



Interoffice Memorandum

AGENDA ITEM

October 24, 2018

TO: Mayor Teresa Jacobs
-AND-
Board of County Commissioners

FROM: Kurt N. Petersen, Manager, Office of Management and Budget *K.N.P.*

SUBJECT: Consent Agenda Item for November 13, 2018
Capital Contribution Agreement between Orange County, Florida
and The School Board of Orange County, Florida

As part of the FY 2018-19 Budget Work Session in July, the Board approved Commissioner Rod A. Love's request to authorize the balance of the District 2 INVEST infrastructure funding be utilized for a South Apopka vocational training facility to be constructed by Orange County Public Schools. This partnership will bring a much needed educational training facility that will benefit area children and families. Included in the FY 2018-19 budget is \$478,000 for Orange County's capital contribution from District 2 INVEST infrastructure funding.

ACTION REQUESTED: Approval and execution of Contribution Agreement by and among The School Board of Orange County, Florida and Orange County, Florida in the amount of \$478,000.

KP/vh

Attachment

c: Eric Gassman, Chief Accountability Officer
Randy Singh, Assistant County Administrator

CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT ("Agreement") is made and entered into as of the Effective Date (hereinafter defined) by and among **THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA**, a body corporate and political subdivision of the State of Florida, whose address is 445 West Amelia Avenue, Orlando, Florida 32801 ("School Board"), and **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida whose principal address is 201 South Rosalind Avenue, Orlando, Florida 32801 ("County").

WITNESSETH:

WHEREAS, School Board is the fee simple owner of that certain real property consisting of approximately 0.218 acres located within Orange County, Florida, and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference ("Property")' and

WHEREAS, in 2014 and 2015, the state legislature appropriated a total of Five Hundred Thousand and No/100 Dollars (\$500,000.00) for the acquisition of the Property and construction and operation of an adult education center on the Property ("Appropriated Funds"); and

WHEREAS, School Board utilized the Appropriated Funds to acquire the Property through eminent domain; and

WHEREAS, School Board intends to design and construct an educational facility ("Proposed Facility") on the Property to provide adult education services and other community services that benefit the community surrounding Wheatley Elementary School; and

WHEREAS, School Board has agreed to engage professionals to design, permit, engineer, develop and construct the Proposed Facilities based on the terms and conditions of this Agreement and the mutual obligations of County and School Board as more particularly set forth herein; and

WHEREAS, County has agreed to contribute to the School Board the Capital Contribution (as defined below) for the design, engineering, development, permitting and construction of the Proposed Facilities as more particularly set forth herein; and

WHEREAS, School Board and County desire to set forth the terms and conditions of their agreement for the design, planning, development, construction, and use in the Proposed Facilities.

NOW THEREFORE, in consideration of the mutual promises made herein and for other good and valuable consideration, the receipt of which is hereby acknowledged by the parties, the parties hereby agree as follows:

1. **Recitals**. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **County's Payment**. County has appropriated and shall contribute to School Board a one-time contribution in an amount equal to Four Hundred Seventy-Eight Thousand and No/100 Dollars (\$478,000.00) ("County's Capital Contribution") for the design and construction of the Proposed Facility. The County's Capital Contribution shall be paid to the School Board in two (2) installments as follows:

a. Two Hundred Thirty-Nine Thousand and No/100 Dollars (\$239,000.00) shall be paid by County to the School Board within thirty (30) days of receipt by County of satisfactory

evidence that School Board has retained the services of an architect or architectural firm, planner or planning firm and/or engineering firm duly licensed in the State of Florida to design the Proposed Facility ("Design Professional").

b. Two Hundred Thirty-Nine Thousand and No/100 Dollars (\$239,000.00) shall be paid by County to the School Board within thirty (30) days of receipt by County of satisfactory evidence that School Board has retained the services of a construction management firm or general contractor duly licensed in the State of Florida for construction or management of the construction of the Proposed Facility ("CM").

