

**Oakland Unified School District
Office of the Superintendent
June 23, 2010**

LEGISLATIVE FILE

To: Board of Education

From: Anthony Smith, Superintendent
Vernon Hal, Chief Financial Officer

File ID No. 10-1630
Introduction Date 6-14-10
Enactment No. 10-1140
Enactment Date 6-23-10
By Bg

Subject: Binding Term Letter - Chabot Space and Science Center - Financial Services

Action Requested:

Approval by the Board of Education of a Binding Term Letter between the District and the Chabot Space and Science Center ("Chabot"), restructuring Chabot outstanding loan balance (including transactions costs) of \$8,170,00 owed District, pursuant to terms and conditions stated herein, incorporated herein by reference as though fully set forth.

Background:

The Chabot Space and Science Center ("Chabot") is a joint powers agency in which the District serves as a member. On July 1, 1999, the District issued Certificates of Participation (COPs) to provide a loan of \$10,265,000 to Chabot, of which \$8,110,000 is still outstanding. To extend the repayment term, the District and Chabot have negotiated, subject to Board of Education approval, a restructuring of the original loan agreement. The "Binding Term Letter" describing the essential elements of the new agreement has been approved by the Chabot Board.

The restructured loan agreement will be a lease lease-back: the District will lease the entire Chabot Space and Science Center facility from Chabot for \$1 then lease it back to Chabot for \$450,000 per year. The lease payments to be made by Chabot will repay the remaining principal still due on the original loan (plus an additional amount to cover up-front costs), and will pay interest and an administrative fee to the District.

The essential terms described in the Binding Term Letter are:

- 40 year maximum term
- New loan amount will be \$8,170,000 (outstanding \$8,110,000 plus transaction costs of \$60,000).
Annual lease payments of \$450,000, starting retroactively to October 1, 2009 (with \$337,500 to be paid concurrent with the execution of the Binding Term Letter).
Interest **will** accrue at the [Local Agency Investment Fund] LAIF interest rate and will be paid out of the quarterly payment, along with the administrative fee.
The amount remaining from the quarterly payment that is not used for interest or the administrative fee will be applied toward principal.
- Principal will also be reduced by in-kind services provided by Chabot:

- Free admission for OUSD students, teachers and chaperones for pre-arranged field trips during the school year.
- Free use of Chabot facilities for official OUSD events.
- Summer camp scholarships for OUSD students for 5% of spaces available.

Discussion:

Although Chabot was able to make payments on the original loan for several years, recently, payments have been difficult due to fiscal challenges at Chabot and the increase in variable rate interest on the COPs. Chabot requested a restructure to provide stability and predictability in payments, and to extend the repayment term. Staff has negotiated the terms set forth in the Binding Term Letter and the Chabot Board has agreed to the terms.

The Binding Term Letter sets the parameters for the legal documents to be developed and brought to the Board for approval in August. The Board's approval of the Binding Term Letter will allow Chabot to make a payment of \$337,500, to cover their lease obligation from October 1, 2009 to June 30, 2010.

Fiscal Impact:

Overall, the fiscal impact should be neutral. The District will capture interest that would otherwise have been earned on the loan amount through the quarterly payments. The administrative fee will compensate for the administrative burden of the lease. The value of in-kind services provided by Chabot will be directly offset by the reduction in principal owed to the District.

Other fiscal considerations: the District will not have access to the full \$8,160,000 until the principal is fully repaid, which is anticipated to take 30 years. If the principal is not repaid in 40 years, the lease terminates and the District will not be able to recapture any outstanding principal after that. Also, the interest rate is capped at 9%, which is slightly lower than the legal limit of 12%. If the LAIF rate exceeds that, the District will forego the potential earnings over the 9% cap up to the 12% limit (maximum lost earnings is 3%). However, the last time LAIF was over 9% was in 1986. LAIF's 30 year average is 6.24%, and the 5 year average is 3.32%.

Recommendation:

Approval by the Board of Education of a Binding Term Letter between the District and the Chabot Space and Science Center ("Chabot"), restructuring Chabot outstanding loan balance (including transactions costs) of \$8,170,00 owed District, pursuant to terms and conditions stated herein, incorporated herein by reference as though fully set forth.

ATTACHMENT

Copy of Binding Term Letter as approved by Chabot Board

BINDING TERM LETTER

This Term Letter sets forth the agreement and understanding which has been reached between the Oakland Unified School District ("OUSD") and Chabot Space and Science Center, a joint powers agency in which OUSD serves as a member ("Chabot"), as to the essential terms of the pending lease agreement between OUSD, as lessee / lessor and Chabot, as lessor / lessee.

