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**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

Memo

To Board of Education

From Silke Bradford, Director – Quality Diverse Providers
David Montes de Oca - Deputy Chief
Marion McWilliams - General Counsel

Board Meeting Date June 28, 2017

Subject **Letter of Intent – Lodestar Charter School for Occupancy of King Estates Campus**

Action Requested Approval by the Board of Education of the Letter of Intent with Lodestar Charter School for occupancy of King Estates Campus and mutual intent to enter into a long term facilities agreement.

Background and Discussion Lodestar Charter School operates grades Kindergarten through 8th grade. Lodestar Charter School has projected enrollment of 390 students for the 2017-2018 school year. Lodestar Charter School will ultimately serve students grades Kindergarten through 12th grade and will serve approximately 850 students when fully enrolled (anticipated by the 2022-2023 school year).

Lodestar Charter School has procured private facilities for the 2017-2018 school year but is interested in occupying and improving the King Estates Campus for the provision of facilities in lieu of Education Code section 47614 ("Proposition 39") commencing with the 2018-2019 school year.

The Board is being asked to approve a Letter of Intent with Lodestar Charter School that includes:

- The District and Lodestar Charter School entering into negotiations for a long term facilities use improvement of the blacktop of the King Estates Campus;
- Equitable use of shared space such as playing fields and parking lots;
- Facility use fee subject to a rent credit offset for the dollar cost value of the improvements;
- Lodestar Charter School will provide District with design and building plans, environmental analysis, and site schematics no later than July 15, 2017;



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- The District and Lodestar Charter School agree to the goal of bringing a long term facilities use agreement to the District Board of Education no later than September 13, 2017;
 - Lodestar Charter School waives the right to obtain facilities under Proposition 39 for the 2017-2018 school year; and,
 - Lodestar Charter School waives the right to receive facilities from the District under Proposition 39 for every school year during which Lodestar Charter School occupies the King Estates Campus under a long term facilities use agreement.

Recommendation

Approval by the Board of Education of a Letter of Intent with Lodestar Charter School for long term occupancy and development of King Estates.

Fiscal Impact

To be determined. Facility use fee will be subject to a rent credit offset for the dollar cost value of the improvements.

Attachments

Letter of Intent



June 29, 2017

**Re: Letter of Intent: Lodestar Charter School
Long-Term Facilities Agreement at King Estates Middle School
"In Lieu" of Proposition 39**

This binding letter of intent, subject to approval by the Board of Lodestar Charter School, a Lighthouse Community Charter Public School (hereinafter referred to as "CHARTER SCHOOL"), which is operated as a nonprofit public benefit corporation (collectively "Charter School"); and the Board of Education of the Oakland Unified School District ("OUSD"/"District") (hereafter "Parties"), memorializes the mutual intent of the Parties to negotiate and enter into a prospective Long Term Facilities Agreement between the District and CHARTER SCHOOL for the use of the Exclusive and Shared Use Space described more fully herein of the District's King Estates School Site at 8251 Fontaine St. Oakland, CA 94605 ("King Estates Site"), currently serving Rudsdale Continuation High School, the Sojourner Truth Independent Study program, and Bay Area Technology Charter School.

RECITALS

WHEREAS, the voters of California passed Proposition 39 in 2001 which requires that all public school facilities should be shared fairly among all public school pupils, including those in charter schools; and

WHEREAS, the District has an obligation under Proposition 39 (Education Code section 47614) to provide an eligible CHARTER SCHOOL with reasonably equivalent, contiguous, furnished and equipped facilities sufficient to house the CHARTER SCHOOL's in-district student population; and

WHEREAS, the CHARTER SCHOOL currently operates grades Kindergarten through 8th grade and began operations in the 2016-2017 school year enrolling 235 students in grades K through 2, and 6th grades and was projected to enroll 390 students in grades K – 3 and 6 – 7 for the 2017-2018 school year. When the CHARTER SCHOOL is fully enrolled (anticipated by 2022-23 school year) it will serve approximately 850 students Kindergarten through 12th grade; and

WHEREAS, the parties have been discussing a scenario under which the CHARTER SCHOOL shall have the right to use, occupation, and improvement of the Exclusive and Shared Use Space on the King Estates Site for the provision of facilities in lieu of Education Code section 47614 ("Proposition 39") as more fully set forth herein; and

WHEREAS, those discussions have involved the CHARTER SCHOOL implementing construction on the site at its own expense, with allowable facility use fee credits consistent with existing District Facility Use Agreements; and

WHEREAS, the CHARTER SCHOOL has procured private facilities outside of Proposition 39 for a portion of its enrollment for the 2017-2018 school year and will not expand during the 2017-2018 as projected due to facilities constraints; and

WHEREAS, the parties intend that the CHARTER SCHOOL shall make improvements at the Exclusive Use Site to prepare it for use and occupation by the CHARTER SCHOOL for educational purposes commencing with the 2018-2019, 2019-2020, or 2020-2021 school year at the CHARTER SCHOOL's discretion. It is anticipated that the CHARTER SCHOOL will spend more than \$22 million dollars improving the King Estates Site for its use; and

NOW, THEREFORE, for and in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows in this Letter of Intent:

1. Agreement Terms and Commencement Date.

- 1.1 **Exclusive Use Space:** The District and Charter School agree to enter into negotiations for the separate Long Term Facilities Agreement for improvement of the CHARTER SCHOOL's Exclusive Use Space described as follows: the blacktop located at the Northwest portion of the premises, as set forth in Exhibit "A" hereto; and ending where the blacktop abuts the fields at the Northernmost portion of the premises; excluding the parking lot; and the area within 20 feet of the building situated at the Southernmost portion of the CHARTER SCHOOL's Exclusive Use Space.