3. **Use of County's Capital Contribution/Surplus Funds and Shortfall.** School Board shall use the County's Capital Contribution for the costs associated with the design and construction of the Proposed Facility. Should the County's Capital Contribution exceed the final costs and expenses incurred for the design, planning and construction of the Proposed Facility or in the event School Board fails to complete the design and construction within three (3) years of the date hereof, School Board agrees to repay to the County that portion of the County's Capital Contribution not otherwise expended toward the design and construction of the Proposed Facility. The School Board shall be solely responsible for any costs and expenses incurred in excess of the County's Capital Contribution related to the design and construction of the Proposed Facility.

4. **Construction of the Proposed Facility.** School Board shall cause construction of the Proposed Facility to commence as soon as reasonably practical after the issuance of all required permits. Once construction has commenced on the Proposed Facility, the School Board shall cause the CM to diligently and in good faith proceed with the construction of the Proposed Facility.

5. **Use of Proposed Facility by School Board.** It is the intent of the parties that School Board use the Proposed Facility for the operation and maintenance of an adult education center offering educational programs in a safe environment for adults, training rooms, administrative offices and any such other uses or purposes incidental thereto ("School Board's Intended Use"). School Board shall not use the Proposed Facility for any use not otherwise included in the School Board's Intended Use without the prior, written consent of County.

6. **Use of Proposed Facility by County.** School Board agrees to permit County, at no additional cost or expense to the County, to periodically utilize the Proposed Facility during the life of the Proposed Facility. County shall request such use by providing written notice to School Board no less than thirty (30) days prior to the date of the requested use outlining the date, time and proposed use of the Proposed Facility. School Board shall have five (5) business days to approve or deny the proposed use by County, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing or anything contained herein to the contrary, County shall coordinate with School Board's Facility Use Management Department to schedule any such use permitted hereunder and provide any documentation reasonably required by School Board to process and approve the request for any such proposed use, including, without limitation, any certificate of insurance, if applicable, provided; however, County shall not be responsible for any facility use fees, rental charges, utility charges, custodial charges or supervisory charges associated with the use of the Proposed Facility.

7. **Lobbying.** School Board shall not expend any funds paid under this Agreement for any lobbyist, as such term is defined in section 2-351 of the Orange County Code, to engage in any lobbying activities designed to influence decisions or other foreseeable actions of the Board of County Commissioners or the governing body of any other municipality located within Orange County.

8. **Naming of Proposed Facility.** School Board reserves the right to name the Proposed Facility. School Board and County understand and agree that the Proposed Facility shall be named in accordance with School Board Policy FF.

9. **Permitting.** School Board and Design Professional shall be responsible for obtaining or causing to be obtained all land use, zoning, special exception, building, development and environmental permits or approvals necessary for the proper execution and completion of the work which are legally required hereunder, including, but not limited to, any application for a future land use amendment, zoning change, special exception application, site plan submissions, general building permits, easements and all other permits, licenses, inspections, fees and similar items to complete the Proposed Facility; sewer (sanitary and storm), water, electrical power, telephone, data utility connections and extensions; utility meter installation and hook-up charges, and other charges assessed by local entities having jurisdiction to permit the lawful occupancy of the Proposed Facility. Permitting shall be through the School Board's Building Code and Compliance Office and all other applicable agencies.

10. **Signage.** Except as otherwise specified herein, County shall be entitled to install signage on the exterior of the Proposed Facility identifying the County and its logo as a contributor to the Proposed Facility, subject to the review and approval of the School Board which will not be unreasonably withheld. In the event County provides written notice to the School Board of its intent to install, repair or replace signage on the exterior of the Proposed Facility ("Signage Notice"), School Board shall have thirty (30) days to review such Signage Notice. Failure to respond to the School Board within thirty (30) days of receipt of the Signage Notice shall amount to an approval by the School Board of the proposed sign.

