

TOPIC: EL RANCHO CHARTER MIDDLE SCHOOL - PROPOSED CONSTRUCTION PROJECT

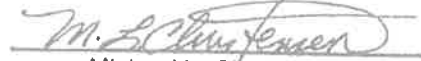
DESCRIPTION: El Rancho Charter School (ERCS) is seeking authorization to construct an approximate 25,000 square foot athletic and classroom building comprised of a gymnasium, dance studio, and five science classrooms (Project) to be located on the campus. Additionally, ERCS is seeking authorization from the Board to finance the project and agrees to reimburse the District for the full amount of the costs financed including the costs of borrowing (fees, interest charges, etc.). Any funds advanced by the District for the project will be repaid by ERCS, including interest at the same rate as the project loan financing procured by the District.

A "Project Development & Construction Agreement" (Attachment A) and "Reimbursement Agreement" (Attachment B) have been drafted by the District's legal counsel, reviewed, and agreed upon by District and ERCS staff and are now to submitted for approval.

FISCAL IMPACT: Revenue of 1% of the Project costs for oversight

RECOMMENDATION: It is recommended that the Board of Education approve the "Project Development & Construction Agreement" and "Reimbursement Agreement" and authorize staff to cooperate with El Rancho Charter School to construct and finance the Project.

This is to certify that this item was approved by the Board of Education.



Michael L. Christensen
Superintendent and Secretary
Orange Unified School District

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement (“Agreement”) is made and entered into this ___ day of _____, 2015 (“Effective Date”), by and between Orange Unified School District, a California public school district duly organized and existing under Chapter 1 of Division 3 of Title 2 of the Education Code of the State of California (“OUSD”) and El Rancho Charter School (“ERC”), a dependent charter school organized and existing under the laws of the State of California (collectively OUSD and ERC shall be referred to herein as “Parties” and individually as “Party”);

WHEREAS, OUSD owns that certain real property located at 181 South Del Giorgio Drive in the City of Anaheim, County of Orange, State of California, as more particularly depicted on Exhibit A attached hereto as the “Campus”.

WHEREAS, the Campus is owned by OUSD and ERC currently pays monies to OUSD pursuant to a memorandum of understanding entitled, “Memorandum of Understanding by and between El Rancho Charter School and Orange Unified School District July 1, 2012 to June 30, 2017” allowing ERC to occupy the Campus to operate its 7-8 middle school educational program.

WHEREAS, ERC intends to construct an approximate 25,000 square foot athletic and classroom building to be located on the Campus comprised of a gymnasium, dance studio, support areas, five science classrooms, and preparation/ storage areas plus supporting areas (collectively referred to as the “Project”). The location of the Project on the Campus is shown in Exhibit A.

WHEREAS, OUSD will fund and/or finance Construction, as defined in Article III of the Project Agreement, of the Project and ERC agrees to reimburse OUSD the full amount of the costs funded and/or financed by OUSD and any other agreed upon fees, costs, and interest charges (“Construction Costs”).

WHEREAS, the Parties wish to set forth in this Agreement the terms for OUSD’s disbursement of the Construction Costs to ERC and ERC’s reimbursement of the Construction Costs to the OUSD.

NOW THEREFORE, for and in consideration of the covenants and agreements hereinafter contained, the OUSD and the ERC hereby agree as follows:

1. **Project.** ERC shall construct the Project in accordance with the Project Development and Construction Agreement between the Parties dated *[insert date]* (“Project Agreement”).
2. **OUSD Responsibilities.** Subject to ERC’s compliance with all terms and conditions set forth in this Agreement and in the Project Agreement between the Parties, OUSD shall fund and/or finance the Construction Costs. The form, timing and method of funding and/or financing shall be at the sole discretion of OUSD. OUSD shall disburse funds up to the final approved Construction Costs for the Project to be solely used by ERC to fund the construction of the Project. OUSD obligation to disburse funds shall be based on actual Construction Costs incurred by ERC. In no event shall OUSD disburse funds to cover any fee owed to OUSD.

