

TOPIC: EL RANCHO CHARTER MIDDLE SCHOOL - PROPOSED CONSTRUCTION PROJECT

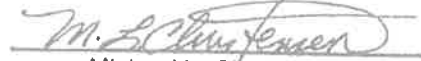
DESCRIPTION: El Rancho Charter School (ERCS) is seeking authorization to construct an approximate 25,000 square foot athletic and classroom building comprised of a gymnasium, dance studio, and five science classrooms (Project) to be located on the campus. Additionally, ERCS is seeking authorization from 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

PROJECT DEVELOPMENT & CONSTRUCTION AGREEMENT

This PROJECT DEVELOPMENT AND CONSTRUCTION AGREEMENT ("Agreement") is made by and between the ORANGE UNIFIED SCHOOL DISTRICT, a school district duly organized and existing under the laws 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 (OUSD and ERC are sometimes herein collectively referred to herein as the "Parties" and singularly as a "Party"), with reference to the following facts:

RECITALS:

A. 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".

B. 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.

C. 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**.

D. The Parties entered into a "Reimbursement Agreement between Orange Unified School District and El Rancho Charter School" dated March 10, 2015 which remains in full force and effect.

E. OUSD will fund or finance construction of the Project and ERC agrees to reimburse OUSD the full amount of the costs funded or financed by OUSD and any other agreed upon fees, costs, and interest charges ("Loan"). The Loan may be comprised of money from OUSD's existing funds and/or OUSD will obtain a loan and the proceeds of the loan will be disbursed to ERC for Construction of the Project. Details regarding the Loan and ERC's repayment of the Loan to OUSD will be set forth in a separate document to be executed by the Parties.

F. OUSD is willing to allow ERC to construct the Project on the Campus pursuant to the terms and conditions contained herein.

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

ARTICLE I
CONDITIONS PRECEDENT TO EFFECTIVENESS

1.1 Conditions Precedent. The effectiveness of this Agreement and ERC's right and ability to commence construction of any improvements of any kind or nature on the Campus, and all of ERC's rights hereunder shall be contingent upon the occurrence of all the following (collectively, the "Conditions Precedent"), which shall be satisfied or waived by a date approved by OUSD.

1.2 Board Approval. The OUSD Board and ERC Board shall have approved the execution, delivery, and consummation of the transactions and documents contemplated by this Agreement.

1.3 Other Approvals. At its sole cost and expense, ERC shall have obtained and provided evidence to OUSD of all necessary consents, permits and approvals required in order to commence the construction of the Project by law, rule or regulation applicable to the Project in a manner consistent with all applicable laws including, without limitation, any necessary approvals by the California Department of Education ("CDE"), the California Division of the State Architect ("DSA"), the California Department of Toxic Substances Control ("DTSC"), and any approval related to compliance with the California Environmental Quality Act ("CEQA"), all in a manner reasonably acceptable to OUSD.

1.4 Funding. ERC shall have provided evidence reasonably satisfactory to OUSD of adequate funding and revenue to undertake and complete the Project in accordance with the terms of this Agreement and to reimburse or repay the Loan to OUSD.

1.5 Loan Agreement. An agreement entered into by the Parties and approved by their respective Boards that sets forth the terms and conditions of ERC's repayment of all amounts funded or financed by OUSD for the construction of the Project and any other agreed upon fees, costs, and interest charges.

ARTICLE II
[RESERVED]

ARTICLE III
CONSTRUCTION

3.1 Definition of Construction. For purposes of this Agreement, "Construction" or "Constructing" shall include, without limitation, (i) the delivery of any materials or supplies for the pre-construction, construction, and completion of the Project, (ii) any necessary preparation and grading of the Project site, (iii) work performed by the Contractor (as defined herein) and Contractor's subcontractors, (iv) actual construction of the Project, (v) construction and installation of separate meters for water, electricity, gas, cable service, telephone and other

utilities that ERC deems appropriate for the operation of the Project, and (vi) landscaping of the Campus.

3.2 Project Schedule. Subject to ERC's satisfaction of all of the Conditions Precedent, ERC shall commence and complete the Construction in accordance with the project schedule and agrees that it will deliver said project schedule, which the Parties will thereafter attach hereto as **Exhibit B** (the "Project Schedule"), within thirty (30) days from the date this Agreement is approved the Parties' respective Boards, and shall complete such Construction pursuant to the Project Schedule (subject to extension for Force Majeure Delay (as hereinafter defined), but in no event later than a date that is agreeable and approved by OUSD after all Conditions Precedent are satisfied.

3.3 Pre-Construction

3.3.1 Personnel

3.3.1.1 Consultants. ERC informed OUSD that it has selected the following consultants related to the Project: WLC Architects ("Architect"), Bernards Construction ("Contractor"), [INSERT OTHER CONSULTANTS], collectively, "Consultants". All Consultants shall be licensed, in good standing and authorized to do business in the State of California throughout the Construction of the Project. ERC shall not substitute or replace any Consultant without prior written approval from OUSD. ERC shall require all Consultants to fully indemnify and defend OUSD as set forth in Section 11.3 of this Agreement.

3.3.1.2 Bonds. Contractor shall provide payment and performance bonds for an amount no less than 100% of the total cost of the construction contract with the Contractor, and the bonds shall be in a form to the form of payment bond and performance bond set forth in **Exhibit C** hereto (collectively, the "Bonds"), which shall be maintained throughout the Construction of the Project. OUSD shall be named as an obligee on the Bonds and such Bonds shall be underwritten by a California admitted surety as defined in Code of Civil Procedure section 995.120. Prior to commencement of Construction, ERC shall provide to OUSD an original set of the Bonds.

3.3.1.3 Subcontractors. ERC shall disclose to OUSD each subcontractor listed or retained by Contractor recommended for acceptance by ERC for Construction of the Project. Should any subcontractor be substituted, ERC shall provide notice to OUSD of such substitution.

3.3.1.4 DIR Registration of Contractors and Subcontractors. ERC shall ensure that the Contractor and all subcontractors (of any tier) are properly registered with the Department of Industrial Relations in accordance with Labor Code section 1725.5. The Contractor and all subcontractors shall furnish certified payroll records as required pursuant Labor Code section 1776 directly to the Labor Commissioner in accordance with Labor Code section 1771.4 on at least on a monthly basis (or more frequently if required by OUSD or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. Monitoring and

enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE).

3.3.1.5 Prevailing Wage Requirements. Pursuant to California Labor Code section 1720 et seq., ERC shall require and ensure that each worker employed in the course of Construction, including, without limitation, is paid, at a minimum, the prevailing rate of per diem wages for the work performed. Wage rates for this Project shall be in accordance with the general prevailing rate of holiday and overtime work in the locality in which the work is to be performed for each craft, classification, or type of work needed to execute the Contract with the Contractor as determined by the Director of the Department of Industrial Relations. ERC shall ensure that all work on the Project complies with Chapter 1 of Part 7 of Division 2 of the Labor Code (Section 1720 et seq.) and California Code of Regulations, Title 8, Chapter 8, Subchapters 3 through 6 (Section 16000 et seq.)

3.3.1.6 Contracts. All contracts entered into by ERC related to Construction of the Project shall be collaterally assigned to OUSD, and which assignment OUSD may invoke without ERC's consent or the consent of the contracting party and without the payment of any fee whatsoever; provided, that OUSD may only invoke such assignment after a Default by ERC hereunder and upon receipt of thirty (30) days' written notice from OUSD. In addition and if applicable, ERC agrees that it shall competitively bid the general construction contract and any other contracts if required by applicable law, rule or regulation.

