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Enactment Date	12/13/17



**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

Memo

To Board of Education

From Marion McWilliams, General Counsel

Board Meeting Date December 13, 2017

Subject Agreement Between Chabot Space & Science Center JPA and the Oakland Unified School District

Action Requested Approval by the Board of Education of the Agreement Between Chabot Space & Science Center JPA and the Oakland Unified School District extending Forbearance Agreement (Enactment # 14-1758) from 12/30/16 to 12/31/17.

Background and Discussion Chabot Space and Science Center is a joint powers agency of which the Oakland Unified School District is a member. In July 1999, the District issued Certificates of Participation (COPS) to provide a loan of \$10,265,000 to the Chabot JPA. Subsequently, the District and the Chabot JPA restructured the loan into a Lease-Leaseback Agreement under which Chabot JPA was to make lease payments to the District of \$450,000 per year for forty years (until 2049). Since 2013-14, Chabot JPA has been unable fiscally to make the lease payments to the District. Over the past several years, the District has entered into a series of temporary Forbearance Agreements with Chabot JPA to enable the Chabot JPA parties to consider ways to potentially restructure or eliminate the debt. These Forbearance Agreements retain all the District's rights to the underlying Agreements and payments owed by Chabot JPA under that Agreement. This Agreement retroactively extends the prior Forbearance Agreement to cover the time period December 30, 2016 to December 30, 2017.

Recommendation Approval by the Board of Education of the Agreement Between Chabot Space & Science Center JPA and the Oakland Unified School District extending Forbearance Agreement (Enactment # 14-1758) from 12/30/16 to 12/31/17.

Fiscal Impact Deferred revenue

Attachments

- Agreement Between Chabot Space & Science Center JPA and the Oakland Unified School District

**AGREEMENT BETWEEN THE
CHABOT SPACE & SCIENCE CENTER JPA AND THE OAKLAND UNIFIED
SCHOOL DISTRICT**

THIS AGREEMENT is entered into on December 13, 2017, by and between the Oakland Unified School District, a California public school district (“OUSD”), and the Chabot Space and Science Center, a joint powers agency (“CHABOT JPA”).

RECITALS

WHEREAS, the Chabot Space and Science Center (CHABOT JPA) is a joint powers agency of which the Oakland Unified School District (OUSD or District) serves as a member; and

WHEREAS, on July 1, 1999, the District issued Certificates of Participation (COPS) to provide a loan of \$10,265,000 to CHABOT JPA; and

WHEREAS, on September 22, 2010, the Governing Board of OUSD in Resolution No. 1011-0034, agreed to a restructuring of the loan agreement with CHABOT JPA in the form of a lease lease-back of the CHABOT JPA Facility in the form of a Site Lease Agreement, the Chabot JPA Lease Agreement and Agreement Regarding Termination of Security Instruments with the CHABOT JPA, (collectively the “CHABOT JPA Lease-Leaseback Agreement”); and

WHEREAS, pursuant to the terms and conditions of the CHABOT JPA Lease-Leaseback Agreement, OUSD leased the Chabot Space and Science Center Facility located at 10000 Skyline Blvd., Oakland, California 94610 (the “CHABOT JPA Facility”) for \$1 and leased the CHABOT JPA Facility back to CHABOT JPA for \$450,000 per year payment by the CHABOT JPA to the District for the term commencing retroactively to October 1, 2009 through September 30, 2049 (40 years); and

WHEREAS, although CHABOT JPA was able to make lease payments to OUSD for several years pursuant to the terms of the CHABOT JPA Lease-Leaseback Agreement, payments by CHABOT JPA became difficult in 2013-2014 due to fiscal challenges at CHABOT JPA; and

WHEREAS, CHABOT JPA is indebted to OUSD in excess of \$1.2 million dollars, and has made no payments under the Lease-Leaseback Agreement since 2013-14; and

WHEREAS, on June 29, 2016 by Enactment No. 16-1265, the Board of Education approved an Agreement between the Chabot Space & Science Center JPA and the District (together the “Parties”) to extend the existing Forbearance Agreement, originally approved by the Board of Education as Enactment 14-1758 on October 8, 2014 by 120 days or to October 30, 2016, and