11. **Improvements or Alterations.** School Board shall have the right to alter, erect or permit to be erected upon the Property any such improvements, alterations or modifications to the Property, or any fixtures, building systems, or equipment or portion thereof, without the prior written approval of the County.

12. **Parking.** School Board and County agree and understand that due to the limitations on the size of the Property, the parking for the Proposed Facility will be located on the adjacent real property owned by School Board known as Wheatley Elementary School ("Wheatley ES Property"). In the event School Board conveys the Property or Wheatley ES Property to a third party entity not affiliated with the School Board, School Board shall record a parking easement encumbering the Wheatley ES Property benefitting the Property.

13. **Indemnification.** To the extent permitted by law, each party agrees to defend, indemnify and hold harmless the other party, its officials and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses (including attorney's fees) attributable to its negligent acts or omissions, or those of its officials and employees acting within the scope of their employment, or arising out of or resulting from the indemnifying party's negligent performance under this agreement. Nothing contained herein shall constitute a waiver of sovereign immunity or the provisions of Section 768.28, Florida Statutes. The foregoing shall not constitute an agreement by either party to assume any liability for the acts, omissions and/or negligence of the other party.

14. **Notice.** Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly received as of (i) the date and time the same are personally delivered, transmitted electronically (i.e., facsimile or e-mail); (ii) within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested; or (iii) within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

School Board: The School Board of Orange County, Florida
Real Estate Management
6501 Magic Way, Bldg. 200
Orlando, Florida 32801
Telephone: (407) 317-3411
Facsimile: (407) 317-3341
Email: Harold.Jenkins@ocps.net

With a copy to: The School Board of Orange County, Florida
Office of the General Counsel
Attn: Laura L. Kelly, Esq.
6501 Magic Way, Bldg. 200
Orlando, Florida 32801
Telephone: (407) 317-3700 (ext. 202-5906)
Telecopy: (407) 317-3751
Email: laura.kelly2@ocps.net

COUNTY: Mayor
Orange County, Florida
201 South Rosalind Avenue
Orlando, Florida 32801

With a copy to: County Administrator
Orange County, Florida
201 South Rosalind Avenue, Fifth Floor
Orlando, Florida 32801

and

County Attorney
Orange County, Florida
201 South Rosalind Avenue, Third Floor
Orlando, Florida 32801

or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided. The attorneys for the parties set forth herein may deliver and receive notices on behalf of their clients.

15. **Effective Date.** The Effective Date of this Agreement shall be the date upon which the last of the parties hereto signs this Agreement ("Effective Date").

16. **Term and Termination.** The term of this Agreement shall continue throughout the life of the Proposed Facility.

17. **Modifications and Amendments.** This Agreement may be amended upon the mutual written consent of the parties hereto. The School Board does hereby confer upon the Superintendent, or Superintendent's designee, the authority to amend this Agreement, or provide any consent, notice, or approval hereunder, without formal School Board approval, provided such amendment, notice, consent or approval does not substantially alter or modify the terms herein. The right to amend or provide consent delegated to the Superintendent shall include the right of the Superintendent to execute the Addendum

and any other agreement, request or documentation resulting from the agreements set forth herein and consistent with the terms and conditions of this Agreement. If, in the sole judgment of School Board, such amendment, notice, consent, or approval does substantially alter or amend this Agreement, then School Board shall have the option of declaring the amendment void *ab initio*, thus rendering the amendment without any legal force and effect. Amendments to this Agreement, which shall conclusively be presumed not to substantially alter or modify the terms hereof, are those which concern the scheduling of hours of use of the Property, and approvals and consents that are expressly contemplated in this Agreement. Amendments to this Agreement which shall conclusively be presumed to substantially alter or modify the terms hereof are those which alter maintenance obligations of the parties and those which increase monetary obligation of the School Board or County.

18. **Entire Agreement.** This Agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party to the extent incorporated into this Agreement.

19. **No Partnership.** School Board and County do not, in any way or for any purpose, become a partner of the other in the conduct of its business, or otherwise, or a joint venturer or a member of a joint enterprise.