3.3.2 Construction Documents. The final plans, specifications and other documents required for the construction of the Project (collectively, "Construction Documents") shall comply with the requirements of DSA. ERC shall obtain final approval from DSA for the Construction Documents. ERC shall submit the final Construction Documents to OUSD and said Construction Documents must be reviewed and approved by OUSD. In the event OUSD discovers any material inconsistency between the Construction Documents and any permit or approval for the Project which has a material adverse impact on the Project or the intended use of the Project as a public school facility, OUSD will notify ERC in writing of the same and if ERC fails to explain the inconsistency to the reasonable satisfaction of OUSD or fails to cure the same within a reasonable time period after written notice from OUSD, then OUSD may require ERC to cease such portions of the Construction that relate to such inconsistency until the discrepancy is resolved to the reasonable satisfaction of OUSD.

3.3.4 Permits: Compliance. ERC, at its sole cost and expense, shall be responsible for obtaining all governmental permits, consents and approvals for the Project including, without limitation, approvals from DSA, CDE, DTSC and any approval related to CEQA. ERC shall obtain all other necessary permits, consents and approvals from all governmental agencies having authority over the Project and shall undertake all steps necessary to insure that Construction is accomplished in compliance with all applicable laws, rules and regulations and the requirements and standards of any insurance underwriting board, inspection bureau or insurance carrier insuring the Campus pursuant to this Agreement.

3.3.5 Commencement of Construction. Except as otherwise disclosed to OUSD as of the date of this Agreement, ERC agrees that no Construction or delivery of materials related to the Project shall commence unless and until the Conditions Precedent have been satisfied to the satisfaction of OUSD and until ERC has provided OUSD at least ten (10) days for OUSD to post notices of non-responsibility or any other notices which OUSD deems necessary for its proper protection.

3.3.6 No OUSD Liability. OUSD shall not be the guarantor of, nor responsible for, the correctness or accuracy of any plans, specifications and/or Construction Documents, or the compliance thereof with applicable laws, rules or regulations, and OUSD shall incur no liability of any kind by reason of granting approval of, accepting or acknowledging the Construction Documents, Consultants or commencement of Construction.

3.3.7 Acknowledgement from Consultants. ERC shall secure from the Consultants, a statement acknowledging that the Project is not constructed by OUSD and is not an OUSD project, and that OUSD is not responsible or liable for the Project.

3.4 Construction

3.4.1 Construction by ERC. ERC, through its Consultants, shall undertake Construction of the Project at its sole cost and expense (subject to the provisions of Article XVI). ERC shall conduct and shall cause the Contractor to utilize all new materials and supplies in building the Project (unless otherwise approved by OUSD in writing), conduct all work with respect to Construction in a good and workmanlike manner by properly qualified personnel and in accordance with all applicable laws, rules and regulations, and such work shall be diligently prosecuted to completion once commenced.

3.4.2 Limitations on Construction. ERC in good faith and using its commercially reasonable efforts shall endeavor to conduct and shall cause the Consultants to endeavor to conduct all work with respect to Construction with as minimal impact as commercially practicable to any student instruction (or any other student activity) at the Campus.

3.4.3 Reports and Changes During Construction. The Parties acknowledge that the Construction Documents may require changes during Construction, including, changes required by law or due to unforeseen circumstances. In the event of a material change to the Construction Documents, ERC shall deliver to OUSD written notice describing the change, the reason for the change, a copy of DSA's approval of said change or a written, executed statement by Architect that said change does not require DSA approval, a statement of any decrease or increase to the estimated cost of Construction of the Project, and all other details reasonably requested by OUSD. For the purpose of this Article a "material change" is a change or series of changes to the Construction Documents that singularly or cumulatively are reasonably estimated to (i) increase the Cost of the Project by two percent (2%) or more or (ii) increase the time to complete the project by sixty (60) days or more.

ERC covenants and agrees that it will deliver the Project Schedule (which the Parties will thereafter attach hereto as **Exhibit B**) and Cost of the Project to OUSD. For purposes of this Agreement, "Cost of the Project" means hard and soft costs to Construction of the Project. Any material increase to the Cost of the Project prior to ERC commencing Construction shall be submitted to and approved by OUSD in its reasonable discretion.

During the term of this Agreement, if there is any material change in the estimated Cost of the Project, regardless of cause (e.g. whether from inaccurate estimating, any change to the Construction Documents, or cause within or outside of ERC's control), ERC shall provide evidence reasonably satisfactory to OUSD of adequate and acceptable funding and revenue to complete Construction of the Project and repay the Loan. If OUSD, in its reasonable discretion, determines that ERC has not established adequate funding and revenue to complete Construction of the Project and repay the Loan, OUSD may issue to ERC written notice to cease Construction of the Project at a logical stage in the construction of the Project so as to minimize any adverse impact on the development or use of the Project and ERC shall do so until it has established adequate funding and revenue to complete Construction of the Project and all costs, expenses and liabilities incurred by ERC arising from the stoppage of Construction shall be the sole responsibility of ERC.

During the term of this Agreement, ERC shall provide to OUSD a progress report in the form attached hereto as **Exhibit E** ("Progress Report") on a quarterly basis starting in the financial quarter to close after ERC commences Construction of the Project through and including the date that ERC achieves Final Completion.

During the term of this Agreement, ERC shall promptly notify OUSD in writing regarding any material adverse change in its funding or revenue if such change affects ERC's ability to complete the Project or repay the Loan to OUSD. OUSD shall review ERC's information and may require ERC to provide additional information and evidence of its ability to fund and complete Construction of the Project or repay the Loan to OUSD. If, in response to such material adverse change, OUSD, in its reasonable discretion, determines that ERC has not established adequate funding or revenue to complete Construction of the Project and repay the Loan, OUSD may require ERC to cease Construction of the Project at a logical stage in the construction of the Project so as to minimize any adverse impact on the development or use of the Project until satisfactory evidence of sufficient funding and revenue has been provided to OUSD regardless of whether ERC has funds to continue Construction but not enough to complete Construction and repay the Loan to OUSD.

3.4.4 Meetings and Inspections. OUSD shall have the right, but not the obligation, to attend any and all on or off site meetings among ERC and its Consultants to review the Project, its progress, scheduling and other related matters ("Project Meetings"). ERC shall notify OUSD's designated representative (Assistant Superintendent of Business) or other designee in writing at least seven (7) days in advance of any regularly scheduled Project Meetings, and shall use reasonable efforts to give OUSD at least 24 hours prior notice of any other Project Meetings. Further, OUSD shall have the right, but not the obligation, to observe Construction at any time during the progress thereof. OUSD shall contract with a Project Inspector approved by DSA ("DSA Inspector") to inspect Construction for compliance with the

approved Construction Documents and applicable DSA rules and regulations including Title 24. ERC shall reimburse and pay for all costs and expenses to OUSD related to the DSA Inspector. The DSA Inspector shall be permitted access to the Project at all times during Construction. If OUSD or the DSA Inspector gives notice to ERC that any aspect of Construction represents a material change from the Construction Documents, or violates any applicable law, rule or regulation, ERC shall cause the Contractor to promptly make corrections required by the DSA Inspector or reasonably required by OUSD. Neither OUSD's right to make such observations nor the making of such observations, regardless of any assertions that such observations amount to unauthorized supervision of Construction, or the supervision of Construction by the DSA Inspector, shall operate as a waiver of any rights of OUSD to require that Construction be accomplished with new materials (unless otherwise approved by OUSD in writing), and executed in a good and workmanlike manner in accordance with the Construction Documents in all material respects, and applicable law, rule or regulation. Nothing in this Agreement shall be construed as any right or responsibility of OUSD to inspect or observe the Project and shall not relieve ERC's or the Contractor's requirement to complete Construction of the Project in accordance with the DSA approved Construction Documents, all required federal, state or local governmental agency requirements having jurisdiction over the Project.