3. **ERC Responsibilities and Conditions for Disbursement.**

A. **Compliance.** ERC, at all times throughout the term of this Agreement, shall be in compliance with all terms of this Agreement, the Project Agreement, and any applicable federal, State and local laws, rules, regulations and ordinances that are now or may in the future become applicable to ERC, ERC's business, equipment and personnel engaged in operations covered by this Agreement and/or the construction of the Project. ERC certifies that it is familiar with all such federal, State and local laws, rules, regulations and ordinances.

B. **Financial Reports and Multi-Year Projections.** Financial reports and multi-year financial projections shall be provided to the District after the approval of this Agreement, and shall be provided throughout the term of the Agreement, as described below.

A preliminary budget shall be provided to OUSD no later than July 1st of each year. The unaudited actuals financial report shall be provided to the District by September 15th for the full prior year, along with the revised budget for the then-current fiscal year. The first interim financial report shall be provided to the district within forty-five (45) days after October 31st, each year (no later than December 15th). The second interim financial report shall be provided to OUSD within forty-five (45) days after January 31st of each year (no later than March 15th).

The budget reports, interim financial reports, unaudited actual financial reports, and all budget revisions shall include a multi-year projection for the current plus two out year. All key budget variables, including, but not limited to, revenue, expenditure, debt, beginning and ending balance, student enrollment/staffing projections and bell scheduled shall be included and defined.

C. **Request Process for Disbursement of Funds.** ERC must follow the request process specifically set forth in Article XVI of the Project Agreement, in order to receive any disbursement pursuant to this Agreement or the Project Agreement.

D. **Oversight Fee.** In addition to any other payments required herein, ERC shall pay to the District an Oversight Fee equal to One Percent (1%) of the Construction Costs, in lieu of the Four Percent (4%) Service Fee, as defined in *[agreement]*. The Oversight Fee shall be due on or before the end of each quarter.

4. **ERC Responsibilities for Reimbursement of Construction Costs.**

A. **Reimbursement of Construction Costs plus Interest and Fees.** Upon recordation of the Notice of Completion for the Project, OUSD may begin invoicing ERC for reimbursement of the Construction Costs plus interest and fees. The timing and manner of financing is in OUSD's sole and absolute discretion.

a. If OUSD obtains funding from any outside source, ERC shall, in addition to the Construction Costs, reimburse OUSD for the interest charged by the third party. Such interest will be retroactively charged from the date OUSD first disbursed Construction Costs to ERC. The interest rate upon which OUSD obtains third party funding shall be applied to the balance of the Construction Costs owed by ERC as if that rate had been accruing from the date OUSD first disbursed Construction Costs to ERC. OUSD shall invoice ERC in the same manner and time periods as OUSD is required under the terms of the third party funding. In addition, ERC shall reimburse OUSD for

any fees or costs associated with obtaining the financing, including but not limited to fees charged by the third party as well as attorney and consultant fees incurred by OUSD.

b. If OUSD does not obtain funding from an outside source, ERC shall, in addition to the Construction Costs, reimburse OUSD for interest on the Construction Costs at *[the then-current market interest rate/ _____ (___ %)]*, as of the first invoice from OUSD. Such interest will be retroactively charged from the date OUSD first disbursed Construction Costs to ERC. The interest rate shall be applied to the balance of the Construction Costs owed by ERC as if that rate had been accruing from the date OUSD first disbursed Construction Costs to ERC. OUSD shall invoice ERC *[period and amount of invoice]*.

B. Reserve. In addition to the Five Percent (5%) reserve requirement, if OUSD obtains funding from any outside source, ERC shall keep in reserve an amount equal to one (1) year of debt service on the third party funding. Such reserve shall be identified in the quarterly Unaudited Actuals Financial Report and Multi-Year Financial Projection.

5. Term. The term of this Agreement ("Term") shall begin upon the Effective Date and terminate upon ERC's payment to OUSD of the full amount of Construction Costs, including any interest and costs. Termination, revocation, suspension or expiration for any reason of ERC's Charter shall not relieve ERC of any obligations accrued pursuant to this Agreement.

