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Enactment Number	16-0545
Enactment Date	4/13/16



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

OFFICE OF THE GENERAL COUNSEL

Memo

To Board of Education

From David Montes, Deputy Chief
Jacqueline P. Minor, General Counsel

Board Meeting Date April 13, 2016

Subject **Facilities Use Agreement**

Action Requested Approval of Letter of Intent with American Indian Model Schools for 2016-17 at Lakeview Elementary School and for Long Term Occupancy of King Estates

Background and Discussion The Board is being asked to approve a Letter of Intent with AIMS that includes:

1. Provisional use of Lakeview ES for 2016-17 School Year.
2. The District and AIMS agree to enter into negotiations for a potential Long Term Facilities Agreement for a portion of the King Estates Site for an initial term of 10 years with two 10-year options to renew, and a tenant improvement credit not exceed 80% of the reasonable costs Charter School spends on its Tenant Improvements, an amount not to exceed \$2 million dollars.
3. Agreement to extend the deadline for submitting and responding to Preliminary and Final offers under Proposition 39 for the 2016-2017 school year by 30-days.
4. AIMS acknowledges and understands that if it exercises the option not to proceed with the Long Term Facilities Agreement, AIMS must vacate the Lakeview campus no later than June 20, 2017 and that no extensions or exceptions to this requirement will be granted by the District.

Recommendation Approval of Letter of Intent with American Indian Model Schools for 2016-17 at Lakeview Elementary School and for Long Term Occupancy of King Estates

Fiscal Impact Annual Revenue for 16-17 based upon the 2016-17 Prop 39 Rate

Attachment Letter of Intent



Revised April 8, 2016

Re: Letter of Intent for Long Term Joint Use Agreement “In Lieu” of Proposition 39

Dear Maya:

This binding letter of intent, subject to approval by the Board of Education of AIMS and the Board of Education of OUSD, outlines the substantive terms of a prospective Long Term Facilities Joint Use Agreement (“Long Term Facilities Agreement”) between Oakland Unified School District (“OUSD”/“District”) and American Indian Model Schools (AIMS), a California nonprofit public benefit corporation operating American Indian Public High School (“Charter School”) for the use of a yet to be determined portion of the District’s King Estates School Site at 8251 Fontaine St. Oakland, CA 94605 (“King Estates Site”), currently serving Rudsdale Continuation High School and Bay Area Technology Charter School.

1. Agreement Term and Commencement Date.

- 1.1. The District and Charter School agree to enter into negotiations for a potential Long Term Facilities Agreement for a portion of the King Estates Site (referred to as the “AIMS Premises”). The AIMS Premises at the King Estates Site shall accommodate up to 400 students enrolled in American Indian Public High School, with flexibility to accommodate growth in student enrollment over time, in conditions reasonable equivalent to those in which the students would be accommodated if they were attending public schools of the District consistent with the standards established by Education Code section 47614 and its implementing regulations.
- 1.2. The term (“Initial Term”) of the Long Term Facilities Agreement, should it be approved by both parties, would be ten (10) years. It is anticipated that such an agreement would commence on June 1, 2017, and end on June 30, 2027, unless subject to earlier termination under any provision of the Long Term Facilities Agreement, which would include, but not be limited to the following reasons:
 - 1.2.1. Termination by the Charter School in whole or in part if any one or more of the Charter’s School’s programs ceases to operate after a revocation, nonrenewal or surrender of a charter to the granting agency, and all appeals have been exhausted.

2. Renewal of Agreement. The Long Term Facilities Agreement would provide that Charter School may renew for two (2) additional terms (“Additional Term”) of ten (10) years each, provided that the Additional Term is approved by the District’s Board of Education, which approval shall not be unreasonably withheld, prior to the end of the Initial Term and again at the end of the first ten (10) year Additional Term.