3.4.5 Insurance. Prior to commencing any Construction or the delivery of any materials or supplies for the Project, ERC shall provide OUSD with copies of certificates of the insurance required in Article XI below.

3.4.6 Substantial Completion of the Project. Upon Substantial Completion (as hereinafter defined) of the Project, ERC shall provide written notice to OUSD and OUSD shall have the right, but not the obligation, to timely conduct an observation to confirm Substantial Completion of the Project. For purpose of this Agreement, "Substantial Completion" or "Substantially Completed" is not reached until each of the following three conditions have been met: (i) all contractually required items have been installed with the exception of items that are unfinished, deficient or require correction in order to conform with the Construction Documents in all material respects ("Punch List Items"); (ii) all fire/ life safety systems have been installed, and are working and signed off on the DSA Form 152 Inspection Card, and all building systems including mechanical, electrical and plumbing are all functioning; and (iii) the Project is fit for occupancy and its intended use in accordance with the applicable portions of the Construction Documents and all applicable laws, rules and regulations.

3.4.7 Completion of Project Construction. Upon completion of the Punch List Items, ERC shall provide written notice to OUSD and OUSD shall have the right, but not the obligation, to timely conduct an observation to confirm that the Project is complete and conforms to the Construction Documents. Construction shall be deemed complete ("Completion of Project Construction" or "Completion of the Project") only after: (i) the Project is physically and functionally complete in all respects in material conformance with the Construction Documents and all applicable laws, rules and regulations, and is ready to be occupied and utilized in accordance with the terms of this Agreement, and that all Punch List Items have been successfully completed, (ii) the applicable governmental agency having appropriate jurisdiction over the Project has issued a certificate of occupancy or its equivalent, and (iii) 30 days after a Notice of Completion has been recorded for the Project.

3.4.8 No OUSD Liability. ERC understands and agrees that OUSD is not a guarantor of, nor responsible for, Construction of the Project, or the compliance thereof with applicable laws, rules or regulations. OUSD shall not incur liability of any kind by reason of granting approval or otherwise allowing Construction or the Project to be developed on the Campus and ERC shall indemnify and defend OUSD from any and all liability, claims, and/or damages that may arise directly or indirectly from Construction or the Project, except to the extent that such liability, claim, and/or damages arise from OUSD's sole negligence, gross negligence, unlawful acts or willful misconduct.

3.4.9 Notice of Completion. ERC shall notify OUSD in writing when the Project is completed and a Notice of Completion for the Project can be recorded in the appropriate Office of the Recorder in accordance with Sections 8182, 8184, 9204 and 9208 of the California Civil Code or any successor statute.

3.4.10 Copy of Construction Documents. Within 30 days of Completion of the Project, ERC shall deliver to OUSD one (1) set of copies of the Construction Documents with any changes reflected thereon during the Construction on compact disc or other media specified by OUSD. ERC shall also deliver to OUSD a copy of any warranties, guarantees and manuals relating to the Project and all improvements, equipment and systems therein.

3.5 Use of Project. ERC agrees that ERC shall have no right to use the improvements of the Project until it has satisfied all of the following:

3.5.1 ERC has obtained a certificate of occupancy or its equivalent for the Project;

3.5.2 The DSA Inspector has completed its inspection and issued clearance for the use of the Project and a copy of such has been delivered to OUSD;

3.5.3 Except for any Punch List Items and disputed claims, the Consultants has released and waived all claims arising from the portions of the Construction of the Project that are complete, and all liens and encumbrances arising from the same have been discharged from the fee and title of the Campus as provided in Article IX;

3.5.3 All required documents to obtain DSA close-out and certification of the Project have been submitted to DSA; and

3.5.4 ERC shall have provided to OUSD one (1) copy of the final Construction Documents and any field changes for the Project.

3.6 Failure to Complete Construction. In the event ERC fails to observe the Project Schedule or complete Construction of the Project, OUSD shall have the right to pursue all rights and remedies available at law. In addition to the foregoing, ERC agrees OUSD shall have the right, but not the obligation, to pursue the completion of Construction of the Project and ERC agrees that if OUSD makes such election, ERC authorizes OUSD to deduct from the general revenue account of the ERC an administrative management fee in an amount equivalent to the

actual costs and expenses incurred by OUSD in completing Construction of the Project. In OUSD's sole discretion, it may further demand and require ERC to relinquish its charter as set forth in Section 12.3.3.

ARTICLE IV
OWNERSHIP OF THE PROJECT IMPROVEMENTS

All improvements of the Project on the Campus shall be owned by OUSD. At the termination of the occupancy by the ERC of the Campus, ERC shall execute and deliver any documentation required by OUSD to confirm OUSD's ownership of the improvements to the Project, and OUSD shall have no obligation to pay for the improvements of the Project or provide any compensation to ERC (except as expressly provided pursuant to Article XVI below). This Article IV shall survive the expiration or earlier termination of this Agreement.

ARTICLE V
MAINTENANCE AND REPAIR

5.1 Maintenance and Repair

5.1.1 OUSD's Maintenance and Repair Obligations. OUSD shall not be required or obligated to do any maintenance or to make any repairs, changes, alterations, additions, improvements or replacements of any nature whatsoever in, on or about the Project through Completion of Construction. Nothing contained herein shall be construed as requiring OUSD to make any repairs or to do any maintenance necessitated by reason of the act or omission of ERC or anyone claiming under ERC, or by reason of the failure of ERC, to observe or perform any conditions, covenants or agreements contained in this Agreement, or by reason of any damage to or destruction of other property caused by any improvements, alterations or additions made by ERC or anyone claiming through ERC.

5.1.2 ERC's Maintenance and Repair and Replacement Obligations. At all times during the term of this Agreement, ERC, at its sole cost and expense and without cost to OUSD, shall keep and maintain the Campus in good, clean, sanitary and safe condition and repair and in compliance with all laws, rules, and regulations applicable to a public school and OUSD's standards, policies and bulletins.

5.2 Survival. This Article V shall survive the expiration or earlier termination of this Agreement.

ARTICLE VI
ENROLLMENT CAPACITY

The Parties expressly agree that the Project is to be used solely to support the educational program offered to ERC students and the addition of the structures identified in the Project to the Campus does not permit or grant ERC authority to increase its overall student enrollment in grades 7 and 8 at the Campus beyond 1200 students through the term of the Loan and until the

Loan is fully reimbursed to OUSD. Nothing herein shall constitute an effort by OUSD to limit growth but, rather, is only a limit on student capacity at this particular site.

ARTICLE VII CERTAIN COVENANTS

From the Execution Date until the Expiration Date, in addition to any covenants set forth elsewhere in this Agreement, ERC agrees to the following:

7.1 Litigation. ERC shall not commence any litigation with respect to Construction or the Project or affecting OUSD's interest in the Campus without first providing written notice to OUSD.

7.2 Funding. ERC shall maintain adequate and acceptable revenue and funding arrangements and shall fulfill its funding obligations under this Agreement in order for ERC to undertake the transactions contemplated by this Agreement, for ERC to complete Construction of the Project in accordance with the terms of this Agreement and repay the Loan. Upon request by OUSD, ERC shall provide to OUSD evidence reasonably satisfactory to OUSD that all such revenue and funding arrangements are in place and that all such revenue projections are being fulfilled. Except as expressly provided pursuant to Article XVI below, OUSD discloses and ERC agrees that OUSD has no obligation to provide any funding or revenue in the event ERC does not have sufficient funding to complete the Construction of the Project in accordance with the terms of this Agreement, or any obligation to complete Construction of the Project.

