



March 6, 2015

Letter of Intent to Enter Into In Lieu of Proposition 39 -- Ground Lease and Joint Use Agreement Between OUSD and Lazear Charter School

The Oakland Unified School District affirms its intent to enter into In Lieu of Proposition 39 Agreement with Lazear Charter School ("Lazear"), for the use of the former OUSD School Site, Lazear Elementary School, located at 824—29th Avenue, Oakland, CA 94601 to commence July 1, 2015. By entering into this Agreement, Lazear waives any rights under Proposition 39 (Education Code Section 47614, as amended) for the term of this Agreement.

This Agreement is subject to the following Recitals that are key consideration for the Agreement and shall be incorporated into any final Agreement between the Parties:

- A. WHEREAS, the provisions of Education Code sections 10900 through 10914.5, inclusive, (the "Community Recreation Act") support joint action by District and Charter School to organize, promote, and conduct programs in order to improve the health and general welfare of the citizens of the City of Oakland and students residing in the District to cultivate the development of good citizenship by provision for adequate programs of community recreation as will contribute to the attainment of general educational and recreational objectives for children and adults of the state; and
- B. WHEREAS, under the provisions of Education Code section 17534 (b), the requirement that the term of any Joint Use Lease Agreement not exceed five (5) years, shall not apply when capital outlay improvements are made on school property for park and recreation purposes by public entities and nonprofit corporations such as Charter School; and
- C. WHEREAS, Lazear will make significant capital outlay improvements on the Premises for recreation and educational purposes.

The Parties, in entering into this Letter of Intent, agree as follows:

1. Condition of Premises.

- a. The Premises are leased to Lazear on an "AS IS" basis. By entry and taking possession of the Premises pursuant to this Agreement, Lazear accepts the Premises in "AS IS" condition.
- b. Lazear acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the Premises for Charter School's Activities.

- 2. Title to School Site(s) /Classroom Buildings.** The Parties acknowledge that title to the Premises is held by the District.

3. **Premises:** See Attachment A (Attachment B to the February 1, 2015 Preliminary Prop 39 Offer for the 2015-16 school year.). Exclusive use of the former OUSD School Site, Lazear Elementary School, located at 824—29th Avenue, Oakland, CA 94601
4. **Use:** Public Charter School
5. **Agreement Term:** The term of this Agreement shall be for twenty (20) years, subject to earlier termination if Lazear’s program ceases to operate after a revocation, nonrenewal or surrender of the charter to the granting agency, and all appeals have been exhausted. The commencement date shall be July 1, 2015, ("Commencement Date") and unless sooner terminated under any provision hereof, this Agreement shall end on June 30, 2035 (“Term”). At the termination of this Agreement, Lazear shall have the right to renew for two additional terms of ten (10) years each, at Lazear’s discretion. Upon expiration of these option periods, further renewal of the Term may be effected by mutual agreement of the parties, as set forth below:

a. **Renewal of Agreement**

- i. If the Parties wish to further renew this Agreement after expiration of the Term and the two renewal terms specified above, this can only be done by a separate writing executed by the Parties that complies with all of the following provisions:
- ii. It specifically authorizes further tenancy by Lazear and specifies the terms of that tenancy, and
- iii. It is approved by each Party’s governing body prior to the end of the Term, as extended by the two renewal terms specified above.

6. **Agreement Commencement: July 1, 2015**
7. **Facility Use Fee:** Until the completion and occupancy by Lazear of the new building it intends to build on the Site, the Facility Use Fee is fixed at the 2015-16 Prop 39 rate of \$3.80 per square foot, based upon 29,531 square feet. In 2015-16 the rate is \$112,217.
8. **Payment Schedule:** Each year’s rent shall be paid in four installments: 25% by October 1, 25% by December 1, 25% by April 1, and 25% by July 1.
9. **Custodial Services:** In consideration for entering into an in lieu Proposition 39 Agreement, Lazear may, at its option, self-procure custodial services during the term of this Agreement.
10. **Utilities:** Utility charges are not included in the Facility Use Fee. Lazear shall pay for all utilities charges. For purposes of this Agreement, utilities include water, irrigation, gas, electricity, telephone, security and fire alarm monitoring, data and communication lines and service, trash pick-up, and sewage fees.
11. **Improvements to the Site:** The Parties agree as follows:

The Parties acknowledge and agree that the consideration for the District’s agreement to enter into this Agreement under the terms of the Community Recreation Act (Education Code sections 10900 through 10914.5) is Lazear’s agreement to make substantial improvements to the Premises, using non-District funds and resources. In the event Lazear constructs or installs recreational

improvements or other school facilities, the Parties will meet to renegotiate the Facility Use Fee, taking into consideration actual costs directly attributable to purchase, installation, and construction of the additional recreational improvements or facilities. The actual costs shall not include any of the costs of permits, inspections, environmental clearance, and/or maintenance of the additional recreational improvements or facilities, and shall not include any costs for overhead, or Lazear staffing, as applicable, or other indirect expenses incurred by Lazear. Any improvements on the Site are subject to the following:

- a) All improvement work shall be done by licensed contractors, selected by Lazear. Under all circumstances, Lazear must seek and receive approval from the Division of the State Architect, to the extent such approval is required by law.
- b) All construction must meet code requirements, including fire
- c) Lazear is responsible for compliance with CEQA, if applicable
- d) Final District sign off before occupancy by students

12. Meet and Confer to Agree Upon Community Recreation Act Joint Use

As required by the Community Recreation Act (Education Code sections 10900 through 10914.5) and Education Code section 17534 (b), District and Lazear shall meet and confer to agree upon and develop the joint use, development, construction, and maintenance of the Premises for the attainment of general educational and recreational objectives for students residing in the District and students attending Charter School. The Parties anticipate joint use of the athletic field.

13. Maintenance and Repairs during the Term of the Agreement

Lazear agrees to provide, at its own cost and expense, any and all maintenance for the Premises. Maintenance to be provided by Lazear shall be consistent with the normal maintenance levels and shall insure safe and healthful use.

14. Indemnification and Insurance

As provided in Sections 21 and 22 of the February 1, 2015 Preliminary Prop 39 Offer

15. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary

Exclusion: The District certifies to the best of its knowledge and belief, that it and its principals: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, verifies that this Lazear does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>

16. Final Agreement

The Parties agree that the final Agreement shall be submitted for approval by the OUSD Board of Education at its meeting on March 11, 2015.

17. No Assignment or Subletting. Lazear shall not have the right, voluntarily or involuntarily, to assign, license, transfer or encumber this Agreement or sublet all or part of the Premises without District's consent. Any purported transfer shall be void and shall, at District's election constitute a default. No consent to transfer shall constitute a waiver of the provisions of this Section.

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OAKLAND UNIFIED SCHOOL DISTRICT SCHOOL

James Harris, President, Board of Education

Antwan Wilson, Superintendent & Secretary, Board of Education

APPROVED AS TO FORM:

Jacqueline Minor, General Counsel

CHARTER SCHOOL

By: _____

Title: _____