3. Rent. The Long Term Facilities Agreement would provide that, for and in consideration of the use of the AIMS Premises, Charter School would agree to pay District Facilities Use Lease Rents (“Rent”), subject to the Rent Credit described in section 4 below, as follows:

- 3.1. Rent shall be based on the annual Prop 39 Facilities Use Rate assessed by the District to other Charter Schools at District facilities multiplied by the AIMS Premises' total square footage. Rent, minus any Rent Credit, would be due on a monthly basis.

4. **Tenant Improvement Rent Credit.**

- 4.1. Subject to the provisions herein, and in accordance with more detailed terms and conditions to be negotiated by the parties as part of the potential Long Term Facilities Use Agreement, the District would credit to the Charter School the amount of Rent due each year based upon the actual amount of money spent by Charter School for the Charter School's share of the tenant improvements, repairs, furnishings and technology upgrades (the "Tenant Improvements") on the AIMS Premises (the "Rent Credit"). The Rent Credit shall not exceed 80% of the reasonable costs Charter School spends on its Tenant Improvements, in an amount not to exceed \$2 million dollars.
- 4.2. Charter School's share would be a sum negotiated by the parties, and it would generally be based upon the estimated number of in-district students attending American Indian Public High School each school year during the term of the Long Term Facilities Use Agreement.
- 4.3. OUSD would agree to immediately and fully credit to the Charter School and offset any Rent due during the 2017-2018 school year, the total actual costs of the Tenant Improvements necessary for preparing the 8 portables currently in place at the AIMS Premises so that they satisfy the "reasonably equivalent" standard under Education Code section 47614 and its implementing regulations. The foregoing credit described in this subsection 4.3 **would not be subject to or included** in the additional Tenant Improvement \$2 million cap provided for in subsection 4.1, above. Any remaining additional Tenant Improvement work needed to create space for non-district ADA during the 2017-2018 school year would be Charter School's sole financial responsibility.

5. **Tenant Improvements.**

- 5.1. Except as provided for in Section 4, above, regarding Rent Credit, Charter School would be solely responsible to make payment for any service or work performed in connection with the design and construction of any Tenant Improvements to AIMS Premises that are contracted for by AIMS. Charter School would administer and resolve any claims or disputes that may arise against it in connection with the design and construction of the Tenant Improvements.
- 5.2. Charter School and any person performing work for construction of the Tenant Improvements, would be required to exercise reasonable precautions to avoid damage and protect persons or property while on the AIMS Premises and any adjacent staging area. District would assume no liability for loss or damage to property or injuries to or deaths of agents, contractors, or employees of Charter School by reason of the exercise of privileges given in this section. Charter School would indemnify and hold District harmless from any damage caused by the Charter School's activities authorized in this section, except to the extent such damage was caused by District's gross negligence or willful misconduct.
- 5.3. Charter School would be required to provide notice to District in writing of the status of the Tenant Improvement projects and notify the District when the Tenant Improvements are completed. District would have the right to reasonably inspect and reject the Tenant Improvements, provided that the sole grounds for any such rejection shall be failure to comply with applicable law and regulations.
- 5.4. Charter School would be responsible for the timely completion of any Tenant Improvements to the AIMS Premises, including preparing the 8 portables currently in place at the AIMS Premises that are necessary to satisfy the "reasonably equivalent" standard, and in order for Charter School to commence its school programs for the 2017-2018 school year.

6. **Maintenance.** In general the District may have no maintenance or repair obligations with respect to the Tenant Improvements constructed on the Premises during the term of the Long Term Joint Facilities Use Agreement.