ARTICLE VIII COSTS

ERC shall pay, or cause to be paid: (i) all costs of Construction of the Project; and (ii) all charges which are incurred by ERC or which may be a charge or lien against the Campus or the Project, including, without limitation, payments for insurance premiums, gas, electricity, wiring, heating, light, power, other utilities, security, trash removal, disposal and management of Hazardous Materials (as hereinafter defined), interior cleaning and janitorial services, ground maintenance, landscaping, cable television, telephone, or other communications systems used, rendered or supplied upon or in connection with the Project, and any other charges, costs, obligations, liabilities, requirements and expenses which arise with regard to the Construction of the Project (collectively, "ERC Costs"). OUSD shall not bear any cost, expense or liability for the Construction of the Project. This Article VIII shall survive the expiration or earlier termination of this Agreement.

ARTICLE IX LIENS AND STOP NOTICE CLAIMS

9.1 ERC shall not suffer or permit any liens or stop notice claims to stand against the fee title to the Campus or against the Project, or any part thereof, by reason of any work, labor, services or materials done, or supplied, or claimed to have been done or supplied to ERC or the Campus or the Project, or any part thereof, through or under ERC. If any such lien or stop notice

claim shall at any time be filed against the Campus or the Project, ERC shall provide OUSD written notice thereof as soon as notice of such lien, stop notice or action comes to the knowledge of ERC and shall cause the same to be discharged of record within 60 days after the date of the recordation of a notice of completion for the Project, by either payment, recorded release of lien or stop notice, recorded release bond deposit or bond, unless a bond therefor is already in effect or commencement of a lawsuit pursuant to Civil Code Section 8480, et seq. for a decree to release the property from the lien, or in the case of a stop notice, commencement of a summary proceeding pursuant to Civil Code Section 9500 et seq. or ERC's interpleader of funds subject to stop notice claims. If ERC is unable to discharge the lien or stop notice, ERC shall defend and indemnify OUSD in any mechanics' lien or stop notice litigation filed in connection with the Campus or Project. The failure of ERC to discharge a lien recorded or stop notice filed on the Campus or the Project, or any part thereof, within 60 days after the date of recordation of a notice of completion for the Project and ERC's refusal to defend and indemnify OUSD in any mechanics' lien or stop notice litigation filed in connection with the Project shall constitute a Default under this Agreement and any other agreement providing ERC occupancy and use of the Campus. Nothing in this Agreement shall imply any consent or agreement on the part of OUSD to subject its fee estate in the Campus to liability under any mechanics' lien law or to any claimant as defined in Civil Code Section 8004.

9.2 If any such liens or stop notices are not so discharged within 60 days after the date of recordation of a notice of completion for the Project, OUSD may, with ten (10) days' notice to ERC, without waiving its rights and remedies based on such breach of ERC and without releasing ERC from any of its obligations, cause such liens or stop notices to be released by any means it shall deem proper, including payment in satisfaction of the claim giving rise to such lien. Promptly following notice by OUSD, ERC shall, but no later than ten (10) business days after ERC's receipt of OUSD's notice, pay to OUSD any sum paid by OUSD to remove such liens, together with interest at the maximum rate then allowed by law ("Interest Rate"), from the date of such payment by OUSD, which Interest Rate shall commence as of the day OUSD makes payment in satisfaction of the claim giving rise to such lien or stop notices and shall continue until ERC has remitted full payment to OUSD.

9.3 The provisions of this Article IX shall survive the expiration or earlier termination of this Agreement.

ARTICLE X **ENVIRONMENTAL ISSUES**

10.1 Hazardous Materials.

10.1.1 Definitions. As used in this Agreement, the following definitions shall apply: "Environmental Laws" shall mean all federal, state and local laws, ordinances, rules and regulations now or hereafter in force, as amended from time to time, in any way relating to or regulating human health or safety, or environmental evaluations of potential school sites or health care facilities, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and includes, without limitation, the Comprehensive Environmental Response, Compensation and

Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, the Hazardous Substance Account Act, California Health and Safety Code § 25300, *et seq.*, the Hazardous Waste Control Law, California Health and Safety Code § 25100, *et seq.*, the Medical Waste Management Act, California Health and Safety Code § 25015, *et seq.*, and the Porter-Cologne Water Quality Control Act, California Water Code § 13000, *et seq.*, Education Code § 17210, *et seq.*, and California Code of Regulations, Title 5 § 14010, *et seq.* "Hazardous Materials" shall mean any substance or material that is described as a toxic or hazardous substance, explosive material, radioactive substance, waste or a pollutant or contaminant or infectious waste, or words of similar import, in any of the Environmental Laws, and includes, but is not limited to, asbestos, petroleum or petroleum products (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive matter, medical waste, and chemicals which may cause cancer or reproductive toxicity. "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including continuing migration, of Hazardous Materials into or through soil, air, surface water or groundwater in violation of Environmental Laws.

10.1.2 ERC Covenants. ERC shall not use, produce, process, manufacture, generate, treat, handle, store or dispose of any Hazardous Materials in, on or under the Campus or the Project, or use the Campus or the Project for any such purposes, or Release any Hazardous Materials into any air, soil, surface water or groundwater comprising the Campus or the Project, in each of the foregoing cases, in violation of any Environmental Laws. ERC shall comply with all Environmental Laws applicable to the Campus or the Project, or the construction or use or occupancy thereof, or any operations or activities therein or thereon.

10.2 Hazardous Materials Claims. Each Party hereto shall immediately advise the other Party in writing of: (i) any written notices received by such Party (whether such notices are from the Environmental Protection Agency, or any other federal, state or local governmental agency or regional office thereof) of the violation or potential violation of any applicable Environmental Laws occurring on or about the Campus or the Project, (ii) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened in writing pursuant to any Environmental Laws, (iii) any written notices received by such Party of all claims made or threatened by any third party against any Party, the Campus or the Project relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials relating to the Campus or the Project (the matters set forth in clauses (i), (ii) and (iii) above are hereinafter referred to as "Hazardous Materials Claims") and (iv) any Party's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Campus that could have a reasonable likelihood to cause the Campus or the Project or any part thereof to be subject to any Hazardous Materials Claims. Each Party hereto shall have the right but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims.

10.3 Indemnity by ERC. ERC shall be solely responsible for, and shall indemnify, defend and hold harmless OUSD, the OUSD Board, OUSD's officers, employees, and agents from and against, any claim, demand, lawsuit, loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, Release by ERC (including its Consultants, general contractor, subcontractor, representative or owner) of Hazardous Materials on, under or derived from the Campus or the Project in violation of applicable law during the term of this Agreement, including, without limitation: (i) claims of third parties (including governmental agencies) for injury or death to any person or for damage or destruction of any property, (ii) claims for response costs, clean-up costs, costs and expenses of removal and restoration, including fees of attorneys' and experts, and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency, (iii) any and all other claims for expenses or obligations, including attorneys' fees, costs, and other expenses, (iv) any and all penalties threatened, sought or imposed on account of a violation of any Environmental Law, and (v) all fees of any consultants, attorneys and engineering firms retained in connection with monitoring the Hazardous Materials; provided, however, that the foregoing indemnity shall not apply to any claim, demand, lawsuit, loss, damage, cost, expense or liability to the extent arising from (A) sole negligence, gross negligence, unlawful acts or willful misconduct on the part of OUSD, the OUSD Board, OUSD's officers, employees, and agents or (B) any Hazardous Materials that existed on, under or derived from the Campus, the Project or other properties as of the date of this Agreement or which later is found to exist following the date of this Agreement as a result of underground migration.

