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OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education
 From Marion McWilliams, General Counsel
 Board Meeting Date October 13, 2016
 Subject **Amendment of the Forbearance Agreement with Chabot Space & Science JPA**

Action Requested **Approval of Amendment to Further Extend the Forbearance Agreement between the Chabot Space & Science Center JPA and the District**

Background and Discussion On June 29, 2016, by Enactment No. 16-1265, the Board approved an Agreement between the Chabot Space & Science Center JPA and the District 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 to allow CHABOT JPA and the District to co-convene with Councilwoman Ann Campbell Washington a meeting with CHABOT to develop a plan for the elimination of the debt owed to the District by CHABOT JPA. In order to continue to work to develop said plan for the elimination of the debt owed to the District, without waiving any rights of the District under the CHABOT JPA Lease-Leaseback Agreements, Staff is recommending that the Forbearance Agreement be extended by an additional 60 days to December 30, 2016.

The extension 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).

Recommendation **Approval of 60 Day Extension of the Forbearance Agreement with Chabot Space & Science JPA**

Fiscal Impact n/a

Attachments

- Amendment to Further Extend the Forbearance Agreement between the Chabot Space & Science Center JPA and the District
- 120 Days Extension of the Forbearance Agreement

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

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 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 to allow CHABOT JPA and the District to co-convene with Councilwoman Ann Campbell Washington a meeting with CHABOT to develop a plan for the elimination of the debt owed to the District by CHABOT JPA. In order to continue to work to develop said plan for the elimination of the debt owed to the District, without waiving any rights of the District under the CHABOT JPA Lease-Leaseback Agreements, the Parties hereby agree to further extend the Forbearance Agreement by an additional 60 days to December 30, 2016.

IN WITNESS WHEREOF, the parties have executed this Amendment to be effective November 1, 2016.

CHABOT SPACE AND SCIENCE
CENTER, A Joint Powers Agency

By:

Name:

Oakland Unified School District

President, Board of Education

Superintendent and Secretary, Board of Education

Approved as to Form

Marion L. McWilliams, General Counsel

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

THIS AGREEMENT is entered into on June 29, 2016, 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 payments by CHABOT JPA became difficult due to fiscal challenges at CHABOT JPA; and

WHEREAS, as of June 30, 2015, CHABOT JPA is indebted to OUSD in the amount of \$450,000 for fiscal year 2013-14, and \$450,000 for fiscal year 2014-15, and has made no payments to date during 2015-16; and

WHEREAS, CHABOT JPA has hired a new Executive Director who is an experienced science program and museum executive, manager and fundraiser;

WHEREAS, CHABOT JPA has received financial commitments from two funders to fund a new strategic and business plan for Chabot;

WHEREAS, CHABOT JPA has requested that OUSD provide additional time for CHABOT'S new Executive Director to develop and implement a new strategic plan and transform CHABOT

into a viable business model that among other things offers a world class educational center for Oakland students;

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 (a) the CHABOT JPA is in arrears to OUSD in the amount of \$450,000 for fiscal year 2013-14, \$450,000 for fiscal year 2014-15, and during 2015-16 has made no payments to date and that such indebtedness is continuing under the terms of the CHABOT JPA Lease-Leaseback Agreements.

2. **Extension of Existing Forbearance Agreement.** OUSD agrees 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 to allow CHABOT JPA and the District to co-convene with Councilwoman Ann Campbell Washington a meeting with CHABOT to develop a plan for the elimination of the debt owed to the District.

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:

Oakland Unified School District

President, Board of Education

Superintendent and Secretary, Board of Education

Approved as to Form

Jacqueline Minor, General Counsel