

Students

Integrity

Fiscal Responsibility

Learning

People

Teamwork

Commitment

Accountability

High Standards



Four Corners Charter School

**SPECIAL MEETING OF THE
BOARD OF DIRECTORS'
May 17, 2011**





FOUR CORNERS CHARTER SCHOOL, INC. BOARD MEETING
Tuesday, May 17, 2011
Agenda

CALL TO ORDER

ACTION ITEMS

- I. Open For Public Comment**
- II. HVAC/Roofing Project Review (APPROVAL)**
- III. Development Agreement (APPROVAL)**
- IV. Financing Agreement (APPROVAL)**

INFORMATIONAL

- V. Old Business**
- VI. New Business**
- VII. Adjournment**

◀ **Next Meeting: June 29, 2011** ▶



Facility Update

HVAC/Roofing Project

- Mr. Paul Hage reviewed the entire project with the Board. The concept has been approved but the actual budget was not. The estimates are coming in just shy of 2M to complete both the HVAC and Roofing project. Currently the project is being reviewed as an all-inclusive, one year plan. The project would be completed this summer of 2011 while the students and most of the staff are out of the buildings. The Board agreed that they would accept the recommendation of CSUSA as to the contractor and trust that they will go with the best bid, with low prices while not jeopardizing the overall project.
- The Board discussed the need to view these projects as one and overall cost benefits of not dividing it into phases and complete the project this summer. Timing to begin the project is crucial as the prep work needs to begin now to complete by the start of the new school year.
- The Board requested that CSUSA look at the recycle value of the existing equipment and try to recoup money from that.
- Ms. Mercado reported that the Board currently had a capital fund balance of 1.3M and a reserve of \$900,000. She expressed concern that the project would deplete the entire accounts if approved. Given the concern over the State budget cuts for FTE funding, this might not be in the best interest of the School at this time.
- The Board asked if the project could be financially funded from an outside source and Ms. Mercado stated she would look into this.
- Additionally, the Board discussed the cost savings from the monthly electric usage, maintenance currently being paid for old system, and higher energy efficiency. It was suggested that the savings accrued over the next few years could be broken down and added back to replenish the Board reserve fund. Example, if the yearly savings was \$300,000, \$150,000 of this would go back to the reserve fund.

Motion made by Mr. Melendez with a second by Mr. Miller to approve to move forward with the HVAC/Roofing project with the contingency that financing would be researched and the actual funding for the project would be decided after such research is analyzed.

- 1. First, third party funding would be researched.**
- 2. If third party funding is not available, then capital fund balance and reserved fund would be used with the premise that the cost savings of the use of the new system would go back to replenish the reserve fund.**

- Mr. Melendez stated that Ms. Mercado would take the lead in the research of outside funding.



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Board Certified City, County & Local
Government Law

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May 10, 2011

Via Electronic Mail

Sarah E. Graber, Director of Finance
Business and Fiscal Services
The School District of Osceola County
817 Bill Beck Boulevard
Kissimmee, FL 34744

Tom Phelps, Asst. Superintendent,
Administration/Student Services
The School District of Osceola County
817 Bill Beck Boulevard
Kissimmee, FL 34744

Migdalia Mercado, Senior Accountant
Business and Fiscal Services
The School District of Osceola County
817 Bill Beck Boulevard
Kissimmee, FL 34744

Dr. Sonia Vasquez- Esposito, Director of
Charter Schools & Education
Choices
The School District of Osceola County
817 Bill Beck Boulevard
Kissimmee, FL 34744

**Re: OCSB/Charter School/Four Corners
Our File No. 0859**

Dear Ladies and Gentlemen:

Pursuant to Migdalia's April 28, 2011 email, I am forwarding the first rough draft of a proposed Development Agreement between the School Board and Four Corners regarding the HVAC system replacement work described in Migdalia's email. As you can see from the enclosed, proposed document, I have taken the information from Migdalia's email and attempted to create a Development Agreement. Please carefully review the information in the attached document and provide me with any comments or additional information which is needed to more fully describe the proposed project. You may need to involve other department within the School District to ensure that all relevant issues have been addressed.

Additionally, I have proposed the plans and specifications for this project are attached as Exhibit A to the Agreement. Please obtain a copy of those plans and specifications.