10.4 Removal of Hazardous Materials. To the extent ERC is liable under Section 10.3 above, ERC, at its sole cost and expense, shall, with due care, in a safe manner and in accordance with all applicable laws, detain the spread of, ameliorate and remove from the Campus or the Project any Hazardous Materials contamination located on or beneath the Campus or the Project in violation of applicable law and shall monitor or cause to be monitored the levels of Hazardous Materials on, under or derived from the Campus and the Project or in the ground water in accordance with the terms and procedures required by any federal, state or local governmental agency having jurisdiction including, without limitation, any Regional Water Quality Control Board and the Environmental Protection Agency.

10.5 Survival. The provisions of this Article X shall survive the expiration or earlier termination of this Agreement.

ARTICLE XI **INSURANCE; INDEMNITY**

11.1 ERC Insurance.

11.1.1 Insurance. At all times during the term of this Agreement, at ERC's sole cost and expense and in its own name, ERC shall, as a covenant of this Agreement, provide and keep in force and effect:

11.1.1.1 Directors and Officers Liability Insurance. Directors and Officers Liability Insurance on an occurrence basis. Such insurance shall provide primary

coverage without contribution from any other insurance carried by or for the benefit of OUSD and the OUSD Board. The minimum limits of liability shall be a combined single limit with respect to each occurrence in an amount of not less than that specified in **Exhibit D**.

11.1.2 ERC Insurance Policies. All policies of insurance provided for herein shall be issued by insurance companies authorized to do business in California and rated in Best's Insurance Guide, or any successor thereto as having a "Best's Rating" of "A-" or better and a "Financial Size Category" of at least "VII" or better or, if such ratings are not then in effect, the equivalent thereof or such other financial rating as OUSD may at any time consider appropriate. All policies held by ERC in connection with this Agreement shall name ERC as the insured and OUSD and the OUSD Board as additional insureds, and shall provide that they may not be cancelled by the insurer for nonpayment of premiums or otherwise or be terminated or lapse of their own accord or by their own terms until at least thirty (30) days after written notice of the proposed cancellation upon all parties named in such policies as insureds. All insurance required to be carried by ERC shall contain a provision that no act or omission of ERC shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained. All general liability, property damage and other casualty policies shall be written as primary policies, not contributing with any other coverage which OUSD or ERC may carry. ERC agrees that with respect to all such policies carried by or to be carried by ERC, ERC shall require its insurance broker to provide OUSD with written notice whenever there are paid losses on ERC's insurance policies which result in a 20% or greater erosion of limits. Upon the Execution Date, and thereafter at least ten (10) days prior to the expiration date of such policy, ERC shall deliver to OUSD copies of the policies for all the insurance required to be carried by ERC hereunder. ERC shall each obtain in all policies of insurance carried by it, a waiver by the insurance companies thereunder of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.

11.1.3 Blanket Insurance. Notwithstanding the foregoing, all of the insurance requirements set forth herein on the part of ERC shall be deemed satisfied if covered by a blanket insurance policy providing the coverage required by this Agreement.

11.2 Waiver. Except as otherwise provided in this Agreement or at law or equity, OUSD shall not be liable for and ERC hereby waives all claims against OUSD for damage to any property or injury, illness or death of any person in or upon the Campus or the Project arising at any time during the term of this Agreement, except the extent the same results from the sole negligence, gross negligence, unlawful acts or willful misconduct on the part of OUSD, the OUSD Board, OUSD's officers, employees, and agents. OUSD shall not be liable for and ERC hereby waives all claims against OUSD arising in any way due to, in connection with or related to, directly or indirectly, the Campus or the Project or any activities by ERC in, on or about the Campus, including the Construction of the Project, except the extent the same results from the sole negligence, gross negligence, unlawful acts or willful misconduct on the part of OUSD, the OUSD Board, OUSD's officers, employees, and agents.

OUSD and ERC hereby agree and acknowledge that ERC is acting on its own behalf in Constructing the Project and is not operating as an agent of OUSD. Should OUSD be named as a defendant in any suit brought against ERC in connection with or related to, directly or

indirectly, ERC's Construction of the Project, ERC shall pay to OUSD the costs and expenses OUSD incurs in such suit, including without limitation, its actual professional fees such as appraisers', accountants' and attorneys' fees, except to the extent said suit is caused by OUSD's sole negligence, gross negligence, unlawful acts or willful misconduct.

The provisions of this Section 11.2 shall survive the expiration or sooner termination of this Agreement.

11.3 Indemnity and Hold Harmless. In addition to the ERC's other indemnity obligations set forth elsewhere in this Agreement, to the fullest extent permitted by law, ERC and its Consultants, 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 ERC 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 associated with the Project, (v) injury to, loss or theft of property associated with the Project, (vi) any failure or alleged failure of ERC or its Consultants to comply with any provision of applicable law including, but not limited to, any competitive bidding or procurement requirements applicable to the Project or Construction of the Project, (vii) failure to make Loan payments to OUSD, or (viii) any claim by a third party that OUSD is responsible for any actions of ERC in connection with the Project (collectively "Liabilities"). Notwithstanding anything to the contrary set forth in this Section 11.3, the provisions of this Section 11.3 shall not apply to the extent that all or part of the Liabilities are 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 11.3 shall survive the expiration or sooner termination of this Agreement.

11.4 Contractor Insurance. Contractor shall take out and maintain the following insurance requirements:

11.4.1 Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than \$2,000,000.00 or Commercial General Liability Insurance which provides limits of not less than:

(a)	Per occurrence (combined single limit)	\$2,000,000.00
(b)	Project Specific Aggregate	\$2,000,000.00
(c)	Products and Completed Operations (aggregate)	\$2,000,000.00
(d)	Personal and Advertising Injury Limit	\$1,000,000.00

11.4.2 Insurance Covering Special Hazards. The following Special hazards shall be covered by riders or riders to above mentioned public liability insurance or property damage insurance policy or policies of insurance, in amounts as follows:

(a)	Automotive and truck where operated in amounts	\$1,000,000.00
(b)	Material Hoist where used in amounts	\$1,000,000.00
(c)	Explosion, Collapse and Underground (XCU coverage)	\$1,000,000.00
(d)	Hazardous Materials	\$1,000,000.00

11.4.3 In addition, Contractor shall provide Excess Liability Insurance coverage in the amount of Four Million Dollars (\$4,000,000.00).

11.4.4 Workers' Compensation. Statutory workers compensation insurance covering all employees and agents of the Contractor as required by law in the State of California and in compliance with all federal, state and local laws and ordinances applicable to the work to be performed under this Agreement. The minimum limits of liability shall be a combined single limit with respect to each occurrence in an amount of not less than \$1,000,000 or as required by law.

11.4.5 Builder's Risk/ All-Risk Insurance Requirements. The Contractor, during the progress of construction of the Project and until final acceptance of the Project by OUSD, shall maintain Builder's Risk, Course of Construction or similar first party property coverage issued on a replacement cost value basis consistent with the total replacement cost of all insurable work and the Project included within the Contract Documents. Coverage is to insure against all risks of accidental direct physical loss, and must include, by the basic grant of coverage or by endorsement, the perils of vandalism, malicious mischief (both without any limitation regarding vacancy or occupancy), fire, sprinkler leakage, civil authority, sonic boom, earthquake, flood, collapse, wind, lightning, smoke and riot. The coverage must include debris removal, demolition, increased costs due to enforcement of building ordinance and law in the repair and replacement of damage and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the work on the Project which is the subject of the Contract Documents, including completed work and work in progress, to the full insurable value thereof. Such insurance shall include OUSD as an additional named insured.

