

SIERRA SANDS UNIFIED SCHOOL DISTRICT

**Board of Education
Special Board Meeting**

**JANUARY 31, 2014
District Office Conference Room A
113 Felspar
*www.ssusdschools.org***

We, the members of the Board of Education of the Sierra Sands Unified School District, are committed to providing the highest quality education in a safe environment to all K-12 students. We believe the school shares with the family, church, and community the responsibility for developing life-long learners who are responsible, productive

A G E N D A

CALL TO ORDER AND PLEDGE TO THE FLAG

11:00 A.M.

Amy Castillo-Covert
Judy Dietrichson
Bill Farris
Tom Pearl, Vice President/Clerk
Kurt Rockwell, President
Michael Scott

Joanna Rummer, Superintendent (appearing telephonically)

1. **ADOPTION OF AGENDA**

2. **BUSINESS ADMINISTRATION**

2.1 Consider Approval of Agreement with Ridgecrest Charter School As Alternative to Specific Compliance With Education Code Section 47614 and CCR, title 5, sections 11969.1 et seq. (Proposition 39”) In Accordance With California Code of Regulations, title 5, section 11969.1, subd. (b).

3. **ADJOURNMENT**

2. BUSINESS ADMINISTRATION

- 2.1 Consider Approval of Agreement with Ridgecrest Charter School as Alternative to Specific Compliance With Education Code Section 47614 and CCR, title 5, sections 11969.1 et seq. (Proposition 39”) In Accordance With California Code of Regulations, title 5, section 11969.1, subd. (b).
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BACKGROUND INFORMATION: Ridgecrest Charter School (RCS) made a request for use of District facilities pursuant to Proposition 39. Proposition 39 provides for allocation of district facilities to a charter school that makes a timely request and is eligible under the statute and regulations for use of district facilities. Facilities are allocated based upon the charter school’s in-district average daily attendance. To qualify for facilities, the charter school must be able to project at least 80 in-district ADA for the school year. Since the request was received from RCS, the superintendent and representatives of RCS have met to discuss options for housing RCS. Section 11969.1, subd. (b), of the regulations governing Proposition 39 provides that a charter school and a school district may mutually agree to an alternative to specific compliance with any of the provisions of the regulations.

CURRENT CONSIDERATIONS: The superintendent and RCS representatives were able to reach an agreement regarding facilities alternatives for the charter school. With the board’s approval, the district will enter into an agreement with RCS whereby the district will pay \$80,500 annually to RCS for a period of five years beginning with the 2014-15 school year and ending with the 2018-19 school year in lieu of allocation of district facilities for use by the charter school. In return, RCS agrees to waive any and all rights to request to use district facilities under Proposition 39 for a period of five school years. A copy of this agreement is attached. The agreement is subject to approval by both the district board and RCS board. The RCS board has approved the agreement.

FINANCIAL IMPLICATIONS: The cost of this agreement is estimated to be \$80,500 per year for five years for a total of \$402,500.

SUPERINTENDENT’S RECOMMENDATION: It is recommended that the board approve the agreement with Ridgecrest Charter School as an alternative to specific compliance with Proposition 39 in accordance with 5 CCR section 11969.1., subd. (b).

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made and entered into by and between Sierra Sands Unified School District ("DISTRICT") and Ridgecrest Charter School ("RCS"). DISTRICT and RCS are hereinafter collectively referred to as the "Parties."

RECITALS

A. Whereas on or about December 1, 2013 RCS made a request to the DISTRICT for facilities pursuant to Education Code section 47614 and the regulations implementing same (Cal. Code Regs., tit. 5, §§ 11969.0 et seq.) (jointly referred to as "Proposition 39") for the 2014/2015 school year ("2014/2015 REQUEST");

B. Whereas RCS may make annual requests in the 2015/2016, 2016/2017, 2017/2018, and 2018/2019 school years to the DISTRICT for facilities pursuant to Proposition 39 or any other provision of law currently existing or which hereafter be enacted ("FUTURE REQUESTS");

C. Whereas the DISTRICT and RCS desire to relieve, resolve, waive and discharge all claims arising from RCS' 2014/2015 REQUEST and/or FUTURE REQUESTS (collectively "REQUESTS"), as well as any other demands, actions, claims, liabilities, liens, damages, obligations, or causes of action, with respect to any and all subject matter(s), transactions and/or other events, whether previously asserted or otherwise, which RCS may have against DISTRICT, whether known or unknown, arising out of, or relating to, every act or omission directly or indirectly arising from the REQUESTS.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants, agreements and representations hereinafter set forth, DISTRICT and RCS hereby agree as follows:

1. The Parties agree that this Agreement shall not in any way constitute an admission of the past, present or future existence of any valid or contingent claims against, or liability to any party on the part of any other party except as set forth below. It is understood that each of the Parties denies in all respects any and all allegations and/or wrongdoing as asserted by any other of the Parties.