WHEREAS, on October 13, 2016 by Enactment No. 16-1687, the Board of Education approved a further extension of this Agreement to extend the existing Forbearance Agreement, by an additional 61 days or to December 30, 2016 to allow the Parties to continue discussions with the

City of Oakland to develop a plan for the elimination of the debt owed to the District by CHABOT JPA, and

WHEREAS, the District, the City of Oakland, and CHABOT JPA are exploring potential plans for the elimination of the debt owed to the District,

WHEREAS, CHABOT JPA has requested that the District provide additional time to continue discussions about potential debt elimination and the District deems it in the best interest of all parties to the CHABOT JPA to continue such discussions during the time period of this Agreement,

NOW, THEREFORE, subject to the terms and conditions contained herein and without waiving its rights under the CHABOT JPA Lease-Leaseback Agreements, it is agreed between the CHABOT JPA and OUSD as follows:

1. **Existing 2013-14 CHABOT JPA Indebtedness /Agreement.** CHABOT JPA and OUSD each hereby acknowledge and agree that the CHABOT JPA is in arrears to OUSD for each of the \$450,000 annual lease payments since 2013-14 and that such indebtedness has been and is continuing under the terms of the CHABOT JPA Lease-Leaseback Agreements.

2. **Extension of Existing Forbearance Agreement.** OUSD agrees to extend the prior Forbearance Agreements, originally approved by the Board of Education as Enactment # 14-1758 on October 8, 2014, Enactment 16-1265 on June 29, 2016, Enactment 16-1687 on October 13, 2016 to allow CHABOT JPA and the District to develop a plan for the elimination of the debt owed to the District. The term of this extended Forbearance Agreement shall be December 30, 2016 to December 31, 2017.

3. **Acknowledgement and Reaffirmation of CHABOT JPA.** By signing this Agreement, the CHABOT JPA consents and agrees to the terms of this Agreement and acknowledges that all indebtedness arising under the CHABOT JPA Lease-Leaseback Agreements shall continue to constitute obligations of the CHABOT JPA. The foregoing confirmation shall not be deemed to limit the terms of the CHABOT JPA Lease-Leaseback Agreements in any manner. This Agreement does not negate the existing unpaid debt and does not modify OUSD Board Resolution 1011-0034 (approving restructuring of the original Certificates of Participation (COPS) to a Lease-Leaseback Agreement between the District and CHABOT JPA).

4. **Further Assurances and Additional Documents.** CHABOT JPA shall, at the request of OUSD following the execution of this Agreement, promptly execute and deliver, or cause to be executed and delivered, to OUSD all such further documents and instruments and take all such further action as may be reasonably necessary or appropriate to confirm or carry out the provisions and intent of this Agreement.

5. **Severability of Provisions.** Any provision of this Agreement that is prohibited or unenforceable shall not invalidate the remaining provisions of this Agreement, or any other agreement executed between OUSD and the CHABOT JPA or affecting the validity or enforceability of such provisions.

6. **Successors and Assigns.** This Agreement is binding upon the parties and their respective successors, assigns, heirs and personal representatives. CHABOT JPA may not assign or transfer any rights or obligations under this Agreement without the prior written consent of OUSD.

7. **Governing Law.** This Agreement shall be governed by and construed in accordance with the substantive laws of the State of California.

8. **No Third Party Reliance.** No third party shall be entitled to rely upon this Agreement or to have any of the rights or benefits hereunder.

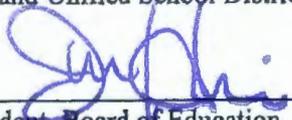
9. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

IN WITNESS WHEREOF, the parties have executed this Agreement and effective as of the date first above stated.

CHABOT SPACE AND SCIENCE
CENTER, A Joint Powers Agency


By: _____
Name: Adam Tobin

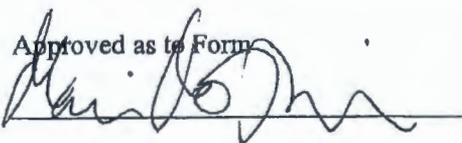
Oakland Unified School District



President, Board of Education



Superintendent and Secretary, Board of Education

Approved as to Form


Marion McWilliams, General Counsel