11.4.6 Fire and Extended Coverage. Fire and hazard "all risk" insurance covering 100% of the full replacement cost valuation of the Project. Such insurance shall provide protection against any peril included within the classification "Fire and Extended Coverage", together with insurance against fire sprinkler damage, vandalism and malicious mischief. Such insurance shall contain (i) no coinsurance or contribution clauses and (ii) a Replacement Cost Endorsement. The insurance required in this paragraph may be carried by the Contractor.

11.4.7 Contractor Additional Insured Endorsement Requirements. The Contractor and its subcontractors shall name, on any policy of insurance required under Section 11.4, ERC, OUSD, the OUSD Board, and their respective officers, employees, agents, volunteers and independent contractors as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall be an ISO CG 20 10 (04/13), or an ISO CG 20 38 (04/13), or their equivalent as approved by OUSD in its sole discretion, and must state that

coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The insurance provided by the Contractor pursuant to Section 11.4 must be designated in the policy as primary to any insurance obtained by ERC or OUSD. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

11.4.8 Consultant Additional Insured Endorsement Requirements. ERC's Consultants shall name, on any policy of insurance required by ERC for the Project, OUSD, the OUSD Board, and its officers, employees, agents, volunteers and independent contractors as additional insureds. A copy of the additional insured endorsement from all Consultants shall be provided to OUSD prior to the start of construction. The insurance provided by the Consultants must be designated in the policy as primary to any insurance carried by OUSD and that OUSD's insurance shall be on an excess or contingent basis. The amount of the insurer's liability shall not be reduced by the existence of such other insurance carried by OUSD.

11.5 The provisions of Section 11.4 shall survive the expiration or sooner termination of this Agreement.

ARTICLE XII

DEFAULT; REMEDIES

12.1 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.

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

12.2.1 Costs. The failure of ERC to pay or cause to be paid before delinquency any ERC Costs or other fees, charges, or payments due hereunder, or to observe or perform any of ERC's financial covenants and obligations hereunder, or failure to timely make Loan payments to OUSD, where such failure shall continue for a period of thirty (30) days after receipt of written notice thereof by OUSD to ERC.

12.2.2 Construction. The failure of ERC to construct the Project in accordance with the DSA approved Construction Documents or to observe or perform any of its covenants and obligations hereunder pertaining to Construction, where such failure shall continue for a period of thirty (30) days after receipt of written notice thereof by OUSD to ERC.

12.2.3 Project Schedule. The failure of ERC to meet the deadline for any milestone as set forth in the Project Schedule as a result of ERC or its Consultants' negligence,

or to observe or perform any of its covenants and obligations hereunder pertaining to the Project Schedule, where such failure shall continue for a period of thirty (30) days after receipt of written notice thereof by OUSD to ERC.

12.2.4 Liens. The failure of ERC to discharge a lien recorded on the fee title to the Campus, or the leasehold title to the Campus or on the Project, or any part thereof caused by ERC or any party claiming through ERC relating to Construction of the Project, or to observe or perform any of its covenants and obligations hereunder pertaining to liens on the Campus or on the Project.

12.2.5 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.

12.2.6 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, in violation of Article XIII hereof.

12.2.7 Failure to Perform. The failure of ERC to perform or observe any of ERC's covenants and obligations required hereunder, where such failure shall continue for a period of thirty (30) days after receipt of written notice thereof by OUSD to ERC.

12.2.8 Failure to Make Loan Payments. The failure of ERC to make any required payments pursuant to the agreement for the repayment by ERC of the Loan to OUSD used to fund construction of the Project, where such failure shall continue for a period of thirty (30) days after receipt of written notice thereof by OUSD to ERC.

12.3 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:

12.3.1 Right to Perform. OUSD shall have the right, but not the obligation, to enter the Project or the Campus at all times for the purpose of performing any covenant or condition that ERC has failed to perform, at OUSD's option. All costs incurred by OUSD in so performing shall promptly be reimbursed to OUSD by ERC, together with 10% of the costs and expenses incurred by OUSD or the amount expended under any performance or surety bond as an administrative/management fee and interest at the Interest Rate, from the date such cost or expense is incurred by OUSD following ERC's Default up to and including the date paid. In rendering such performance, OUSD shall have the right to execute any agreements relating to Construction, or otherwise in connection with, the Campus and/or the Project. Any performance by OUSD of ERC's obligations shall not waive or cure such Default.

12.3.2 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.

12.3.3 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 ("Resolution") 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 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 Loan, including any liability arising from default or nonpayment on all or part of this Loan, the aforementioned provision regarding voluntary relinquishment of the charter shall become moot and unenforceable.

ARTICLE XIII **ASSIGNMENT; LEASE; ENCUMBRANCES**

13.1 Agreement. 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.

13.2 Assignment by ERC. Under no circumstances shall ERC assign all or part of its interest, if any, in the Campus and/or the improvements of the Project, to any entity, except with the prior written consent of OUSD, which consent may be withheld at OUSD's reasonable discretion, and in no event shall ERC transfer its interest, if any, in the improvements of the Project and/or the Campus separate from ERC's interests and obligations under this Agreement.

13.3 Encumbrance. ERC shall not encumber its interest, if any, in the improvements of the Project, or any part thereof, and such action shall be deemed to be an immediate Default hereunder. ERC shall not execute a mortgage encumbering all or any portion of the right, title and estate of ERC, if any, in the improvements of the Project.

13.4 Other. Any assignment, transfer, mortgage, encumbrance or lease of, or any license, concession, franchise or other permission to use the improvements of the Project or the Campus granted by ERC to any person or entity shall be expressly subject and subordinate to all applicable terms and conditions of this Agreement. Any purported or attempted assignment, transfer, mortgage, encumbrance or lease of, or any license, concession, franchise or other permission to use the improvements of the Project or the Campus contrary to the provisions of this Article XIII shall be void, constitute a Default under this Agreement, and, at the option of OUSD, shall terminate this Agreement.

13.5 OUSD Approval. Notice of any actual or proposed assignment, transfer, mortgage, encumbrance, lease or hypothecation of the improvements of the Project, the Campus or this Agreement shall be given by ERC to OUSD, together with a copy of the proposed documentation thereof (including, in the event of an assignment, the assumption document in which the assignee or proposed assignee agrees to assume all obligations of ERC under this Agreement), with all necessary and appropriate details for OUSD to provide an approval. Any approval or disapproval by OUSD under this Article XIII is at OUSD's sole discretion.

13.6 Costs. ERC shall reimburse OUSD for OUSD's costs and attorneys' fees incurred in conjunction with the processing and documentation of any actual or proposed assignment, transfer, mortgage, encumbrance, lease or hypothecation of the improvements of the Project, the Campus or this Agreement by ERC, or any license, concession, franchise or other permission to use the improvements of the Project or the Campus granted by ERC to any person or entity.

13.7 Assignment by OUSD. Subject to applicable legal requirements, OUSD shall have the right at any time and from time to time during the term of this Agreement to sell or assign all or any portion of its fee interest in the Campus. Notice of any assignment or proposed assignment of this Agreement made in conjunction with such transfer shall be given by OUSD to ERC at least thirty (30) days prior to such assignment or proposed assignment, together with a copy of the assumption document by which the assignee or proposed assignee agrees to assume all obligations of OUSD under this Agreement.

ARTICLE XIV **NOTICES**

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 in **Exhibit D** 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.

ARTICLE XV **MISCELLANEOUS**

15.1 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.

15.2 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.

15.3 Choice of Law. This Agreement shall be governed and construed by the laws of the State of California.

15.4 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.

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

15.6 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.

15.7 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.