Chabot, as borrower, entered into a Loan Agreement ("Original Loan") with OUSD, as lender, for \$10,000,000 on July 1, 1999, of which \$8,110,000 remains due and owing to OUSD.

Chabot and OUSD desire to restructure Chabot's repayment obligations under the Original Loan into a lease lease-back agreement ("Lease Agreement").

The parties intend this Term Letter to be binding and enforceable, and to inure to the benefit of the parties and their respective successors and assigns, as follows:

ESSENTIAL TERMS OF THE LEASE AGREEMENT

OUSD and Chabot agree to enter into the Lease Agreement whereby OUSD will lease the entire Chabot Space and Science Center facility ("Chabot Facility") from Chabot, and Chabot will concurrently lease the entire Chabot Facility back from OUSD, the essential terms of which are as follows:

1. OUSD Lease Term: Maximum term 40 years.
2. OUSD Lease Payment to Chabot: \$1.00.
3. Chabot Lease Term: Maximum term 40 years. Lease to commence retroactively effective October 1, 2009.
4. Chabot Lease Payment to OUSD: Quarterly payments, due as described below, until the principal sum of \$8,170,000 ("Principal") has been paid.

a. Amount owed by Chabot under Original Loan:

Outstanding amount of Original Loan:	\$ 8,110,000
Transaction Costs: (estimate - after actual are paid, any funds remaining will be returned to Chabot)	\$ 60,000
TOTAL:	\$ 8,170,000

- b. Fixed quarterly lease payments ("Lease Payments") of \$112,500 per quarter (\$450,000 per year), which will be applied first to the administrative fee ("Administrative Fee") described below, then to interest due, calculated based on the LAIF apportionment rate (described below), and then to the Principal sum of \$8,170,000. Lease Payments will be made until the Principal amount of \$8,170,000 has been repaid. (If the LAIF rate stays within its 5 year average, the Chabot Lease term will be approximately 30 years. See Appendix "A" loan pay-down calculator.)
5. Chabot Lease payments shall be due each fiscal quarter as follows:
 1. June 30
 2. September 30
 3. December 31
 4. March 31
6. Chabot shall be entitled to prepay the Principal in part or in full, at any time without penalty. Partial prepayments shall be applied first to interest and then to Principal.
7. Concurrently with the execution of this Term Letter, Chabot will pay to OUSD the sum of \$337,500 which sum shall be credited toward the quarterly Lease Payment(s) due on December 31 2009, March 31, 2010, and June 30, 2010. Such sum shall be allocated among Administrative Fee(s), interest and Principal. (See Appendix "A" for distribution.)
8. The Lease Agreement shall be finalized before September 30, 2010, when the next quarterly Chabot Lease Payment will become due. Upon execution of the Term Letter and pending the approval of the Chabot Lease no payments will be due under the Original Loan.
9. The OUSD Lease will automatically terminate upon the expiration or earlier termination of the Chabot Lease, except in the case of a termination for default by Chabot under the terms of the Chabot Lease.
10. The portion of each quarterly Chabot Lease Payment that is allocated to interest shall reflect the LAIF Quarterly Apportionment Rate, as posted on the State Treasurer's website applicable to the quarter for which the Lease Payment is made; provided, however, the interest rate will be capped at an annual maximum of 9% (http://www.treasurer.ca.gov/pmialaif/historical/qrtlyappor_rates.pdf). Quarterly Lease Payments are paid in arrears for the prior quarter. (See Appendix B for historic information on LAIF rates.)

11. OUSD will charge an Administrative Fee to be paid quarterly, out of the \$112,500 Lease Payment. The annual Administrative Fee shall be one-half of one percent (0.5%) of the then-outstanding Principal calculated and paid quarterly (0.125% per quarter).

12. **In-Kind Offsets:** The Chabot Lease will provide for the Principal balance to be reduced quarterly by in-kind services provided by Chabot to OUSD. As further specified, the in-kind services shall be free admission and free use of the Chabot Facility by OUSD. The value of in-kind services shall be calculated quarterly and deducted from the Principal balance remaining as of the date of calculation. Chabot and OUSD will re-evaluate the in-kind provisions every three (3) years to review the net benefit of in-kind offsets versus the reduction of Principal.