20. **Waiver.** The failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall not constitute a waiver of either party's right to demand exact compliance with the terms hereof.

21. **Time.** Time is of the essence of this Agreement.

22. **Legal Construction.** Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included. Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday, or holiday, such time for performance shall be extended to the next business day. For purposes of this Agreement, "holiday" shall mean federal holidays as defined in 5 U.S.C. 6103. Except as otherwise set forth herein, the last day of any period of time described herein shall be deemed to end at 11:59 p.m. local time in Orange County, Florida. The headings inserted at the beginning of each paragraph are for convenience only, and do not add to or subtract from the meaning of the contents of each paragraph.

23. **Governing Law and Venue.** Venue for any action, suit, or proceeding brought to recover any sum due under, or to enforce compliance with, this Agreement shall lie in the court of competent jurisdiction in and for Orange County, Florida; each party hereby specifically consents to the exclusive personal jurisdiction and exclusive venue of such court.

24. **Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

25. **Attorneys' Fees.** In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising herefrom, each party hereto shall bear its own costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant fees,

attorney, paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, in mediation, arbitration, bankruptcy or administrative proceeding, or at trial or on appeal.

26. **Counterparts and Facsimile Signatures.** This Agreement may be executed in two or more counterpart copies, including facsimile and electronic mail signatures, each of which shall be deemed to constitute one original document. The parties may execute different counterparts of this agreement, and, if they do so, the signatures pages from the different counterparts may be combined to provide one integrated document and taken together shall constitute one and the same instrument.

27. **Relationship of Parties.** This Agreement is solely for the benefit of the parties executing the Agreement, and no rights are intended, nor shall any rights accrue, to any third party unless expressly provided in this Agreement.

28. **Successors and Assigns.** School Board shall not assign its right hereunder, without the prior written consent of the County. Failure to comply with this section may result in immediate termination of this Agreement.

29. **Force Majeure.** The time for the performance of School Board's obligations under this Agreement, including without limitation School Board's performance of the design, permitting and construction requirements set forth herein, will be extended for a period of time equal to any period of delay experienced by School Board, or the number of days lost, due to any of the following ("**Force Majeure**"): strikes, civil riots or commotion, war, invasion, acts of terrorism, explosion, fire or other casualty, sabotage, theft, vandalism, Acts of God, labor disputes, unavailability of labor or materials, hurricane, tropical storm, tornado, or other adverse weather conditions, act or failure to act of governmental authorities (including failure or delay in issuing necessary approvals, permits, and licenses so long as Seller is diligently pursuing its obligations hereunder), act or failure to act of third-party utility service providers, or other causes beyond the reasonable control of School Board.

30. **Participation.** All of the parties to this Agreement have participated fully in the negotiation and preparation hereof; this Agreement shall not be construed more strongly for or against any party regardless of which party is deemed to have drafted the Agreement.

31. **Jury Trial.** THE PARTIES HERETO WAIVE A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THEM OR THEIR SUCCESSORS UNDER OR CONNECTED WITH THIS AGREEMENT OR ANY OF ITS PROVISIONS AND ANY NEGOTIATIONS IN CONNECTION THEREWITH.

[SIGNATURE PAGE OF THE CONTRIBUTION AGREEMENT BETWEEN THE ORANGE COUNTY
SCHOOL BOARD AND ORANGE COUNTY, FLORIDA]

IN WITNESS WHEREOF, County and School Board have caused this Agreement to be
executed as of the dates set forth below.



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Phil Datchanda*
Teresa Jacobs
for Orange County Mayor

Date: 11.13.18

ATTEST: Phil Diamond, CPA, County Comptroller

As Clerk of the Board of County Commissioners

By: *Latela Lewis*
for Deputy Clerk

Date: NOV 13 2018

STATE OF FLORIDA)
) sash:
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me on the 13 day of November, 2018,
by ~~Teresa Jacobs, as Mayor of Orange County, Florida~~ Phil Datchanda, County Administrator, a public corporation and public body
corporate and politic of the State of Florida, and who each have acknowledged that he/she executed
the same and that each was authorized to do so. Each is personally known to me or _____ has
produced as identification.