May 10, 2011
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If I can be of further assistance to you with regard to the enclosed, proposed document, please do not hesitate to contact me. I look forward to hearing from you.

Sincerely,



Suzanne D'Agresta

SDA/cv
Enclosure

cc: Terry Andrews, Interim Superintendent

Prepared by and return to:
Suzanne D'Agresta, Esq.
Brown, Garganese, Weiss & D'Agresta, P.A.
111 N. Orange Avenue, Suite 2000
P O Box 2873
Orlando, FL 32802-2873

DEVELOPMENT AGREEMENT

(Four Corners Charter School)

This **Development Agreement** ("Agreement") is entered into between **THE SCHOOL BOARD OF OSCEOLA COUNTY, FLORIDA** ("School Board") a Florida political subdivision, with its principal place of business at 817 Bill Beck Boulevard, Kissimmee, Florida 34744 and **FOUR CORNERS CHARTER SCHOOL, INC.**, ("Four Corners") a Florida non-profit corporation with its principal place of business at 9100 Teacher Lane, Davenport, Florida 33837.

RECITALS

WHEREAS, the School Board is the owner of the facility and real property currently being operated as Four Corners Charter School ("Charter School") and leases the Charter School to Four Corners for the operation and maintenance of the Charter School; and

WHEREAS, Four Corners desires to replace the current heating, ventilation and air-conditioning (HVAC) system at the Charter School, and the School Board is willing to allow Four Corners to perform or cause to be performed such HVAC replacement work.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained, and subject to the conditions set forth herein, the parties hereby agree as follows:

1. **Recitals.** The recitals set forth in the WHEREAS clauses are incorporated herein and made a part of this Agreement.
2. **Project Description.** Four Corners, at its sole cost and expense shall cause to be replaced the HVAC system at the Charter School, consistent with the plans and specifications attached hereto and incorporated by reference as Exhibit A. ***[IS THERE A BETTER WAY TO DESCRIBE THE PROJECT?]*** All work shall be performed by duly licensed and qualified architects, engineers, contractors and subcontractors, and shall otherwise not interfere with the educational program of the Charter School.

3. **Minimum Standards.** All HVAC system replacement work at the Charter School shall be performed in strict compliance with all applicable codes, regulations and standards generally applicable to public schools in the State of Florida, and in accordance with the standards of the School Board in connection with the construction of public schools with regard to approved means of construction and materials for construction. All such work shall also be performed in strict compliance with the State Requirements for Educational Facilities (“SREF”). ***[ARE THESE APPROPRIATE CONSTRUCTION STANDARDS?]***

4. **Inspection and Permitting.** All HVAC system replacement work at the Charter School shall be reviewed, permitted, and inspected by the School Board’s Long Range Planning and Permitting Department. Upon final completion of the HVAC system replacement work, any required certificates of occupancy will only be issued by the School Board’s Long Range Planning and Permitting Department upon all such replacement work passing all final inspections. ***[IS THIS CORRECT?]***

5. **Bonds.** Four Corners shall, at its sole cost and expense, furnish separate payment and performance bonds in the amount of 100% of the cost of the construction of the HVAC system replacement work in accordance with requirements of §255.05 and §1013.47, Florida Statutes, as the same may be amended from time-to-time. The School Board shall be expressly named as an intended third-party beneficiary of the required bonds. Terms, specifications, and quality of the required bonds shall be strictly in accordance with the statutes and shall not be a common law bond.

6. **Indemnity and Hold Harmless.** To the extent permitted by law, Four Corners shall hold harmless and indemnify the School Board from and against any and all manner and types of claims, damages, liabilities, or losses that may result from Four Corners’ HVAC system replacement work, including defense of the School Board and payment of any damages with regard to claims by third parties who may claim to be injured in person or property while on or about the Charter School. This obligation to hold harmless and indemnify the School Board does not constitute a waiver of the School Board’s sovereign immunity nor does it act as abrogation of the limits of liability of the School Board under §768.28, Florida Statutes as the same may be amended from time-to-time. It is the intention of the parties that the School Board will maintain its sovereign immunity to the fullest extent available.

7. **Insurance.** Four Corners shall continue to furnish to the School Board evidence of all insurance as described in that certain Amended and Restated Charter School Contract with regard to the Four Corners Charter School K-8 as the same may be amended from time-to-time.