15.8 Entire Agreement. This Agreement, the Reimbursement Agreement dated March 10, 2015, the Loan and the additional agreements entered into concurrently with and as a condition precedent to the effectiveness of the Loan 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.

15.9 Successors and Assigns. Subject to the provisions hereof relative to assignment and to Section 13.1 hereof, 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.

15.10 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.

15.11 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.

15.12 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.

15.13 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.

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

15.15 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.

15.16 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 sum of money required to discharge any lien if at any time the Campus, or portion thereof, or the Project, or any part thereof, shall be in danger of being foreclosed, forfeited or lost.

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

- Exhibit A: Site Plan Campus
- Exhibit B: Project Schedule
- Exhibit C: Form of Payment and/or Performance Bond
- Exhibit D: Insurance Requirements
- Exhibit E: Form of Progress Report
- Exhibit F: Projected Contractor Invoice

15.18 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.

15.19 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.

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

ARTICLE XVI
DISBURSEMENT OF FUNDS FOR CONSTRUCTION

The Loan or any money provided by OUSD pursuant to this Agreement shall be solely used by ERC to fund the Construction of the Project. Any amounts of the Loan or any money provided by OUSD not used by ERC under this Agreement shall be returned to OUSD. OUSD shall disburse funds up to the final approved construction cost for the Project to be solely used by ERC to fund the Construction of the Project pursuant to the following procedure:

16.1 Application for Disbursement. At least thirty (30) days prior to the month in which ERC projects it will need to make payments for the Construction of the Project, ERC shall submit to OUSD written itemized statements signed by ERC ("Application") setting forth:

16.1.1 The total amount projected to be incurred by ERC for Construction of the Project ("Disbursement"), which for each Disbursement shall not be more than the amount reasonably estimated by ERC required to complete the projected work to be performed, material to be supplied and/or costs to be incurred or due for thirty (30) days after the Disbursement is released;

16.1.2 An invoice in the form attached hereto as **Exhibit F** showing the projected work to be performed, material to be supplied and/or costs to be incurred or due in connection with the Project (and are reasonably incurred in connection with the Cost of the Project) and the specific time period for which Disbursement is requested;

16.1.3 A Progress Report describing the portion of the Project that has been completed;

16.1.4 An officer's certificate, signed by an officer of ERC, certifying to OUSD that ERC has sufficient funds (after taking into account ERC's receipt of the Disbursement that is the subject of the Application) for the Completion of Project Construction; and

16.1.5 The materials required to be delivered to OUSD under Section 16.2.4 below for OUSD's review and approval or waiver as conditions precedent to the applicable Disbursement.

16.2 Conditions Precedent to Each Disbursement. OUSD shall have the right to condition the release of any Disbursement upon OUSD's review and approval or written waiver of any and all of the following conditions:

16.2.1 OUSD's receipt of a timely and complete Application, including without limitation, the contents of such Application;

16.2.2 No Default under this Agreement or the 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" is then occurring or an event that with notice and the passage of time would constitute a Default under such agreements;

16.2.3 OUSD's inspection of the improvements and reasonable verification of completion of improvements that were to have been constructed up to the date of the Application then being reviewed by OUSD; and

16.2.4 Prior to the Application for Disbursement, ERC shall have delivered to OUSD an officer's certificate, signed by an officer of Architect or Contractor, certifying to OUSD that, based on the current Project plan and timeline, within thirty (30) days following the date of such officer's certificate, the cost required for Completion of Project Construction will be less than the sum of the final approved construction cost for the Project minus any previous Disbursements, along with documentation evidencing the portion of the Project that has been completed and the portion of the Project remaining to be completed (and the cost thereof) as of the date of such certificate.

16.3 Funding of the Disbursement. Provided that the conditions precedent have been reviewed and approved or waived by OUSD, OUSD shall submit a request to the Orange County Department of Education Disbursement Department to issue the approved payment amount to the Contractor or other approved party.

IN WITNESS WHEREOF, OUSD and ERC have executed this Agreement as of the dates set forth with the respective signatures.

[SIGNATURES ON THE FOLLOWING PAGE]

OUSD:

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

By: 

Name: Claudio (Joe) Sornera

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 – To be provided

EXHIBIT B

Project Schedule – To be provided

EXHIBIT C

Form of Payment and Performance Bond

PAYMENT BOND

(CALIFORNIA PUBLIC WORK)

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the EL RANCHO CHARTER SCHOOL (sometimes referred to hereinafter along with the ORANGE UNIFIED SCHOOL DISTRICT, collectively as "Obligee") has awarded to _____ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: _____ (hereinafter referred to as the "Public Work"); and

WHEREAS, said Contractor is required to furnish a bond in connection with said Contract, and pursuant to California Civil Code section 9550;

NOW, THEREFORE, We, _____, the undersigned Contractor, as Principal; and _____, a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the EL RANCHO CHARTER SCHOOL and ORANGE UNIFIED SCHOOL DISTRICT as dual Obligees, and to any and all persons, companies, or corporations entitled by law to file stop notices under California Civil Code section 9100, or any person, company, or corporation entitled to make a claim on this bond, in the sum of _____ Dollars (\$ _____), such sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which payment will and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, its heirs, executors, administrators, successors, or assigns, or subcontractor, shall fail to pay any person or persons named in Civil Code section 9100; or fail to pay for any materials, provisions, or other supplies, used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code, with respect to work or labor thereon of any kind; or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by Unemployment Insurance Code section 13020 with respect to work and labor thereon of any kind, then said Surety will pay for the same, in an amount not exceeding the amount herein above set forth, and in the event suit is brought upon this bond, also will pay such reasonable attorneys' fees as shall be fixed by the court, awarded and taxed as provided in California Civil Code section 9550 et seq.

This bond shall inure to the benefit of any person named in Civil Code section 9100 giving such person or his/her assigns a right of action in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, Plans, or specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described; or pertaining or relating to the furnishing of labor, materials, or equipment therefor; nor by any change or modification of any terms of payment or extension of time for payment pertaining or relating to any scheme or work of improvement herein above described; nor by any rescission or attempted rescission of the contract, agreement or bond; nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond; nor by any fraud practiced by any person other than the claimant seeking to recover on the bond; and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given; and under no circumstances shall the Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the Obligee and the Contractor or on the part of any obligee named in such bond; that the sole condition of recovery shall be that the claimant is a person described in California Civil Code section 9100, and who has not been paid the full amount of his or her claim; and that the Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF this instrument has been duly executed by the Principal and Surety above named, on the _____ day of _____, 20__.

PRINCIPAL/CONTRACTOR:

By: _____

SURETY:

By: _____

Attorney-in-Fact

IMPORTANT: THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service for service of process in California)

Telephone: _____

Telephone: _____

STATE OF CALIFORNIA)
)
COUNTY OF)

ss.

On _____ before me, _____, a Notary Public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument as the Attorney-in-Fact of the _____ (Surety) and acknowledged to me that he/she/they subscribed the name of the _____ (Surety) thereto and his own name as Attorney-in-Fact on the executed instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said State (SEAL)

Commission expires: _____

NOTE: A copy of the power-of-attorney to local representatives of the bonding company must be attached hereto.

PERFORMANCE BOND

(CALIFORNIA PUBLIC WORK)

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the EL RANCHO CHARTER SCHOOL (sometimes referred to hereinafter along with the ORANGE UNIFIED SCHOOL DISTRICT, collectively as "Obligee") has awarded to _____ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: _____ (hereinafter referred to as the "Public Work"); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in that certain contract for said Public Work dated _____, (hereinafter referred to as the "Contract"), which Contract is incorporated herein by this reference; and

WHEREAS, the Contractor is required by said Contract to perform the terms thereof and to provide a bond both for the performance and guaranty thereof.

