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OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education
 From Jacqueline Minor, General Counsel
 Board Meeting Date October 8, 2014
 Subject **Approval Of the Forbearance Agreement with Chabot Space & Science JPA**

Action Requested **Approval Of the Forbearance Agreement with Chabot Space & Science JPA**

Background

In 1989 a Joint Powers Agency (JPA) was formed between the City of Oakland, the School District and East Bay Regional Park District to create the Chabot Space & Science Center. The mission of the Center is "the pursuit and practice of quality science education." The Chabot Facility includes a space and science museum, a café, gift shop, planetarium, theater, educational facilities, and rooms that can be rented for sponsorship of educational programs and community events. On July 1, 1999, the District issued Certificates of Participation (COPs) to loan \$10,265,000 to Chabot. Although Chabot was able to make payments on the original loan for several years, payments became more difficult as the variable interest rate on the COPs increased. By 2009, faced with increasing interest rates, Chabot fell behind in the payments. At that time, \$8,327,680.60 was outstanding on the original loan. Chabot requested that the District restructure the loan to provide stability and predictability in payments, and to extend the repayment term to 40 years. The original loan was renegotiated. The terms of the restructured loan, which was approved by the OUSD Board in early 2010 were: 1) the restructured loan agreement is a lease lease-back of the Chabot Space and Science Center Facility (the District leases the Facility from Chabot for \$1 then leases it back to Chabot for \$450,000 per year). 2) Chabot was to make quarterly payments of \$112,500.

In November 2013, Chabot advised the District it was unable to make the scheduled payment. As of June 30, 2014, Chabot is behind four quarters and owes the District \$450,000. The outstanding loan principal owed by Chabot to the District is \$6.8 million dollars. Chabot requested another loan modification pending the completion of a current capital campaign and realignment of its business model.

Discussion

The District proposes to enter into a two year Forbearance Agreement. Under the terms of the Forbearance Agreement, OUSD will temporarily



forbear from exercising its rights under the Lease-Leaseback Agreements and 1) CHABOT JPA will make payments to OUSD as follows: during OUSD's 2014-15 fiscal year, a payment of \$150,000 toward the 2013-14 indebtedness; and a payment of \$200,000 during OUSD's 2015-16 fiscal year toward the 2013-14 indebtedness; 2) subject to approval by the Oakland City Council, the 2013-14 partial payment, payable in the 2014-15 and 2015-16 fiscal years will be made by the City of Oakland to OUSD, for the benefit of CHABOT JPA, from the hotel tax proceeds (Measure C) payable by the City of Oakland to CHABOT JPA.

Recommendation

Approval Of the Forbearance Agreement with Chabot Space & Science JPA

Fiscal Impact

Revenue of \$150,000 during FY 2014-15 and \$200,000 during FY 2015-16

Attachments

- Forbearance Agreement

FORBEARANCE AGREEMENT
CHABOT SPACE & SCIENCE CENTER

THIS FORBEARANCE AGREEMENT (the "Forbearance Agreement") is entered into on September 1, 2014, 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 (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 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, recently, payments by CHABOT JPA have been difficult due to fiscal challenges at CHABOT JPA; and

WHEREAS, as of June 30, 2014, CHABOT JPA is indebted to OUSD in the amount of \$450,000 for fiscal year 2013-14, and was unable to bring this amount in arrears current in the 2013-14 fiscal year (the 2013-14 CHABOT JPA Indebtedness"); and

WHEREAS, CHABOT JPA has requested that OUSD temporarily forbear from exercising its rights and remedies under the CHABOT JPA Lease-Leaseback Agreements, and OUSD has agreed to temporarily forbear such rights (as to the 2013-14 CHABOT JPA Indebtedness);

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 /Conditional Forbearance.** CHABOT JPA and OUSD each hereby acknowledge and agree that (a) the CHABOT JPA is in arrears to OUSD in the amount of \$450,000 for fiscal year 2013-14, and that such indebtedness is continuing under the terms of the CHABOT JPA Lease-Leaseback Agreements, and that the 2013-14 Indebtedness is due and owing to OUSD.