8. **Liens.** Four Corners shall not have the right or authority to incur the Charter School or to permit any person to claim or assert a lien for the improvement or repair of the Charter School made by Four Corners. Four Corners shall notify all parties

performing work at the Charter School at Four Corners' request that this Agreement does not allow any lien to attach to the School Board's interest.

9. **Improvements to Real Property.** Any and all improvements to the Charter School shall be deemed fixtures to the land and shall be immediately, automatically, conveyed to the School Board upon final completion of the HVAC system replacement work. At all times, the title to the Charter School shall remain in the School Board.

10. **Default.** "Default" shall mean a material breach of this Agreement, failure to perform the HVAC system replacement work in accordance with standards applicable to the School Board public school construction standards, or failure to perform the HVAC system replacement work in accordance with the plans and specification attached hereto as Exhibit "A." Upon any such default, the School Board may exercise any remedy and rights available under the laws of Florida including, but not limited to, an action for injunction or specific performance.

11. **Governing Law and Venue.** This Agreement, and all questions relating to its validity, interpretation, performance or enforceability shall be governed by and construed in accordance with the laws of the State of Florida. Any legal disputes, legal proceedings or actions arising out of or in connection with this Agreement shall be brought in the state courts of Osceola County, Florida.

12. **Notices.** Notices to be delivered under this Agreement shall be in writing and effective when delivered either by hand delivery, facsimile, or United States Certified Mail, Return Receipt Requested, addressed to the parties as follows:

a. To the School Board:

The School Board of Osceola County, Florida
817 Bill Beck Boulevard
Kissimmee, Florida 34744
Attn: Superintendent
Facsimile: (407) 870-4658

b. To Four Corners:

13. **No Waiver.** No consent or waiver, expressed or implied, by either party to this Agreement to or of any breach or default by another in the performance of any obligation shall be deemed or construed to be a consent or waiver to or of any other breach or default by that party. Failure on the part of any party to complain of any act or failure

to act by another party or to declare the other party in default notwithstanding how such failure continues, shall not constitute a waiver of the right of that party.

14. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the matters covered by this Agreement. This Agreement can be modified or amended only by a written document duly executed by the parties or their duly appointed representatives.

15. **No Assignments.** This Agreement may not be assigned, by Four Corners in any fashion, whether by operation of law or by conveyance of any type without the prior written consent of the School Board, which consent the School Board may withhold in its sole discretion.

16. **Captions.** The captions used for the paragraphs and subparagraphs in this agreement are inserted only for a matter of convenience, and in no way define, limit or describe the scope or the extent of this Agreement or any paragraph or subparagraph.

17. **Severability.** In the event the provisions of this Agreement are determined by a Court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision shall be excised from this Agreement, and the remainder of this Agreement shall continue in full force and effect. Notwithstanding the foregoing, if the result of the deletion of such provision will materially and adversely affect the rights of a party, such party may elect, at its option, to terminate this Agreement in its entirety.

18. **Cumulative Remedies.** All rights, powers, remedies, benefits, and privileges available under any provision of this Agreement to any party, are in addition to and cumulative of any and all rights, powers, remedies, benefits and privileges available to such party under all other provisions of this Agreement, at law or in equity.

19. **Approval.** Whenever any review or approval is required by any party, such party agrees that such review or approval will be promptly and expeditiously prosecuted to conclusion.

20. **Further Assurances.** The parties agree to execute any and all further instruments and documents, and take all such action as may be reasonably required by any party to effectuate the terms and provisions of this Agreement and the transactions contemplated in this Agreement.

21. **No Construction Against Drafter.** Each of the parties have been represented by legal counsel who have had ample opportunity to, and have, participated in the drafting of this Agreement. Therefore, this Agreement shall not be construed more favorable or unfavorably against any party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by its duly authorized representatives as of the date first above.

THE SCHOOL BOARD OF OSCEOLA COUNTY, FLORIDA

By: _____
Cindy L. Hartig, Chair

Attest By: _____
Terry Andrews, Interim Superintendent

Date: _____

FOUR CORNERS CHARTER SCHOOL, INC.

By: _____
Print Name: _____

Attest By: _____
Print Name: _____

Date: _____

Exhibit A