Shared Use Space: The Charter School is entitled to equitable shared use of the playing fields and the parking lot based upon the CHARTER SCHOOL's percentage of in-district students as compared to the other school programs at the King Estates Site, and subject to existing joint-use agreements for those spaces; the CHARTER SCHOOL's use of the playing fields and parking lot will be outlined as part of the negotiation of the Long Term Facilities Agreement.

- 1.2 The term ("Term") of the Long Term Facilities Agreement, should it be approved by both parties, will be consistent with the Term of existing long-term District Facilities Agreements, 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 if the Charter's School's program ceases to operate after a revocation, nonrenewal, or surrender of a charter to the granting agency, and all administrative, nonjudicial appeals have been exhausted.

1.3 **Facility Use Fee.** The Long Term Facilities Agreement would provide that, for and in consideration of the use of, and right to make improvements upon, the Exclusive Use Site, Charter School would agree to pay District a **Facility Use Fee**, subject to a rent credit offset for the dollar cost value of the improvements made to the Exclusive Use Site by the CHARTER SCHOOL, to be set forth in more detail in the Long-Term Facilities Agreement the CHARTER SCHOOL improvements shall remain the property of the CHARTER SCHOOL (unless the financing arrangement requires otherwise) and shall become the property of the District upon expiration or termination of the long-term Facilities Agreement.

1.4 **Project Description:** As part of the negotiations for a long-term Facilities Use Agreement the CHARTER SCHOOL shall provide the District with the following: design and building plans, environmental analysis, and site schematics defining the Project no later than July 15, 2017.

2. Waiver of Rights under Proposition 39. The parties intend that the CHARTER SCHOOL's use and occupation of the Exclusive Use Site would be in lieu of a facilities offer under Proposition 39 and its implementing regulations. The CHARTER SCHOOL hereby agrees to waive any and all rights to receive facilities from the District under Proposition 39 for every school year after the mutual execution of the long-term Facilities Agreement in which the CHARTER SCHOOL is occupying and using the King Estates Site. However, the CHARTER SCHOOL shall be allowed to apply for Prop. 39 facilities from the District if the CHARTER SCHOOL and District are unable to agree upon a long-term Facilities Agreement by Nov. 1, 2017, in which case the CHARTER SCHOOL shall be allowed to apply for Prop. 39 facilities for the 2018-2019 school year. The Parties shall negotiate as part of the long-term Facilities Agreement the interim-housing rights of the CHARTER SCHOOL during the construction phases of the site development.

3. In consideration of the terms and conditions set forth herein, although the Parties anticipate that the CHARTER SCHOOL shall make improvements at the Exclusive Use Site to prepare it for use and occupation by the CHARTER SCHOOL for educational purposes commencing with the 2018-2019 school year (or the 2019-2020 or 2020-2021 school year as determined by the CHARTER SCHOOL), the CHARTER SCHOOL, upon written request to the District, shall be provided reasonable access to the Exclusive Use Site during the 2017-2018 (and, if necessary, 2018-2019 and 2019-2020) school years for the purposes of making improvements, as agreed upon by the Parties in the separate long-term Facilities Agreement, provided that such access shall not interfere with other

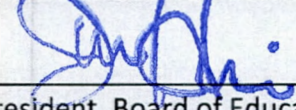
programs operating at the King Estates Site, or of the neighbors' right to quiet enjoyment of their property. The District also agrees that it shall not encumber or otherwise commit to other use the Exclusive Use Space during the Term of the long-term Facilities Agreement. The condemnation of any portion of the Exclusive Use Space shall not be considered a violation of this Letter of Intent.

4. Agreement to Extinguish Preliminary Offer, Response and Final Offer Timelines. The Parties agree that this Letter of Intent shall be presented to the OUSD Board concurrently with a letter agreement by CHARTER SCHOOL waiving its right to receive a Final Offer of Facilities under Proposition 39, and otherwise waiving a right to obtain any facilities from the District during the 2017-2018 school year, except as expressly set forth herein. All deadlines and other obligations related to the Proposition 39 process for the 2017-2018 are extinguished.

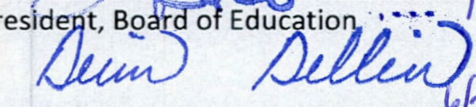
5. Duty of Good Faith and Fair Dealing. The District and the CHARTER SCHOOL shall negotiate in good faith and with all due haste the long-term Facilities Agreement with a goal of bringing any agreed upon long-term Facilities Agreement to the OUSD Board no later than September 13, 2017.

IN WITNESS WHEREOF, District and CHARTER SCHOOL execute this Agreement effective the date and year first above written.

OAKLAND UNIFIED SCHOOL DISTRICT



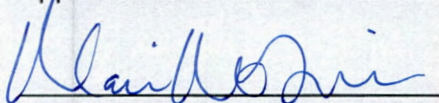
President, Board of Education 6/29/17



Secretary, Board of Education 6/29/17

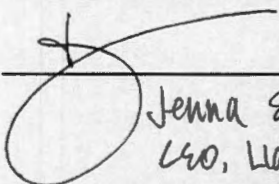
Date: June 29, 2017

Approved as to Form and Content:



Marion McWilliams, General Counsel

LODESTAR CHARTER SCHOOL



Jenna Starffler
CEO, Lighthouse Community
Public Schools

Date: June 16, 2017