6. Indemnification and Hold Harmless. In addition to ERC's other indemnity obligations set forth in the Project Agreement, to the fullest extent permitted by law, ERC shall indemnify, protect, defend and hold OUSD, the OUSD Board, OUSD's officers, employees, and agents harmless from and against any and all claims, losses, costs, loss, attorneys' fees, damages, expenses and liabilities incurred or arising from any cause in connection with: (i) the Project, (ii) the failure of ERC to pay or cause to be paid any Construction Costs, (iii) the failure of ERC to observe or perform any of the terms, covenants or conditions of this Agreement on ERC's part to be observed or performed, (iv) death or bodily injury to any person, (v) injury to, loss or theft of property, (vi) any failure or alleged failure to comply with any provision of law applicable to the Project or Construction of the Project or this Agreement, (vii) failure to make reimbursement payments to OUSD, or (viii) any claim by a third party that OUSD is responsible for any actions by ERC in connection with the Project (collectively "Liabilities"), excepting Liabilities due to the sole negligence, gross negligence, unlawful acts or willful misconduct on the part of OUSD, the OUSD Board, OUSD's officers, employees, and agents. ERC agrees to promptly notify OUSD of the commencement of any litigation or proceedings pending, threatened or commenced in writing (whether or not served) against ERC or any ERC representatives in connection with the matters covered hereby. The provisions of this Section shall survive the expiration or sooner termination of this Agreement.

7. Notice. Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery delivered by a representative of the Party giving such notice, or (b) overnight delivery by recognized overnight courier, or (c) United States mail, postage prepaid, registered or certified mail or (d) facsimile, addressed to the person(s) identified below or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable Party sent in accordance herewith. Any such notice or communication shall be deemed to have been delivered either at the time of personal delivery

actually received by the addressee or a representative of the addressee at the address provided above or, if delivered on a business day in the case of delivery service or certified or registered mail, as of the earlier of the date delivered or the date seventy-two (72) hours following the date deposited in the United States mail at the address provided herein, or if by telecopier, upon electronic confirmation of good receipt by the receiving telecopier. ERC and OUSD hereby agree that notices may be given hereunder by the Parties' respective counsel and that, if any communication is to be given hereunder by ERC's or OUSD's counsel, such counsel may communicate directly with all principals as required to comply with the provisions of this Article XIV.

IF TO DISTRICT: Orange Unified School District
1401 North Handy Street
Orange, CA 92867
Attention: Joe Sorrrera
Facsimile: (714) 997-6180

IF TO ERC: El Rancho Charter School
181 South Del Giorgio Drive
Anaheim, CA 92808
Attention: John Besta
Facsimile: (714) 281-8791

8. Default.

A. OUSD's Default. OUSD shall not be in default of any of its obligations under this Agreement unless OUSD fails to perform such obligations within a reasonable time, but in no event less than thirty (30) days, after written notice by ERC to OUSD specifying wherein OUSD has failed to perform such obligations; provided, however, that if the nature of OUSD's default is such that more than thirty (30) days are required for its cure, OUSD shall not be in default if OUSD commences such cure within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

B. ERC's Default. The occurrence of any one of the following events shall be considered a "Default" of this Agreement by ERC:

a. Costs. The failure of ERC to pay or cause to be paid before delinquency any fees, charges, or payments due hereunder, or to observe or perform any of ERC's financial covenants and obligations hereunder.

b. Insolvency. The making by ERC of any general assignment or general arrangement for the benefit of creditors, or the filing by or against ERC of a petition to have ERC adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy.

c. Assignment. The actual or attempted assignment, transfer, mortgage, encumbrance, or lease of, or the actual or attempted granting of any license, concession,

franchise or other permission to use the Campus or the Project, except as provided herein, by ERC, or the actual or attempted assignment or attempted assignment of this Agreement by ERC.

d. Failure to Perform. The failure of ERC to perform or observe any of ERC's covenants and obligations required hereunder, including, but not limited to, the failure to make any reimbursement payment.