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2. In lieu of providing facilities, DISTRICT shall provide RCS with annual payments of \$80,500 beginning on August 1, 2014, according to the following schedule:

<u>School Year</u>	<u>Payment Date</u>	<u>Amount</u>
2014–2015	August 1, 2014	\$80,500
2015–2016	August 1, 2015	\$80,500
2016–2017	August 1, 2016	\$80,500
2017–2018	August 1, 2017	\$80,500
2018–2019	August 1, 2018	\$80,500

3. RCS agrees that it withdraws its 2014/2015 REQUEST and shall not make any FUTURE REQUESTS for facilities to the DISTRICT for the 2015/2016, 2016/2017, 2017/2018, and 2018/2019 school years including, without limitation, any facilities request under California Education Code section 47614 and sections 17455 et seq. RCS further agrees that its 2014/2015 REQUEST is deemed withdrawn on the date all parties execute this Agreement.

4. Nothing in this Agreement shall be construed as making either party the partner, joint venturer or agent of the other.

RELEASES AND WAIVERS

5. Except as otherwise expressly stated in this Agreement and except for obligations created by this Agreement, RCS does hereby for itself and its respective agents, servants, spouses, domestic partners, employees, parent companies, subsidiaries, affiliates, officers, directors, board members, stockholders, attorneys (past and present), insurers, indemnities, representatives, partners (either limited or general), predecessors in interest, assigns, and successors, release, acquit, and forever discharges DISTRICT and all its agents, servants, spouses, domestic partners, employees, parent companies, subsidiaries, affiliates, officers, directors, board members, stockholders, attorneys (past and present), indemnities, representatives, insurers, sureties, partners (either limited or general), predecessors in interest, assigns, heirs, and successors of and from any and all manner of action or actions, cause or causes of action, suits, workers compensation claims, debts, liens, contracts, agreements, bonds, promises, liabilities, claims (including, but not limited to, claims for attorneys fees, costs, and sanctions), damages, demands, losses, costs, or expenses of any nature, whether now known or unknown, at law or in equity, vested or contingent, suspected or unsuspected, and whether or not concealed or hidden, which have

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existed, or which do exist, or which hereafter can, shall, or may exist, with respect to those events and/or transactions which arise out of, or relate to, the REQUESTS.

6. Except as provided herein, RCS acknowledges that it is aware of the fact that the execution and full performance of the terms of this Agreement shall be effective as a full and final accord and satisfaction and settlement of and as a bar to each and every claim, damage, demand for damage, debt, account, reckoning, liability, workers compensation claim, obligation, cost, expense, lien, action and cause of action heretofore referred to and release and as more specifically described above, which RCS may have in the future or have had against DISTRICT by reason of, relating to, or in connection with the transactions and occurrences forming the basis of the REQUESTS. In connection with such waiver and relinquishment, RCS acknowledges that it is aware it or its attorneys may hereinafter discover facts different from or in addition to the facts which its attorneys now know or believe to be true with respect to the subject matter of this Agreement, but it is RCS' intention to fully, finally, absolutely and forever settle any and all claims, disputes and differences which do now exist, or heretofore have existed between DISTRICT and RCS which relate to or form the basis for the REQUESTS, and that in furtherance of such intention, the Agreement herein shall be and remain in effect as a full and final complete Release notwithstanding the discovery of any such different or additional facts.

7. Except as provided herein, it is the intention of the Parties in executing this Agreement that the same shall be effective as a bar to each and every claim, demand, and cause of action hereinabove specified; and that RCS hereby knowingly and voluntarily waives any and all rights and benefits otherwise conferred by the provisions of Section 1542 of the California Civil Code, which reads in full as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

8. Except as provided herein, RCS expressly consents that, notwithstanding section 1542 of the California Civil Code, or any other statute or rule of law of similar import whether enacted or in force in California or in any other State of the Union, this Agreement shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown or unsuspected claims, demands, and causes of action, if any, as well as those relating to any other claims, demands, and causes of action hereinabove specified. RCS acknowledges and agrees that this waiver is an essential and material term of this Agreement and the settlement which leads to it, and without such waiver, the Parties would not have entered into this Agreement. RCS has been advised by legal counsel with respect to such waiver, and understands and acknowledges the significance and consequences of the Agreement and of this express

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waiver of section 1542 and any other similar statute or rule of law of similar import whether enacted or in force in California or in any other State of the Union.

REPRESENTATIONS AND WARRANTIES

9. The Parties each represent and warrant that no other person or entity has claimed or now claims any interest in the subject of this Agreement, and that they have the sole right and exclusive authority to execute this Agreement and that they have not sold, assigned, transferred, or otherwise set over to any other person or entity, any claim, lien, demand, cause of action, obligation, damage, or liability covered thereby.

ENTIRE AGREEMENT

10. This Agreement contains the entire agreement between the Parties hereto and constitutes the complete, final, and exclusive embodiment of their agreement with respect to the subject matter hereof. The terms of this Agreement are contractual and not a mere recital. This Agreement is executed without reliance upon any promise, warranty, or representation by any party or any representative of any party other than those expressly contained herein, and each party has carefully read this Agreement, has been advised of its meaning and consequences by his or its respective attorney, and signs the same of his or its own free will.

BINDING EFFECT

11. This Agreement shall bind the heirs, legal successors, personal representatives, successors, and assigns of each party, and inure to the benefit of each party and its/his agents, directors, trustees, officers, employees, servants, successors, and assigns.

ATTORNEYS FEES AND COSTS

12. Except as otherwise provided herein, each party to this Agreement shall bear its own costs, expenses, and attorneys' fees, whether taxable or otherwise, incurred in, arising out of, or in any way related to the REQUESTS and the matters released herein.

ENFORCEMENT

13. If any action is necessary to enforce or interpret the terms of this Agreement, the prevailing party or parties (as determined by the Court or other relevant authority) in such action shall be entitled to its reasonable attorneys' fees and costs, including court costs and expert fees, whether or not such proceeding is prosecuted to judgment.

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JURISDICTION

14. Any suit brought by the DISTRICT or RCS to enforce any provision hereof or for damages for the breach hereof, shall be commenced and maintained exclusively in the state courts sitting in California.

APPLICABLE LAW

15. This Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of the State of California as applied to contracts made and to be performed entirely within California.

LANGUAGE AND TERMS

16. The language and terms of this Agreement are to be understood in their ordinary sense (except where otherwise defined) and are not to be interpreted in a technical manner so as to unfairly deprive any party of substantive rights. Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular to refer to and include the plural, and vice versa.

CONSTRUCTION

17. The text of this Agreement is the product of negotiation among both Parties and is not to be construed as having been prepared by one party or the other, but shall be construed as if all Parties jointly prepared this Agreement, and any uncertainty or ambiguity shall not be interpreted against any one party.

COUNTERPARTS

18. This Agreement may be executed in duplicate originals, including facsimiles, each of which is equally admissible in evidence, and each original shall fully bind each party as if all had signed the same copy. Upon execution by all Parties, each signed counterpart shall constitute one original.

SEVERABILITY

19. In the event any provision of this Agreement is found to be illegal or unenforceable, such illegality or unenforceability shall not prevent enforcement of all other provisions of the Agreement.

NOTICES

20. All notices required or permitted to be given under this Agreement must be in writing and may be given by any method of delivery which provides evidence or

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confirmation of receipt, including personal delivery, express courier (such as Federal Express), facsimile, and prepaid certified or registered mail with return receipt requested. Notices shall be deemed to have been given and received on the date of actual receipt or, if any of the following dates is applicable and is earlier, then on such earlier date: on the business day actually sent if sent by facsimile and first class mail; one (1) business day after sending, if sent via express courier; or five (5) business days after deposit in the U.S. mail, if sent by certified or registered mail. Notices shall be given or addressed to the respective parties at the following addresses:

To: Ridgecrest Charter School
325 S. Downs
Ridgecrest, CA 93555

To: Joanna Rummer
Superintendent
Sierra Sands Unified School District
113 Felspar Avenue
Ridgecrest, CA 93555

Any party may change its address for the purpose of this section by giving written notice of such change to the other party in the manner herein provided.

AUTHORITY

21. Each party warrants that the person signing below is authorized by its governing board to sign this Agreement on its behalf, and to bind it to the terms of this Agreement.

MODIFICATIONS

22. This Agreement shall not be modified by any party by oral representation made before or after the execution of this Agreement. All modifications must be in writing and signed by the Parties hereto.

EXECUTION OF FURTHER DOCUMENTS

23. Each of the Parties hereto agree to perform all acts and to execute, deliver and file all documents reasonably necessary to effectuate the rights and obligations set forth herein and to carry out the purposes and intent of the Agreement.

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VOLUNTARY AND KNOWING

24. This Agreement is executed voluntarily and without any duress or undue influence on the Parties hereto. The Parties acknowledge that:

- A. THEY HAVE READ THIS AGREEMENT;
- B. THEY WERE REPRESENTED IN THE PREPARATION, NEGOTIATION, AND EXECUTION OF THIS AGREEMENT BY LEGAL COUNSEL OF THEIR OWN CHOICE OR HAD THE OPPORTUNITY TO RETAIN LEGAL COUNSEL;
- C. THE AGREEMENT HAS BEEN FULLY EXPLAINED TO THEM BY THEIR RESPECTIVE LEGAL COUNSEL;
- D. THEY UNDERSTAND THE TERMS AND CONSEQUENCES OF THIS AGREEMENT AND OF THE RELEASES AND WAIVERS IT CONTAINS;
- E. THEY ARE FULLY AWARE OF THE LEGAL AND BINDING EFFECT OF THIS AGREEMENT AND SIGN THE SAME OF THEIR OWN FREE WILL; AND
- F. THEY ARE COMPETENT AND OF SOUND MIND.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement and Release on the respective dates set forth below.

RIDGECREST CHARTER SCHOOL

SIERRA SANDS UNIFIED SCHOOL DISTRICT

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Dated: _____, 2014

Dated: _____, 2014

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