020 to Dec. 31, 2021. Eligible employers can claim the ERC on an original or adjusted employment tax return for a period within those dates. Only recovery startup businesses are eligible for the ERC in the fourth quarter of 2021.

An employer is eligible for the ERC if it:

- Sustained a full or partial suspension of operations limiting commerce, travel or group meetings due to COVID-19 and orders from an appropriate government authority, or
- Experienced a significant decline in gross receipts during 2020 or a decline in gross receipts during the first three quarters of 2021 or
- Qualified in the third or fourth quarters of 2021 as a recovery startup business.

ANALYSIS

This action item seeks the approval of the Employer Retention Tax Credit retainer agreement through Michael Williams, a California-licensed attorney. His firm focuses its practice on tax planning and credits; he is the tax attorney proposing to provide this service. We review whether there is any risk to (1) being denied a refund and whether that presents issues of cash flow or charges of frivolous filings, (2) media concerns, and (3) potential costs. In sum, we believe there is minimal to no risk from (1) and (2), and the risk of (3) can be mitigated by cost structure of attorney fees. Regarding (1), some of the risk is already mitigated because we are seeking a refund. If we had applied for the ERC as many companies did during the early part of the pandemic, we would withhold our requested amount. The danger is if the IRS denied the request, then we would have to pay the money back to the IRS. However, this period is past and now the only option under the ERC is to request a refund. There is less risk here because if the IRS denies a refund from the IRS, there is nothing to pay back. They either send you a check or deny the request (from which we could appeal if we so chose).

There is minimal risk of fraudulent or frivolous filings. This risk is largely borne by the attorney filing the returns, but, regardless, we have done our due diligence with not just the attorney himself, but also I have reviewed the FAQs on eligibility. Regarding the risk associated with (3) described above, we can mitigate this in a couple of ways. One, by paying our fees on a contingency basis, we don't pay any fees if we do not get the refund. Two, we can ask our attorney to cover possible appeal and audit costs under this contingency fee arrangement. Thus, the most likely downside risk is not paying anything at all, as if the IRS disagrees with our claim at a later date, we can abate any potential penalties as we can clearly demonstrate that we've done our due diligence and relied on the advice of an experienced tax attorney who has filed a substantial number of claims for charter schools in California and around the country. The attorney charges a success-based fee for his services; at our credit size his rate is **8%**, which is in line with other schools that we have discussed regarding their ERC filings. If all quarters are approved for which we qualify, the total credit would be in excess of **$1,682,151.** It is possible that not all quarters receive approval, as each is judged on its own merit. As such, the refund amount will only be known if and when the IRS approves the refund claim.

RECOMMENDATION

It is recommended that the Board of Directors approve the Employer Retention Tax Credit retainer agreement at 8% contingency fee.