2. **Terms of Forbearance Agreement.** Subject to the terms and conditions of this Forbearance Agreement, OUSD agrees to temporarily forbear from exercising its rights under the CHABOT JPA Lease-Leaseback Agreements as follows:

- A. During the term of this Forbearance Agreement, CHABOT JPA will make payments to OUSD as follows: during OUSD's 2014-15 fiscal year, a payment of \$150,000 toward the 2013-14 indebtedness; and a payment of \$200,000 during OUSD's 2015-16 fiscal year toward the 2013-14 indebtedness. During the term of this Agreement, OUSD will not invoice CHABOT JPA additional lease payments (except as provided in this Paragraph 2A).
- B. Subject to approval by the Oakland City Council, the 2013-14 partial payment, payable in the 2014-15 and 2015-16 fiscal years will be made by the City of Oakland to OUSD, for the benefit of CHABOT JPA, from the hotel tax proceeds (Measure C) payable by the City of Oakland to CHABOT JPA.
- C. No later than March 2016, the District and CHABOT JPA shall meet, confer and develop a plan for the repayment of the balance of the debt owed by CHABOT JPA to OUSD, including the 2013-14 remaining arrearages and the then balance due on the CHABOT JPA Lease-Leaseback Agreements. OUSD's willingness to consider further revisions of the original agreement is contingent upon evidence satisfactory to OUSD of the likely success of CHABOT JPA's capital campaign and progress toward building The Redwoods Environmental Education Center at the CHABOT JPA Facility. Upon expiration of this Agreement, if the Parties have not developed a repayment plan OUSD may pursue and enforce any and all of its remedies against CHABOT JPA under the CHABOT JPA Lease- Leaseback Agreements.
- D. During the term of this Forbearance Agreement, OUSD will provide one staff person on loan to CHABOT JPA. CHABOT JPA will provide the job description and necessary skills to OUSD. The staff person assigned will be mutually agreed upon by OUSD and CHABOT JPA.
- E. For the period from July 1, 2014 to June 30, 2016, the in-kind portion of the payment will consist of three components:
 - i. A facility use credit of up to \$50,000 per year by OUSD personnel, to be reserved and used as currently outlined in the existing agreement between CHABOT JPA and OUSD.

- ii. A School Outreach Programming credit of up to \$3,000 per year that will bring the science experience to the Oakland Schools that are unable to come to the Center. This will increase the opportunity for these students to supplement their science education in their own school environment. This will be provided on a first come, first served basis. Once the \$3,000 credit has been exhausted, the regular rates will apply for all outreach programming.
- iii. The delivery of free field trips to all OUSD students begins at an estimated value of \$78,000 per year, to be reserved and used as currently outlined in the existing agreement between CHABOT JPA and OUSD. The value of this item will be at the full cost of the field trip booked and will fluctuate over time. The \$78,000 is based on approximately 6,000 students annually (typical over prior years) at a cost of \$13 each. The amount applied toward the credit will be the actual value of the field trip booked and will fluctuate.

3. **Term**. The term of this Agreement is July 1, 2014 to June 30, 2016. This Agreement will expire on June 30, 2016 (the "**Expiration Date**").

4. **Acknowledgement and Reaffirmation of CHABOT JPA**. By signing this Forbearance Agreement, the CHABOT JPA consents and agrees to the terms of this Forbearance 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 Forbearance Agreement does not negate the existing unpaid 2013-14 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).

5. **Further Assurances and Additional Documents**. CHABOT JPA shall, at the request of OUSD following the execution of this Forbearance 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 Forbearance Agreement.

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

7. **Successors and Assigns**. This Forbearance 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 Forbearance Agreement without the prior written consent of OUSD.

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

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

10. **Counterparts.** This Forbearance 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 Forbearance Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Forbearance 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 Forbearance Agreement and effective as of the date first above stated.

OAKLAND UNIFIED SCHOOL DISTRICT

CHABOT SPACE AND SCIENCE
CENTER, A Joint Powers Agency

By: _____

By: _____

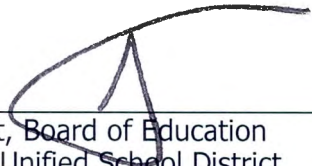
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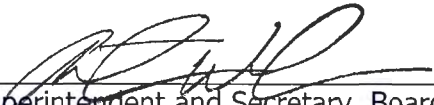
Alexander Zwissler ED/CEO

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Bv:

OAKLAND UNIFIED SCHOOL DISTRICT



President, Board of Education
Oakland Unified School District



Superintendent and Secretary, Board of Education
Oakland Unified School District

Approved As to Form



Jacqueline Minor, General Counsel

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Bv: