

LOS ANGELES UNIFIED SCHOOL DISTRICT

SCHOOL CONSTRUCTION BOND CITIZENS' OVERSIGHT COMMITTEE

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Connie Yee (Alternate)

L.A. Co. Auditor-Controller's Office

Jose Zambrano (Alternate)

Tenth District PTSA

(Vacant)

Assoc. General Contractors of CA

Joseph P. Buchman – Legal Counsel

Burke, Williams & Sorensen, LLP

Lori Raineri and Keith Weaver – Oversight Consultants

Government Financial Strategies

Timothy Popejoy

Bond Oversight Administrator

Perla Zitle

BOC Staff

RESOLUTION 2020-13

BOARD REPORT NO. 312-19/20

PATH FORWARD FOR THE OCEAN CHARTER SCHOOL PANAMA STREET K-8 SCHOOL PROJECT

WHEREAS, Los Angeles Unified School District's (Los Angeles Unified) Staff proposes that the Board of Education (Board) adopt one or both of the following actions (the "Actions") and authorize the Chief Facilities Executive, the General Counsel, and/or their designee to undertake reasonable action and to execute reasonable instruments as permitted by law to accomplish the action approved by the Board:

1. In order to assist Ocean Charter School ("Ocean") in completing construction of the school facilities at Panama Street ("Project"), authorize an increase of approximately \$5,400,000, which would increase the augmentation grant from \$36,064,634 to \$41,464,634, and the overall Project budget to \$77,529,268. This will require an exception to the District's Augmentation Grant program policy of providing no more than 50 percent of the project budget as Los Angeles Unified's share will be approximately 53 percent. Bond Program funding targeted for charter school facilities will fund the requested increase; and/or
2. If Ocean fails to complete construction of its Project or otherwise defaults under the Charter School Facilities Program ("CSFP") and/or the agreements with Los Angeles Unified, authorize the Chief Facilities Executive and/or Office of the General Counsel to observe the requirements of the CSFP, California Education Code section 17078.52 et seq., and/or pursue available legal and administrative remedies. The Office of the General Counsel shall inform the Board prior to undertaking any legal action; and

WHEREAS, The State, as part of the CSFP, awarded Ocean a \$25,764,634 grant for the Project and authorized a \$10,300,000 loan. On April 12, 2016, the Board approved a \$25,791,888 augmentation

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PATH FORWARD FOR THE OCEAN CHARTER SCHOOL PANAMA STREET K-8 SCHOOL PROJECT

grant to fund the remainder of the updated project estimate of \$51,583,776. Subsequently, as a result of the Division of the State Architect's (DSA) approval of the project design and the receipt of construction bids, on November 14, 2017, the Board authorized a \$10,272,746 increase to the charter augmentation grant, which increased the District augmentation grant amount from \$25,791,888 to \$36,064,634. Ocean's overall project budget also increased to \$72,129,268 (Board Report No. 190-17/18) at that time; and

WHEREAS, Ocean transferred title to Los Angeles Unified in accordance with the Los Angeles Unified Charter Augmentation Grant Program Guidelines ("Grant Guidelines"); and

WHEREAS, Ocean is constructing a 94,000 square foot, two-story school facility consisting of 26 classrooms, administration offices, a multi-purpose room, and lunch shelters. Additionally, the Project includes outdoor play space and an underground parking garage with approximately 60 parking spaces; and

WHEREAS, Recently during construction, Ocean's overall project budget has increased to \$77,529,268, which is primarily attributed to testing, identification and removal of impacted soil, additional dewatering measures due to the amount of soil water encountered at the site and necessary for the stabilization of the soil, offsite work related to utilities, including the requirement for two additional storm drains in the public right of way, and delayed water and power service; and

WHEREAS, The funding requested is necessary for Ocean to complete construction of the Project; and

WHEREAS, Completion of the Project will allow Ocean to educate all students on one site and will allow Los Angeles Unified to utilize the vacated space occupied by Ocean under Proposition 39 at WESM for other programs; and

WHEREAS, The Project will provide a long-term location for Ocean, who will waive its rights under Proposition 39 for the 40-year term of the lease.

WHEREAS, If Ocean does not complete construction of the Project, Los Angeles Unified may be required to incur general fund costs to observe the Education Code requirements of the CSFP, pursue available legal remedies and secure the site until one of the requirements under CSFP guidelines are met; and

WHEREAS, Los Angeles Unified does not administer the CSFP but if the State deems Ocean in default, the Education Code requires Los Angeles Unified, in the following order of priority, to seek a replacement charter school, elect to take the Project for our own use, or dispose of the Project as surplus property; and

WHEREAS, If Ocean fails to complete construction of the Project, Ocean will not have access to facilities in the upcoming school year for its 530 students because it did not apply for the use of facilities under Proposition 39 (Education Code Section 47614) for the 2020-2021 school year, and the lease for its private facility expires on June 30, 2020; and

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WHEREAS, It should be noted that in the event Ocean manages not to default under CSFP but defaults under the contracts with Los Angeles Unified, the District may pursue legal remedies against Ocean; and

WHEREAS, This action is consistent with the Los Angeles Unified's Charter School Facilities Expansion Program Policy adopted on April 10, 2007, which designates program requirements for projects that provide long-term facility solutions as an alternative to the annual Proposition 39 allocation of Los Angeles Unified facilities (Board Report No. 304-06/07); and

WHEREAS, If Ocean completes the Project it will provide its students with access to permanent, safe school facilities that are up-to-date and promote learning; and

WHEREAS, Not having facilities may potentially cause Ocean to suspend operations until it can identify a site; and

WHEREAS, Assuming the Board authorizes the increase and COVID-19 does not impact ongoing construction, the Project is estimated to be completed by the third quarter of 2020; and

WHEREAS, Without additional funding Ocean will not be able to continue paying its contractor and development team and will be unable to complete construction of the Project; and

WHEREAS, Under CSFP, if the charter school defaults in repayment of its loan, loses its good standing and/or has its charter revoked, Los Angeles Unified must take action in the following order:

1. If the default is the revocation or non-renewal of the charter, Los Angeles Unified must afford the charter school six months to complete the charter review process;
2. Exercise reasonable effort to locate another charter school willing to assume the position of the defaulting charter school;
3. Elect to use the charter school facility as a public school, which will require funding the remaining work to complete construction, and assume repayment of the \$10,300,000 loan OR elect not to use the charter school facility and dispose of the charter school facility in accordance with the CSFP and statutory requirements for the disposal of surplus public school sites; and

WHEREAS, To date, Los Angeles Unified has not pursued legal action for default under the CSFP or its augmentation grant programs; and

WHEREAS, In January 2020, District initiated a formal legal dispute against Ocean for over-allocated Prop. 39 space reimbursements the District claims is owed by Ocean from the 2016-17, 2017-18, and 2018-19 school years that collectively total \$1,265,157.63; and

WHEREAS, Los Angeles Unified Staff has concluded that this proposed action will help facilitate implementation of the Facilities Services Division Strategic Execution Plan (SEP), and therefore, it will not adversely affect Los Angeles Unified's ability to successfully complete the SEP.

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PATH FORWARD FOR THE OCEAN CHARTER SCHOOL PANAMA STREET K-8 SCHOOL PROJECT

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The School Construction Citizens' Bond Oversight Committee recommends that the Board of Education adopt one or both of the Actions and authorize the Chief Facilities Executive, the General Counsel, and/or their designee to undertake reasonable action and to execute reasonable instruments as permitted by law to accomplish the Action(s) approved by the Board, as described in Board Report 312-19/20, a copy of which is attached hereto in the form it was presented to the BOC and is incorporated herein by reference.
2. This resolution shall be transmitted to the Los Angeles Unified School District Board of Education and posted on the Bond Oversight Committee's website.
3. Los Angeles Unified is directed to track the above recommendation and to report on the adoption, rejection, or pending status of the recommendations as provided in section 6.2 of the Charter and Memorandum of Understanding between the Bond Oversight Committee and Los Angeles Unified.

ADOPTED on April 24, 2020, by the following vote:

AYES: **13**

ABSTENTIONS: **0**

NAYS: **1**

ABSENCES: **0**

/Rachel Greene/

Rachel Greene
Chair

/Bevin Ashenmiller/

Bevin Ashenmiller
Vice-Chair



Board of Education Report

File #: Rep-312-19/20, **Version:** 1

Path Forward for the Ocean Charter School Panama Street K-8 School Project

May 5, 2020

Facilities Services Division and Charter Schools Division

Action Proposed:

Staff proposes that the Board of Education (Board) adopt one or both of the following actions and authorize the Chief Facilities Executive, the General Counsel, and/or their designee to undertake reasonable action and to execute reasonable instruments as permitted by law to accomplish the action approved by the Board:

1. In order to assist Ocean Charter School ("Ocean") in completing construction of the school facilities at Panama Street ("Project"), authorize an increase of approximately \$5,400,000, which would increase the augmentation grant from \$36,064,634 to \$41,464,634, and the overall Project budget to \$77,529,268. This would be an exception to the District's Augmentation Grant program policy of providing no more than 50 percent of the project budget, Los Angeles Unified School District's ("Los Angeles Unified") share would be approximately 53 percent. Bond Program funding targeted for charter school facilities will fund the requested increase; and/or
2. If Ocean fails to complete construction of its Project or otherwise defaults under the Charter School Facilities Program ("CSFP") and/or the agreements with Los Angeles Unified, authorize the Chief Facilities Executive and/or Office of the General Counsel to observe the requirements of the CSFP, California Education Code section 17078.52 et seq., and/or pursue available legal and administrative remedies. The Office of the General Counsel shall inform the Board prior to undertaking any legal action.

Background:

The State, as part of the CSFP, awarded Ocean a \$25,764,634 grant for the Project and authorized a \$10,300,000 loan. On April 12, 2016, the Board approved a \$25,791,888 augmentation grant to fund the remainder of the updated project estimate of \$51,583,776. Subsequently, as a result of the Division of the State Architect's (DSA) approval of the project design and the receipt of construction bids, on November 14, 2017, the Board authorized a \$10,272,746 increase to the charter augmentation grant, which increased the District augmentation grant amount from \$25,791,888 to \$36,064,634. Ocean's overall project budget also increased to \$72,129,268 (Board Report No. 190-17/18) at that time. Other factors that added to this increase to the project budget include the Division of the State Architect requirement to construct a mat foundation under the buildings and parking garage, the installation of a passive methane mitigation system due to the site's location in a methane zone.

Ocean acquired 2.1 acres at 12870 and 12908 Panama Street in the Del Rey neighborhood in the City of Los Angeles. Ocean transferred title to Los Angeles Unified in accordance with the Los Angeles Unified Charter Augmentation Grant Program Guidelines ("Grant Guidelines"). On January 10, 2017, the Board adopted a Resolution to exempt the Project from local land use regulations, adopted the Mitigated Negative Declaration and approved the Project. Please see Board Report Nos. 341-15/16, 311-16/17, 313-16/17.

Ocean is constructing a 94,000 square foot, two-story school facility consisting of 26 classrooms, administration offices, a multi-purpose room, and lunch shelters. Additionally, the Project includes outdoor play space and an underground parking garage with approximately 60 parking spaces. Approximately 530 students in K-8th grade will be accommodated at this new school once construction is completed.

Recently during construction, Ocean's overall project budget has increased to \$77,529,268. This increase is primarily attributed to testing, identification and removal of impacted soil, additional dewatering measures due to the amount of soil water encountered at the site and necessary for the stabilization of the soil, offsite work related to utilities, including the requirement for two additional storm drains in the public right of way, and delayed water and power service.

Facilities is working closely with Ocean to minimize unnecessary costs. However, at this late stage of construction there are no feasible alternatives to materially cut costs. The current project budget is still based on an estimate, includes pending change orders and accounts for additional project contingency. The funding requested is necessary for Ocean to complete construction of the Project.

The Project is located in Local District West and Board District 4 (Melvoin).

Expected Outcomes:

Staff anticipates the Board will authorize a \$5,400,000 increase to the augmentation grant for the Ocean Project, from \$36,064,634 to \$41,464,634. Ocean will use this additional funding to complete the Ocean Project.

Ocean currently serves 530 students in K-8th grades on two separate campuses. K-3rd grades are located on a leased site in the Mar Vista community. The 4th through 8th grade students are co-located at Westchester Enriched Sciences Magnets (WESM) through Proposition 39. Completion of the Project will allow Ocean to educate all students on one site and will allow Los Angeles Unified to utilize the vacated space at WESM for other programs. Ocean will also waive its rights under Proposition 39 for the 40-year term of the lease.

Board Options and Consequences:

If the Board adopts the first proposed action, the augmentation grant for the Ocean Project will be increased by \$5,400,000. The Project will provide a long-term location for Ocean, who will waive its rights under Proposition 39 for the term of the lease.

If the first proposed action is not approved, Ocean has stated it will not have sufficient funds to complete construction of the Project. If Ocean does not complete construction of the Project, Los Angeles Unified may be required to incur general fund costs to observe the Education Code requirements of the CSFP, pursue available legal remedies and secure the site until one of the requirements under CSFP guidelines are met.

If the second proposed action is adopted and if Ocean defaults, staff will observe the requirements of CSFP, if applicable, and/or we may pursue available legal remedies.

Los Angeles Unified does not administer the CSFP but if the State deems Ocean in default, the Education Code requires Los Angeles Unified, in the following order of priority, to seek a replacement charter school, elect to take the Project for our own use, or dispose of the Project as surplus property. In the event of Ocean's default, Los Angeles Unified will incur general fund costs to observe the CSFP requirements. In such a situation, Los Angeles Unified may attempt to recover its costs from all available sources.

If Ocean fails to complete construction of the Project, Ocean will not have access to facilities in the upcoming school year for its 530 students because it did not apply for the use of facilities under Proposition 39 (Education Code Section 47614) for the 2020-2021 school year, and the lease for its private facility expires on June 30, 2020. Not having facilities will potentially cause Ocean to suspend operations until it can identify a site. Ocean may apply for the use of Los Angeles Unified facilities under Proposition 39 for the 2021-2022 school year and beyond.

It should be noted that in the event Ocean manages not to default under CSFP but defaults under the contracts with Los Angeles Unified, we may pursue legal remedies against Ocean.

Policy Implications:

This action is consistent with the Los Angeles Unified's Charter School Facilities Expansion Program Policy adopted on April 10, 2007, which designates program requirements for projects that provide long-term facility solutions as an alternative to the annual Proposition 39 allocation of Los Angeles Unified facilities (Board Report No. 304-06/07).

The action is an exception to Grant Guidelines that require charter schools to provide 50 percent of the funding of a school facility from non-Los Angeles Unified sources. If approved, this will increase Los Angeles Unified's share to approximately 53 percent of the Project budget. Ocean has indicated it has no other internal resources available to support the Project. It has already taken a \$10,300,000 loan from the State to cover a portion of the local matching share required by the CSFP.

Budget Impact:

If the Board adopts the first proposed action, the augmentation grant for the Ocean Project will increase from \$36,064,634 to \$41,464,634, a total increase of approximately \$5,400,000. The increase will be funded from Bond Program funds earmarked for charter school facilities projects.

Student Impact:

If Ocean completes the Project it will provide its students with access to permanent, safe school facilities that are up-to-date and promote learning.

Ocean did not apply for the use of facilities under Proposition 39 (Education Code Section 47614) for the 2020-2021 school year, and the lease for its private facility expires this summer. If the increase to the augmentation grant is not authorized, Ocean will most likely not have access to facilities in the upcoming school year to house its 530 students. Not having facilities may potentially cause Ocean to suspend operations until it can identify a site. This may negatively impact Ocean's educational program and the students it serves.

Issues and Analysis:

Ocean's charter augmentation grant proposal for the Project, including its recent request for approximately \$5,400,000 of additional funding, was evaluated under the Grant Guidelines, which require charter school applicants contribute a minimum of 50 percent of the total project cost from non-Los Angeles Unified Bond Program sources. Its most recent request will increase the District's share to approximately 53 percent. While it does not meet the Grant Guidelines, given the Project is 85 percent complete, construction is continuing, and the District holds title to the property and has already invested \$36,064,634 into the Project, staff believes that Ocean's requested increase warrants consideration. If the Board does not authorize the increase to the augmentation grant, Ocean has indicated that it will be unable to complete the Project. Assuming the Board authorizes the increase and COVID-19 does not impact ongoing construction, the Project is estimated to be completed by the third quarter of 2020.

According to Ocean the additional \$5,400,000 in augmentation grant funds will likely be sufficient to complete construction of its Project. Ocean has spent all CSFP funding received from the State and is on track to spend all the \$36,064,634 augmentation grant funds from Los Angeles Unified in April 2020. Without additional funding Ocean will not be able to continue paying its contractor and development team and will be unable to complete construction of its Project. This would mean Ocean will not be able to occupy the site for the 2020-2021 school year and its 530 students will, most likely, be displaced and may not have a facility to occupy for the 2020-2021 school year.

Under CSFP, if the charter school defaults in repayment of its loan, loses its good standing and/or has its charter revoked, Los Angeles Unified must take action in the following order:

1. If the default is the revocation or non-renewal of the charter, Los Angeles Unified must afford the charter school six months to complete the charter review process;
2. Exercise reasonable effort to locate another charter school willing to assume the position of the defaulting charter school;
3. Elect to use the charter school facility as a public school, which will require funding the remaining work to complete construction, and assume repayment of the \$10,300,000 loan OR elect not to use the charter school facility and dispose of the charter school facility in accordance with the CSFP and statutory requirements for the disposal of surplus public school sites.

If Ocean defaults and the Board authorizes the second proposal, the Office of the General Counsel may pursue legal remedies. To date, Los Angeles Unified has not pursued legal action for default under the CSFP or its augmentation grant programs.

In January 2020, District initiated a formal legal dispute against Ocean for over-allocated Prop. 39 space reimbursements the District claims is owed by Ocean from the 2016-17, 2017-18, and 2018-19 school years that collectively total \$1,265,157.63. The dispute was commenced pursuant to the mandatory dispute resolution procedures set forth in Element 14 of Ocean's charter petition. To date, Ocean has disputed the District's claims and has not agreed to pay any reimbursement amounts to the District. The dispute process is ongoing and is expected to proceed to mediation prior to the filing a civil action in superior court.

Bond Oversight Committee Recommendations:

This item was considered by the BOC at its meeting on April 24, 2020. Staff has concluded that this proposed action will help facilitate implementation of the FSD SEP, and therefore, it will not adversely affect Los Angeles Unified's ability to successfully complete the SEP.

Attachments:

None.

Informatives:

None.

Submitted:

4/17/20

RESPECTFULLY SUBMITTED,

APPROVED BY:

AUSTIN BEUTNER
Superintendent

MEGAN K. REILLY
Deputy Superintendent
Office of the Deputy Superintendent

REVIEWED BY:

APPROVED BY:

DAVID HOLMQUIST
General Counsel

MARK HOVATTER
Chief Facilities Executive
Facilities Services Division

___ Approved as to form.

REVIEWED BY:

APPROVED BY:

TONY ATIENZA
Director, Budget Services and Financial Planning

JOSÉ J. COLE-GUTIÉRREZ
Director
Charter Schools Division

___ Approved as to budget impact statement.

PRESENTED BY:

AARON BRIDGEWATER
Director of Facilities Planning and Development
Facilities Services Division