NOW, THEREFORE, we, _____, the undersigned Contractor, as Principal, and _____, a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the EL RANCHO CHARTER SCHOOL and ORANGE UNIFIED SCHOOL DISTRICT as dual Obligees, in the sum of _____ Dollars (\$ _____), said sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the bounded Contractor, his or her heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in said Contract and any alteration thereof made as therein provided, on his or her part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill guarantees of all materials and workmanship; and indemnify, defend and save harmless the Obligee, its officers and agents, as stipulated in said Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exonerated or pro tanto) by any change, extension of time, alteration in or addition to the terms of the contract or to the work to be performed there under or the specifications accompanying the same, nor by any change or modification to any terms of payment or extension of time for any payment pertaining or relating to any scheme of work of improvement under the contract. Surety also stipulates and agrees that

it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any overpayment or underpayment by the Obligee that is based upon estimates approved by the Architect. The Surety stipulates and agrees that none of the aforementioned changes, modifications, alterations, additions, extension of time or actions shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, modifications, alterations, additions or extension of time to the terms of the contract, or to the work, or the specifications as well notice of any other actions that result in the foregoing.

Whenever Principal shall be, and is declared by the Obligee to be, in default under the Contract, the Surety shall promptly either remedy the default, or shall promptly take over and complete the Contract through its agents or independent contractors, subject to acceptance and approval of such agents or independent contractors by Obligee as hereinafter set forth, in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of Liquidated Damages; or, at Obligee's sole discretion and election, Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Obligee of the lowest responsible bidder, arrange for a contract between such bidder and the Obligee and make available as Work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the "balance of the Contract Price" (as hereinafter defined), and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of Liquidated Damages. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable to Principal by the Obligee under the Contract and any modifications thereto, less the amount previously paid by the Obligee to the Principal, less any withholdings by the Obligee allowed under the Contract. Obligee shall not be required or obligated to accept a tender of a completion contractor from the Surety.

Surety expressly agrees that the Obligee may reject any agent or contractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal. Unless otherwise agreed by Obligee, in its sole discretion, Surety shall not utilize Principal in completing the Contract nor shall Surety accept a bid from Principal for completion of the work in the event of default by the Principal.

No final settlement between the Obligee and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

The Surety shall remain responsible and liable for all patent and latent defects that arise out of or relate to the Contractor's failure and/or inability to properly complete the Public Work as required by the Contract and the Contract Documents. The obligation of the Surety hereunder shall continue so long as any obligation of the Contractor remains.

Contractor and Surety agree that if the Obligee is required to engage the services of an attorney in connection with enforcement of the bond, Contractor and Surety shall pay Obligee's reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including reasonable attorneys' fees to be fixed by the Court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

PRINCIPAL/CONTRACTOR:

By: _____

SURETY:

By: _____

Attorney-in-Fact

The rate of premium on this bond is _____ per thousand.

The total amount of premium charged: \$ _____ (This must be filled in by a corporate surety).

IMPORTANT: THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service for service of process in California)

Telephone: _____

Telephone: _____

STATE OF CALIFORNIA)
)
COUNTY OF)

ss.

On _____, before me, _____, a Notary Public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument as the Attorney-in-Fact of the _____ (Surety) and acknowledged to me that he/she/they subscribed the name of the _____ (Surety) thereto and his own name as Attorney-in-Fact on the executed instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said State (SEAL)

Commission expires: _____

NOTE: A copy of the power-of-attorney to local representatives of the bonding company must be attached hereto.

EXHIBIT D

Specific Information or Requirements

Directors and Officers Liability Insurance: See Section 11.1.1.1 above.

Minimum limit of not less than \$2,000,000 per occurrence.

Addresses for Notices: See Article XIV

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

To OUSD: Orange Unified School District
 1401 North Handy Street
 Orange, CA 92867
 Attention: Joe Sorrera
 Facsimile: (714) 997-6180

EXHIBIT E

Form of Progress Report

(See Attached)

EXHIBIT F

Form of Projected Contractor Invoice

(See Attached)

Progress Report

El Rancho Charter School
Submit Two Hard Copies

Billing Address:
Orange Unified School District
Attention: Accounts Payable
1401 North Handy Street
Orange, CA 92867

Date: _____
Period: _____

OUSD Project Number: _____
Project Description: El Rancho Charter School Athletic & Science Building
Approved Budget: _____

Billing Phases Per Construction Contract	Fee Alloc. Per Contract	Maximum fee amount per Fee and Payment Schedule of Construction Contract	Previous Percentage Billed	Fee Amount Completed per Billing Phase or Total Monthly Fee Invoiced To Date	Percentage Billed the Period	Amount Billed this Period	Balance Remaining to be Invoiced
Basic Construction Cost		\$ -	0.00%	\$ -			\$ -
		\$ -	0.00%	\$ -			\$ -
		\$ -	0.00%	\$ -			\$ -
		\$ -	0.00%	\$ -			\$ -
		\$ -	0.00%	\$ -			\$ -
		\$ -	0.00%	\$ -			\$ -
		\$ -	0.00%	\$ -			\$ -
		\$ -	0.00%	\$ -			\$ -
		\$ -	0.00%	\$ -			\$ -
		\$ -	0.00%	\$ -			\$ -
Sub Total	0%	\$ -		\$ -			\$ -
Extra Services		\$ -		\$ -			\$ -
		\$ -		\$ -			\$ -
Sub Total		\$ -		\$ -			\$ -
Approved Change Work Orders		\$ -		\$ -			\$ -
		\$ -		\$ -			\$ -
Sub Total		\$ -		\$ -			\$ -
Total: Basic Construction				\$ -			\$ -
Total: Extra Services & Change Orders		XXXX					\$ -
Total Budgeted		XXXX					\$ -
						Total: Balance Remaining	\$ -

I certify under penalty of perjury that to the best of my knowledge and belief, the information provided in this Progress Report is true, correct and accurate.

El Rancho Project Manager _____

Date _____

OUSD Representative _____

Date _____

Architect _____

Date _____

DSA Project Inspector _____

Date _____

Attached a copy of the latest contractor invoice.

Projected Contractor Invoice

El Rancho Charter School
Submit Two Hard Copies

Billing Address:
Orange Unified School District
Attention: Accounts Payable
1401 North Handy Street
Orange, CA 92867

Date: _____
Invoice Period: _____
Invoice Number: _____
Payment Request Number: _____
OUSD Project Number: 0
Project Description: El Rancho Building
Approved Budget: _____

Billing Phases Per Construction Contract	Percent Complete	Amount Billed from Contractor Invoice dated _____	Estimated 30 Days	Total Forecasted Expenditure
Basic Construction Cost				
		\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -
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		\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -
Sub Total		\$ -	\$ -	\$ -
Extra Services				
		\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -
Sub Total		\$ -	\$ -	\$ -
Approved Change Work Orders				
		\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -
Sub Total		\$ -	\$ -	\$ -
Total: Basic Construction		\$ -	\$ -	\$ -
Total: Extra Services & Change Orders		\$ -	\$ -	\$ -
Total Budgeted		\$ -	\$ -	\$ -
			BUDGETED	\$ -
			Balance to Pay	\$ -

Reconciled Bank Balance at DATE _____ \$ _____
Attach Bank Statement and the Reconciliation

Less Estimated 30 Day Forecast \$ _____

Balance \$ _____

I certify under penalty of perjury that to the best of my knowledge and belief, this invoice is true, correct and accurate and that the total amount requested under this invoice has not been previously requested and/or received by the applicant.

APPROVED FOR PAYMENT:

El Rancho Charter School Project Manager

OUSD Authorized Signature

Date

Date