7. **Proposition 39.** In the event that the parties enter into a Long Term Joint Facilities Use Agreement, Charter School

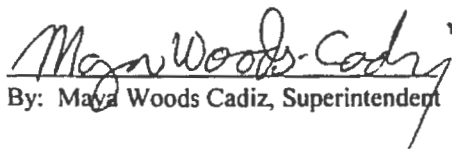
would agree to waive any further right to petition the District for additional space for American Indian Public High School during the term of the Long Term Facilities Agreement. The foregoing waiver by Charter School would not include a waiver of any rights with respect to American Indian Public Charter School or American Indian Public Charter School II, as those schools are not currently intended to be located on the AIMS Premises. In the event that Charter School elects not to proceed with the Long Term Facilities Agreement, or upon the termination or expiration of that agreement, Charter School would retain its right to request Proposition 39 facilities for American Indian Public High School (in addition to all of its other charter schools) for all future school years.

8. Provisional use Use of Lakeview ES for 2016-17 School Year. In consideration for Charter School taking on the Tenant Improvements and agreeing to forego petitioning the District for additional space in subsequent years for any of its Schools and specifically by entering into this Letter of Intent, the District will take steps necessary to allow Charter School to remain at the Lakeview campus for the 2016-17 school year. In consideration for District's agreement to allow Charter School to remain on the Lakeview campus for the 2016-2017 school year, and specifically by entering into this Letter of Intent, Charter School shall make a firm commitment to timely complete the Tenant Improvements before the start of the 2017-18 school year. Charter School expressly understands that the District will to continue its use of Lakeview for student assignment purposes and community school department staffing needs, in addition to the facilities occupied by the Charter School during the 2015-2016 school year, and that the entire Lakeview campus will revert to the District as sole occupant following the end of the 2016-2017 school year. However, three additional classroom spaces at the Lakeview campus will be available to Charter School during this 2016-17 provisional extension school year. These spaces are Room 2, Room 15 and Room 16. This provision to timely vacate the Lakeview campus is binding on AIMS and shall remain in full force and effect and survive any failure of the Parties' inability to timely agree on the terms and conditions of the Long Term Facilities Use Agreement.

9. Agreement to Extend/Toll Prop 39 Preliminary Offer, Response and Final Offer Timelines. In good faith and consideration of the negotiations that will need to quickly commence, Charter School and District agree to extend the deadline for submitting and responding to Preliminary and Final offers under Proposition 39 for the 2016-2017 school year by 30-days.

10. Option to Terminate. Charter School at its discretionary option, and without any penalties, damages or other compensation to the District, may elect not to proceed with the Long Term Facilities Agreement contemplated by this Letter of Intent for the development of an AIMS campus at the District's King Estates Site. **AIMS acknowledges and understands that if AIMS exercises the option not to proceed with the Long Term Facilities Agreement, AIMS must vacate the Lakeview campus no later than June 20, 2017 and that no extensions or exceptions to this requirement will be granted by the District.**

AMERICAN INDIAN MODEL SCHOOLS


By: Maya Woods Cadiz, Superintendent

4-12-16
Date

OAKLAND UNIFIED SCHOOL DISTRICT


Antwan Wilson, Superintendent

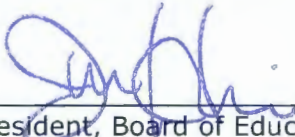
4/14/16
Date

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary

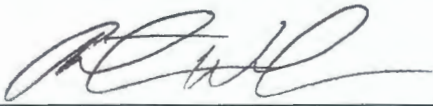
Exclusion: The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List.

<https://www.sam.gov/portal/public/SAM>.

OAKLAND UNIFIED SCHOOL DISTRICT



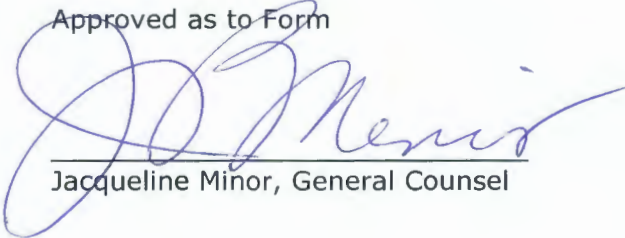
President, Board of Education
Oakland Unified School District



Secretary, Board of Education
Oakland Unified School District

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Approved as to Form



Jacqueline Minor, General Counsel