C. OUSD Remedies. In the event of any Default by ERC, OUSD may pursue any rights or remedies it may have at law, in equity or otherwise and the pursuit of any right or remedy shall not waive nor prohibit OUSD from pursuing any other available right or remedy, including the following additional rights:

a. Costs of Enforcement. OUSD shall have the right to reimbursement from ERC promptly following demand by OUSD for all costs and expenses incurred by OUSD, including attorneys' fees (whether or not legal proceedings are instituted), in enforcing the covenants and obligations of ERC under this Agreement.

b. Relinquishment of Charter. The Parties mutually agree that if ERC fails to cure and correct a Default or breach of this Agreement under Section 12.2.1, 12.2.5, or 12.2.8 within ninety (90) calendar days from the date the notice is provided to ERC, the ERC Charter shall be deemed relinquished and ERC will revert back to being a school of OUSD with no further action necessary by the OUSD Board, OUSD administration and/or ERC. Upon relinquishment of the Charter, ERC will immediately cease to be a Charter School pursuant to Education Code section 47600 *et seq.* and ERC shall comply with all closure procedures specified by law, regulation, or the ERC Charter. ERC and OUSD hereby expressly agree that this relinquishment does not constitute the revocation of the ERC Charter, but, rather, is a voluntary, negotiated, and irrevocable relinquishment by ERC of the ERC Charter. ERC hereby expressly waives all rights related to the processes and procedures set forth in Education Code section 47607 related to revocation of a charter, the implementing regulations related to revocation of a charter, and any other legal rights and remedies that might otherwise be available to ERC, including but not limited to, injunctive relief, declaratory relief, appellate relief, writ of mandate, and/or civil requests for damages of any kind.

The Parties further agree that if at any time, regardless of its status as an independent or dependent charter school, ERC can establish to the sole satisfaction of OUSD that OUSD has no further obligation or liability relative to the reimbursement of the Construction Costs plus interest and fees, including any liability arising from default or nonpayment on all or part of this reimbursement of the Construction Costs plus interest and fees, the aforementioned provision regarding voluntary relinquishment of the charter shall become moot and unenforceable.

9. Miscellaneous.

A. OUSD's Successors. In the event of any transfer of the fee title of or interest in the Campus, OUSD shall be relieved, from and after the date of such transfer, of all liability for

OUSD's obligations hereunder thereafter to be performed, provided such transferee accepts and assumes all such liability in writing. The obligations contained in this Agreement to be performed by OUSD shall, subject as aforesaid, be binding on OUSD's successors and assigns only during their respective periods of ownership. Notwithstanding anything to the contrary contained in this Agreement, all indemnities set forth in this Agreement shall survive the expiration or earlier termination of this Agreement.

B. Captions. The captions and headings in this Agreement are inserted only as a matter of convenience and for reference, and they in no way define, limit or describe the scope of this Agreement or the intent of any provision thereof.

C. Choice of Law. This Agreement shall be governed and construed by the laws of the State of California, with venue in Orange County, California.

D. Interpretation. This Agreement shall be deemed to be jointly prepared by both of the Parties hereto, and any ambiguities or uncertainties herein shall not be construed for or against either of the Parties hereto.

E. Further Assurances. OUSD and ERC agree to execute all documents and instruments reasonably required in order to consummate the transactions contemplated under this Agreement.

F. Attorneys' Fees. In the event either Party hereto should commence an action against the other to enforce any obligation set forth herein, each Party shall pay for its own cost of litigation or arbitration, and attorneys' fees.

G. Counterparts. This Agreement may be executed in one or more counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument.

H. Entire Agreement. This Agreement, the Reimbursement Agreement dated March 10, 2015, the Project Agreement contain all of the agreements of the Parties hereto with respect to the matters covered hereby, and no prior agreements, oral or written, or understandings or representations of any nature whatsoever pertaining to any such matters shall be effective for any purpose unless expressly incorporated in the provisions of this Agreement. The provisions of this Agreement shall not be amended or altered except by an agreement in writing signed by both of the Parties hereto.

I. Successors and Assigns. ERC shall not assign this Agreement or any rights and obligations hereunder without the prior written approval of the OUSD Board, which approval may be denied or conditioned on OUSD Board's sole and absolute discretion. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, transferees, successors and assigns of the respective Parties hereto.