- a. Chabot will not charge an entry fee to OUSD students, teachers and family member/chaperones on pre-arranged field trips, Monday through Friday, during each school year. Every quarter, the number of students, teachers and chaperones admitted shall be multiplied by fifty percent (50%) of the then-current rate for admission and the total shall be deducted from the outstanding Principal balance. Chabot shall be entitled to charge OUSD a reasonable cancellation fee. As of the date of this Term Sheet, the deduction equals \$6.00 per student.
- b. Chabot shall allow use of the Chabot Facility for official OUSD events, meetings, classes and other uses at no charge to OUSD. The foregone rental fees shall be calculated every quarter, based on the facility rental costs charged to the other JPA partners (the City of Oakland and the East Bay Regional Park District) or the public, which ever is less, and shall be deducted from the outstanding Principal balance. Only one entity within OUSD shall be authorized to reserve the Chabot Facility. Chabot shall be entitled to charge OUSD a reasonable cancellation fee. OUSD acknowledges that Chabot may need to postpone or move an OUSD event for commercially practicable reasons and in order to maximize its revenues. Chabot will provide OUSD with at least two weeks advance notice before postponing or cancelling OUSD's use.
- c. Chabot shall make summer camp Scholarships available to OUSD students. Such scholarships shall comprise no more than 5% of the spaces available for the summer camp programs. Each September during the term of the Chabot Lease, the number of scholarship students admitted shall be multiplied by

the then-current rate for admission and the total shall be deducted from the outstanding Principal balance.

13. Chabot shall continue to provide OUSD with teacher training workshops, astronomy and science curriculum support.
14. Chabot and its partners shall continue to provide intensive STEM based programs, such as Galaxy Explorers and Techbridge to OUSD students, subject to program funding availability.
15. The Chabot Facility telescopes shall be available at no charge on Friday and Saturday nights to the OUSD community for astronomy programs.
16. Chabot will work in partnership with OUSD and other stakeholders to develop viable transportation options to increase visitor accessibility and attendance.
17. Concurrent with the execution of the Chabot Lease, OUSD will cancel Original 1999 Loan Agreement.
18. If Chabot defaults under the Chabot Lease by failing to make its quarterly Lease Payments, OUSD will have the right to terminate the Chabot Lease and recover possession of the Chabot Facility for the remaining term of the OUSD lease, as will be further specified under the terms of both the OUSD Lease and the Chabot Lease.

CONDITION PRECEDENT

The completion of the Lease Agreement transaction is subject to the City of Oakland's consent to sublease of Chabot's Ground Lease to OUSD.

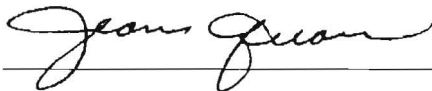
PROVISIONAL CONFIDENTIALITY

Except as may be required by law, OUSD and Chabot each agree to treat this Term Letter and the terms set forth herein as confidential information, and each agrees not to disclose the terms of this Term Letter to the press, the public or to any person; provided however, neither OUSD nor Chabot shall be prohibited from supplying information to its representatives, agents, attorneys, advisors, and others to the extent necessary to analyze, negotiate and reach agreement on the matters set forth herein so long as such representatives, agents, attorneys, advisors, and others are made aware of the terms of this paragraph. Nothing contained in this Term Letter shall prevent OUSD or Chabot from furnishing any required information to any governmental entity or authority pursuant to a legal requirement or from complying with its legal or contractual

obligations. Nothing contained in this paragraph shall be construed or interpreted to prevent or restrain compliance with the provisions of the California Public Records Act or the Ralph M. Brown Act.

THE UNDERSIGNED ACCEPT THE TERMS AND CONDITIONS SET FORTH IN THIS TERM LETTER AS A BINDING STATEMENT OF THE ESSENTIAL TERMS OF THE LEASE AGREEMENT TRANSACTION.

CHABOT SPACE AND SCIENCE CENTER



Hon. Jean Quan, Chair, Joint Powers Authority

June 5th, 2010

Date

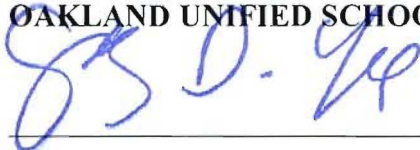


Alexander Zwissler, Secretary, Joint Powers Authority

June 5th, 2010

Date

OAKLAND UNIFIED SCHOOL DISTRICT



Gary Yee, President, Board of Education

6/24/10

Date

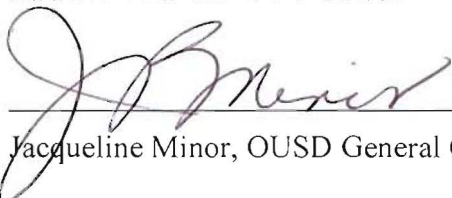


Edgar Rakestraw, Jr., Secretary, Board of Education

6/24/10

Date

APPROVED AS TO FORM:



Jacqueline Minor, OUSD General Counsel

6/8/2010

Date

File ID Number: 10-1630
Introduction Date: 6-14-10
Enactment Number: 10-1140
Enactment Date: 6-23-10
By: JS