CRAIG A. STOPYRA
MY COMMISSION # FF 199641
EXPIRES: February 15, 2019
Bonded Thru Budget Notary Services

AFFIX NOTARY STAMP

Craig A. Stopyra
NOTARY PUBLIC OF FLORIDA
Print Name: Craig A. Stopyra
Commission No.: FF 199641
Expires: Feb. 15, 2019

[SIGNATURE PAGE OF THE CONTRIBUTION AGREEMENT BETWEEN THE ORANGE COUNTY SCHOOL BOARD AND ORANGE COUNTY, FLORIDA]

“SCHOOL BOARD”

WITNESSES:

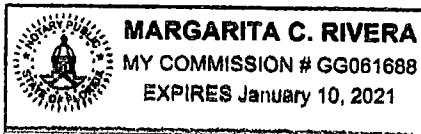
THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA, a corporate body organized and existing under the constitution and laws of the State of Florida

Mariely Pagan
Print Name: Mariely Pagan
Monica L. Conner
Print Name: Monica L. Conner

By: [Signature]
Name: William E. Sublette
Title: Chairman
Dated: 10.22.18

STATE OF FLORIDA)
) sash:
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this 22nd day of October, 2018, by William E. Sublette, Chairman of The School Board of Orange County, Florida, a public corporate body organized and existing under the Constitution and the laws of the State of Florida, on behalf of the School Board, who is personally known to me or had produced _____ (type of identification) as identification.



AFFIX NOTARY STAMP

Margarita Rivera
NOTARY PUBLIC OF FLORIDA
Print Name: _____
Commission No.: _____
Expires: _____

[ADDITIONAL SIGNATURE PAGES TO FOLLOW]

[SIGNATURE PAGE OF THE CONTRIBUTION AGREEMENT BETWEEN THE ORANGE COUNTY
SCHOOL BOARD AND ORANGE COUNTY, FLORIDA]

WITNESSES:

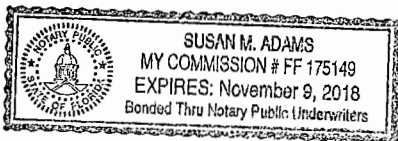
Mariela Pagan
Print Name: Mariela Pagan
Margarita Rivera
Print Name: Margarita Rivera

THE SCHOOL BOARD OF ORANGE
COUNTY, FLORIDA, a corporate body
organized and existing under the constitution and
laws of the State of Florida

Attest: [Signature]
Barbara M. Jenkins, Ed.D., as its
Superintendent
Dated: 10.23.2018

STATE OF FLORIDA)
) s.s.:
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this 23rd day of October,
2018, by Barbara M. Jenkins, Ed.D., as Superintendent of The School Board of Orange County, Florida, a
public corporate body organized and existing under the Constitution and the laws of the State of Florida,
on behalf of the School Board. She is personally known to me or has produced _____
(type of identification) as identification.



AFFIX NOTARY STAMP

[Signature]
NOTARY PUBLIC OF FLORIDA
Print Name: Susan M. Adams
Commission No.: _____
Expires: _____

Reviewed and approved by Orange County
Public School's Chief Facilities Officer

[Signature]
John T. Morris
Chief Facilities Officer

Dated: 10/16, 2018

Approved as to form and legality by legal counsel
to The School Board of Orange County, Florida,
exclusively for its use and reliance.

[Signature]
Laura L. Kelly, Esquire

Dated: OCT 15, 2018

Exhibit "A"

Legal Description of the Property

LOTS 8, 9, AND 10, BLOCK 3, OF OAK LAWN FIRST ADDITION, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK "P", PAGE 16, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.