J. Time Is of the Essence. Time is of the essence with respect to the performance or observance of each of the obligations, covenants and agreements under this Agreement. Except as otherwise provided herein, the Parties agree that any matter that requires the approval or consent of a Party under this Agreement, such approval or consent shall be given or withheld within thirty (30) days following request; provided, however, if the Party fails to respond in such

time period or if the Party denies or disapproves the request and fails to specify in detail the reasons for such denial or disapproval, then the request shall be deemed disapproved.

K. Gender. As used herein, the neuter gender includes the feminine and the masculine, the masculine includes the feminine and the neuter and the feminine includes the masculine and the neuter, and each includes corporation, partnership or other legal entity when the context so requires.

L. Waiver. Either Party hereto may waive the satisfaction or performance of any conditions or agreements in this Agreement which have been inserted for its own benefit, so long as the waiver is signed and specifies the waived condition or agreement and is delivered to the other Party hereto. No waiver of any provision hereof shall be deemed a waiver of any other provision hereof. Consent to or approval of any act by one of the Parties hereto shall not be deemed to render unnecessary the obtaining of such Party's consent to or approval of any subsequent act, nor shall any custom or practice which may develop between the Parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of one of the Parties to insist upon the performance by the other Party in strict accordance with said terms.

M. Cumulative Remedies. No remedy herein shall be considered exclusive of any other remedy, but the same shall be cumulative and, shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Agreement may be exercised from time to time and as often as occasion may arise or as may be deemed expedient.

N. No Subordination. Nothing contained in this Agreement shall be deemed to subordinate OUSD's interest in the Campus to the interest of ERC.

O. Severability. The invalidity or unenforceability of any provision of this Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provisions hereof.

P. Force Majeure. All time periods set forth in this Agreement shall be extended by one day for each day of Force Majeure Delay that occurs. "Force Majeure Delay" shall mean any actual delays due to strikes, lockouts or other labor disturbance, civil disturbance, riot, sabotage, blockage, embargo, inability to secure materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body, severe or unusual shortages of material, supplies or labor, lightning, rain, earthquake, fire, storm, hurricane, tornado, flood, washout, explosion, terrorist act, or any other cause outside of OUSD's or ERC's reasonable control; provided, however, that, notwithstanding the foregoing, ERC shall in any event pay any fees that accrue as a result of any late payment to a third party.

Q. Incorporation. The terms and conditions of the following Exhibits attached hereto are incorporated herein by this reference.

Exhibit A: Site Plan Campus

R. Days. The word "days" as used in this Agreement shall mean and refer to calendar days unless expressly stated as business days. If the time period for the performance of

any act under this Agreement expires on a Saturday, Sunday or any other day in which banking institutions in the State of California are authorized or obligated by law or executive order to close ("Holiday"), the act in question may be performed on the next succeeding day that is not a Saturday, Sunday or Holiday.

S. Signatures. After approval of this Agreement by ERC's Board, each individual executing this Agreement on behalf of ERC represents and warrants that he or she is duly authorized by ERC's Board to execute and deliver this Agreement on behalf of ERC, and that this Agreement is binding upon ERC and its Board in accordance with its terms. Each individual executing this Agreement on behalf of OUSD represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of OUSD and that this Agreement is binding upon OUSD in accordance with its terms and only upon approval by the OUSD Board.

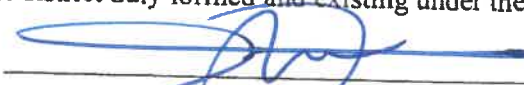
T. Effective Date. The effective date of this Agreement shall be the last date set forth adjacent to the signatures to this Agreement.

U. Board Approval. This Agreement is not valid or an enforceable obligation against the District until approved or ratified by motion of the District's Board of Trustees duly passed and adopted.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

OUSD:

ORANGE UNIFIED SCHOOL DISTRICT,
a school district duly formed and existing under the laws of the State of California

By: 
Name: Claudio (Joe) Sorra
Title: Assistant Superintendent/CBO
Date: 8/5/15

ERC:

EL RANCHO CHARTER SCHOOL,
a dependent charter school organized and existing under the laws of the State of California


By: 
Name: JOHN J. BESTA
Title: PRINCIPAL, BUSINESS AND OPERATIONS
Date: 8-3-15

EXHIBIT A
SITE PLAN CAMPUS – TO BE PROVIDED